

VERMONT LEAGUE OF CITIES AND TOWNS

# HANDBOOK FOR COLLECTORS OF DELINQUENT TAXES



A Comprehensive Guide for  
Vermont Collectors of Delinquent Taxes



*Serving and Strengthening Vermont Local Governments*

**The Vermont League of Cities and Towns (VLCT)** was founded in 1967 as a nonprofit, nonpartisan organization dedicated to serving and strengthening Vermont local government. Today, VLCT supports its member municipalities by offering them a comprehensive insurance program, representation before the state and federal governments, and an extensive educational and technical assistance program.



Founded in 2003, the **VLCT Municipal Assistance Center (MAC)** provides local officials with legal and technical assistance, consulting services, and educational workshops that increase the ability of local officials to serve their citizens. The Center also publishes handbooks for all major town officers and annual surveys on municipal salaries and benefits and current municipal practices. MAC staff have diverse backgrounds in public administration, municipal law, human resources, public finance, and planning and zoning.

A publication of the VLCT Municipal Assistance Center

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## **ABOUT THIS HANDBOOK**

The Vermont League of Cities and Towns Municipal Assistance Center has prepared this *Handbook for Collectors of Delinquent Taxes* as part of its series of publications to assist municipal officials. It is not intended to be a substitute for the Vermont Statutes Annotated, but it should prove to be a valuable starting point.

Collectors of delinquent taxes are faced with the sometimes-daunting task of collecting the delinquent taxes for the local government. This handbook provides an in-depth analysis of the historic purpose and the statutory requirements of the position of delinquent tax collector. It also seeks to provide a realistic guide to some of the practical obligations of the office in order to assist delinquent tax collectors to perform their duties in a complete and effective manner. The appendices to this handbook include sample letters and forms, as well as copies of relevant statutes and case law.

The authorities vested in the collector of delinquent taxes are among the most powerful in all of local government. Improper exercise of these authorities can result in significant legal liability for your town. Reasonable efforts have been made to insure that the information provided in this publication is accurate; however, the Vermont League of Cities and Towns makes no warranty, express or implied, or representation that such information is suitable for any particular purpose or may be relied upon for any specific act, undertaking or course of conduct. In light of the ever-changing status of both statutory and case law, the Vermont League of Cities and Towns recommends that its members consult with an attorney before undertaking a specific course of action based on the material contained herein.

Finally, please do not hesitate to contact us if you have suggestions for improvements or additional material that you feel should be included in this handbook.



# CHAPTER 1

## REQUIREMENTS OF THE POSITION OF DELINQUENT TAX COLLECTOR

### A. ELECTION/APPOINTMENT OF DELINQUENT TAX COLLECTORS

Every town in Vermont must have an official charged with collecting delinquent taxes. However, there are a number of ways in which a town can do this.

#### SIX TYPES OF DELINQUENT TAX COLLECTOR

1. **Elected Delinquent Tax Collector.** The town (village, city, fire district or incorporated school district) may vote to elect a delinquent tax collector for a one-year or three-year term. 17 V.S.A. § 2646(9).
2. **Elected Tax Collector/Delinquent Tax Collector.** The town may vote to elect a tax collector, who is charged with collecting both current and delinquent taxes, for a one-year term. 17 V.S.A. § 2646 (8 and 9).
3. **Town Manager.** If a town has adopted a town manager form of government, it may also vote to have the manager collect taxes (both current and delinquent, unless the town has voted to have the treasurer collect current taxes). 24 V.S.A. § 1236 (10).
4. **First Constable.** If the town fails to elect a tax collector at town meeting and does not provide any other method (e.g. town manager), the first constable automatically becomes the collector of current and delinquent taxes. 24 V.S.A. § 1529.
5. **Selectboard's appointment.** If there is a vacancy in the office or the collector is unable to discharge his or her duties because of sickness or other reason, the selectboard may appoint someone (regardless of his or her residency) as delinquent tax collector and/or current tax collector for the town. 32 V.S.A. §§ 4799, 4674.
6. **Charter provision.** Some municipalities have specific governance charters that provide that the local legislative body may appoint the delinquent tax collector.

1. **Incompatible Offices.** If you are a delinquent tax collector for the town, you may not also be a member of the selectboard or school board or hold the position of locally elected auditor (or be the spouse of the town's locally elected auditor). 17 V.S.A. § 2647.

### B. BONDING

All delinquent tax collectors, whether specifically elected, appointed, or also holding the office of treasurer or constable, must obtain a bond as surety for performance of his or her duties. This bond is designed to insure the town against losing money entrusted to the collector, so that if a delinquent tax collector embezzles the taxes collected, the town can recover the lost amounts from the bonding company.

The selectboard determines the amount of the bond, usually equal to the historical average of delinquent taxes turned over to the collector, and can require additional bonding from time to time, if it is not satisfied that the amount of the bond is sufficient. 24 V.S.A. § 832. It is the delinquent tax collector's responsibility to obtain a bond, and if he or she does not do so within ten days after the selectboard demands it, the office of tax collector will be considered vacant. 32 V.S.A. § 4643. **Note that, even though it is the collector's obligation to obtain a bond, the town must pay the premium.**

In most towns, the town holds one bond that covers all of the public officials in the town that are required to be bonded. After each election, the names on the bond should be updated to ensure that the proper individuals are covered. In rare cases, the bonding company will not insure an individual (usually because of past criminal convictions which may make the individual a poor risk). In such cases the selectboard will notify the delinquent tax collector of the need to obtain a bond, and the desired amount of the bond, and it is the delinquent tax collector's obligation to obtain such bond within ten days of the request or lose his or her office.

In the unlikely event that a collector loses his or her office for failure to obtain a bond, the statutes are very specific about the collector's obligation to lodge with the treasurer of the town the warrants issued to him or her, and a list of the names of, and amounts due from the delinquent taxpayers. Failure to comply with this request, when willful, can result in a fine of up to \$1,000 and/or imprisonment for up to five years. 32 V.S.A. § 4644.

## C. LIABILITY

**1. Collector's liability for failure to pay over tax monies.** A delinquent tax collector who unlawfully neglects to collect and/or pay over a tax that has been paid to him or her shall be accountable for such tax (or the arrearages) to the treasurer, selectboard or other person or body authorized to receive the tax monies. Those persons may cite the collector to appear before a justice of a peace of a neighboring town to show why he or she should not be liable for the arrearages and the costs of the proceedings. The collector must be given six days notice of the hearing, although the petition against him or her does not have to be in writing. 32 V.S.A. § 4691.

If the justice of the peace finds that the collector has failed to turn over tax money received and that decision is not appealed, as described below, then the justice may direct a sheriff to collect the money owed by taking and selling "goods, chattels or estate" of the collector. 32 V.S.A. § 4692.

If a collector wishes to appeal a decision of a justice of the peace, he or she must bring an action in the superior court within *two hours* after the judgment has been rendered (clearly the shortest appeal period in Vermont law). Within 48 hours after an appeal is taken, the collector will need to post a bond to cover double the amounts allegedly owed, and he or she may also be required to provide some security to the town to cover its costs of prosecution. For more details about collection from or punishment of a "delinquent" delinquent tax collector, see 32 V.S.A. §§ 4693-4702.

Note that this statutory procedure is not the exclusive remedy available to the town. The collector also may be subject to a suit for wrongful conversion. If the failure to turn over collected taxes is the result of any sort of fraud, the collector may also be liable for fraud. (This liability will not be discharged even if the collector goes bankrupt). A delinquent tax collector who dies or is unable to perform his or her duties, or whose term expires, and who fails to turn over the tax bill committed to him or her and monies collected thereon shall be liable for the entire amount of the tax bill, and does not have the authority to collect the unpaid taxes. (Nor does his or her guardian, executor, or administrator.) 32 V.S.A. § 4672. Uncollected taxes are generally treated as a legitimate claim against the estate of a deceased tax collector.

- 2. Liability for neglect of duty.** A delinquent tax collector (or any town officer) who neglects his or her lawful duty can be fined up to \$100 for each instance of neglect. 24 V.S.A. § 902. Under the criminal statutes, any town officer who *willfully* neglects to perform his/her lawful duties “shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.” 13 V.S.A. § 3006.
- 3. Collector’s liability for collection of an illegal tax.** A delinquent tax collector will not be liable for the consequences of a mistake, mischarge or overcharge in a tax bill committed to him or her for collection. Moreover, the town must indemnify the collector for any damages that the collector might suffer by reason of the illegality or error of the tax. 32 V.S.A. § 4642.
- 4. Collector’s liability for harm to others arising out of the performance of his or her duties.** Because the delinquent tax collector is an elected or appointed official any action brought against the collector must be brought in the name of the town. The municipality must assume all reasonable legal costs incurred by the delinquent tax collector in such cases, so long as the collector was acting in the performance of his or her duties, and did not act with malicious intent. 24 V.S.A. § 901.

#### **D. INDEPENDENCE OF OFFICE**

The *elected* delinquent tax collector holds an independent office of local government. This means that, absent a charter provision to the contrary, the delinquent tax collector is not answerable to any other municipal official. See generally *Bennington v. Booth*, 101 Vt. 24 (1927). (Selectboard has no authority over clerk since he or she is an independent officer of the local government.) *Couture v. Berkshire*, 121 Vt. 359 (1960). (Selectboard has no authority over road commissioner who, at time of this decision, was an independent officer of the local government.)

Because the selectboard or manager has no power to require the elected delinquent tax collector to perform his or her duties in any particular way, the collector may set his or her own hours, may establish his or her own procedures for collecting the delinquent taxes, adopt his or her own collection policies, set up his or her own bookkeeping method, etc. Although the collector is required to conform to all of the statutory requirements of the office, even if the collector fails to or improperly conducts the business of the office, he or she cannot be fired from the position.

The collector is answerable only to the voters who may express their displeasure by declining to reelect. (See also Section C, above, which discusses liability for failure to act.)

## E. COMPENSATING THE DELINQUENT TAX COLLECTOR

Delinquent tax collectors in Vermont are paid in a variety of ways. Consider the following:

### METHODS OF COMPENSATING DELINQUENT TAX COLLECTORS

- 1. Commission.** Most delinquent tax collectors in Vermont are paid by commission. This means that the collector gets paid by keeping the commission that may be collected on delinquent accounts. 32 V.S.A. § 1674. In such cases the delinquent tax collector usually pays for the expenses of office, such as postage and stationary, from these fees. Some collectors have towns that will cover these expenses so that the entire fee amount is the collector's payment.
- 2. Salary.** In some municipalities the delinquent tax collector is paid a salary. Section 1530 of Title 24 states that "If a municipality votes to pay a salary or other compensation for collecting taxes in lieu of fees and commissions, the latter shall be turned in to the municipal treasurer at least once a month." This means that the selectboard and collector may agree upon a salary, or the voters can vote to pay the collector a particular salary in lieu of fees.
- 3. Fees plus salary.** In some municipalities the collector receives fees plus salary. Municipalities should make it clear when they vote a salary for the collector whether it is in addition to, or in lieu of, the statutory fees.

## F. TAX STATUS OF DELINQUENT TAX COLLECTOR

There is quite a bit of folklore that has developed around the topic of the tax status of delinquent tax collectors. Many delinquent tax collectors believe that they are "self employed" or "contractors" for the town, and thus not subject to income tax withholding or Social Security (FICA). The rules show quite clearly, however, that elected officials must be treated as employees, and that they are subject to federal income tax withholding and FICA. **No matter how the delinquent tax collector is compensated, he or she is considered an employee of the town, and accordingly, federal income tax and FICA (social security tax) must be withheld.**

The Social Security rules clearly say that officers of states or of their political subdivisions are employees for purposes of withholding taxes. Thus, if your town is covered by social security (a few small towns in Vermont are not), then the delinquent tax collector must also be covered. As a practical matter, this means that the delinquent tax collector must turn over to the town treasurer all of his or her fees. The treasurer must then issue a paycheck to the collector, with the FICA and income tax withheld and provide a W-2 form at the end of the year. (See sample letters requesting payment in appendices G and N.)

## CHAPTER 2 STATUTORY SCHEME

### A. LEVYING CURRENT TAXES

Before taxes can become delinquent they must first be levied and due. Taxes are levied by the selectboard which, according to 24 V.S.A. § 1521, makes out and delivers a tax bill to the treasurer or collector of current taxes (depending on who the voters have designated for collecting the current taxes). This tax bill must set out the amounts included for state, county, town, town school district and highway taxes, with the name of each person taxed and the amount of his or her tax.

Where the taxable property includes a homestead, the bill must specify the amounts imposed on that homestead for town, local share and statewide education taxes. The selectboard must certify on the tax bill what taxes are included and the rate percent of each tax so included. In addition, the selectboard must attach to the tax bill, when given to the collector of current taxes, a warrant for the collection of the taxes. *Federal Land Bank v. Flanders*, 105 Vt. 204 (1933). Upon receipt of the warrant and tax bills, the collector of current taxes must give the selectboard a receipt to provide a record that he or she has received the bills. The receipt is then given to the town treasurer, who will use it to credit the appropriate town and school accounts. 24 V.S.A. §§ 1522, 1524.

### B. NOTICE OF CURRENT TAXES

Although many taxpayers would not agree, payment of current taxes is considered to be voluntary, and no special collection techniques or tactics are required. However, state law does have specific requirements for providing notice to the taxpayer.

The first question is: *Who is the taxpayer?* The tax is the responsibility of “the last owner or possessor thereof on April 1 in each year.” 32 V.S.A. § 3651. The owner, as of April 1, remains liable for the year’s taxes regardless of subsequent conveyances. *Fulton v. Aldrich*, 76 Vt. 310 (1904) (Normally, property taxes are prorated between the buyer and seller at the time the property is sold, and such proration does not involve the town in any way.)

According to 32 V.S.A. §§ 4772 and 4792, the collector of current taxes or the treasurer must mail a notice stating the taxpayer’s grand list amount, the tax rate and the amount of taxes (and when due) to each taxpayer at his or her last known address. If the municipality gives a prepayment discount, information about this discount must be included on the tax bill.

The notice must be mailed to the taxpayer at least 30 days prior to the date fixed by the voters for the payment of taxes. However, if the voters have not set a tax due date, or if no notice is mailed to the taxpayers 30 days prior to the date fixed (as often happens when budgets are defeated), then the taxes are due 30 days from the date of mailing of the notices to the taxpayers. Note that when a town votes to have its taxes paid in installments, the notice must be sent at least 30 days before the first installment payment is due.

Reasonable efforts should be made to determine the current whereabouts of the taxpayer. In other words, the notice requirement may not be met if the town merely relies upon an “Addressee Unknown; No Forwarding Address” return from the post office. If the collector receives such a return, he or she should document a further inquiry as to the present whereabouts of the taxpayer. For example, a tax collector might make a call to a relative of the taxpayer who may live in the town, or to a past employer, if known, and should document these efforts.

### **C. TAX PAYMENTS**

Taxes become delinquent when a taxpayer fails to pay the taxes on the final due date specified on the bill (which must be at least 30 days after the bill has been sent out). Note that with installment payments, an installment may be overdue, but the taxes are not delinquent until the final installment date has passed. However, the town may charge interest on overdue installments if it so votes. 32 V.S.A. § 4873. For example, taxes are due August 15 and November 15. Those due on August 15 are subject to interest as of August 16. However, taxes are not delinquent – with fees and penalty added – until November 16.

Questions sometimes arise as to whether a payment has been made on the due date if it was not received by the treasurer on that date, but was mailed on that date or sometime prior to it. A municipality may vote to fix the method of delivery, including acceptance of postmarked mail, for the payment of property taxes. A municipality that does not vote on the matter must accept payment of a tax delivered or postmarked before midnight on the tax due date. 32 V.S.A. § 4773.

Note that when a due date falls on a Sunday, payments are considered timely if received on the next business day. 32 V.S.A. § 3004. If the town’s due date falls on a Saturday or other day that the town offices are not normally open, the treasurer or collector of current taxes should either open the office that day to receive payments, or specify that payment will be accepted on the next day that the office is open. In all of these cases, the tax bill should explain when payments will be accepted.

### **D. DELINQUENCIES**

Within 15 days after the date on which the final installment is due, the treasurer must issue to the collector of delinquent taxes a warrant against the delinquent taxpayers in the amount of taxes remaining unpaid. This warrant remains in effect until all taxes on it are fully paid or otherwise discharged. A municipality may vote to have the treasurer issue the warrant for delinquent taxes within *less than* the 15-day period. Such vote will remain in effect until the town votes otherwise. 32 V.S.A. § 4793. In any case, the collector of delinquent taxes may then proceed to collect those taxes.

The question arises whether the treasurer must issue a warrant to the collector of delinquent taxes if the treasurer and collector are the same person. Although it may seem like unnecessary busy work, the warrant should be prepared (and delivered to yourself) and properly filed or recorded since it is part of the paper trail needed for tax collection. The lack of evidence of any prescribed step in the process may cause problems with collection or result in a court challenge later.

If the treasurer omits the name of a delinquent taxpayer and/or the amount due when issuing the warrant, the treasurer may issue an additional warrant within one year from the date upon which the taxes became delinquent. This means that the collector of delinquent taxes may receive more than one warrant from the treasurer each year. Each warrant received authorizes the collector to proceed with collection, and to charge and collect a commission for doing so. 32 V.S.A. §§ 4794, 1674(2).

Prior to issuance of the warrant, the treasurer or the collector of current taxes may accept, on behalf of the collector of delinquent taxes, full payment of the overdue tax so long the penalty and the interest due accompany the payment. All taxes, fees and interest so collected must then be turned over to the collector of delinquent taxes. Admittedly, this looks rather silly, as the collector then gives all the money back to the treasurer. However, the reason that it must go through the collector of delinquent taxes is because of the personal income tax and FICA withholding that is required. 32 V.S.A. § 5142(b) and (c).

## **E. WATER/SEWER DELINQUENCIES**

Delinquent water and sewer charges create liens against the property and can be collected in the same manner as delinquent property taxes. 32 V.S.A. §§ 3504, 3612, 3306, 3408.<sup>1</sup> This means that the delinquent tax collector can use any of the collection methods available to collect these delinquencies. In fact, many collectors simply add these charges to the delinquent taxes owed by the taxpayer so that he or she only needs to conduct one tax sale or other collection proceeding to collect both the outstanding property taxes and the outstanding water/sewer charges. However, even when one consolidated collection action is taken against a delinquent taxpayer, the tax collector's records must separately record all payments and collection of the delinquent water and sewer charges, interest and penalties since these monies must be remitted to the treasurer for deposit into the sewer fund.

## **F. INTEREST AND PENALTIES**

**1. Interest.** Towns may vote on a warned article at town meeting to charge interest on overdue taxes. 32 V.S.A. § 5136. The amount of interest charged by a town may not exceed one percent per month for the first three months and one and a half percent per month thereafter. The statute also provides that interest must be applied to a fraction of a month as if it were an entire month. This means that if taxes are due on August 1, there will be a full one percent interest applied as of August 2, since that one day is a fraction of a month.

Towns that have installment payments may vote to charge interest on overdue installments in the same manner and rate as discussed above. The town may decide whether the interest will begin to accrue after the due date of each installment, or only after the due date of the final installment. 32 V.S.A. § 4873. Naturally, most towns that have adopted an installment

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<sup>1</sup> In most cases, however, the town might prefer to use the Uniform Water and Sewer Disconnect authority found in 24 V.S.A. §§ 5141 et seq., since this generally results in speedy resolution of the delinquencies. A town might prefer to use traditional tax collection methods in cases in which there are also delinquent taxes, and when a disconnect might create a health hazard.

method of tax payment have opted to charge interest from the due date of each installment in order to encourage the prompt payment of the tax installments.

Note that interest begins to accrue as soon as a payment is late. If the tax becomes delinquent because of nonpayment by the final due date, the delinquent tax collector may charge interest on the overdue taxes beginning from the date that the payment became late. 32 V.S.A. §§ 4873, 5136.

- 2. Penalty.** According to statute, the collector of delinquent taxes *may* charge a commission of 8% on the amount of the taxes owed. This commission is often referred to as the collector's fee, or penalty. The collector of delinquent taxes has discretion to charge a commission from zero up to a maximum of 8%. 32 V.S.A. § 1674(2). This commission can also be changed by the voters. The voters may reduce the commission, provide for a grace period, or provide for a graduated commission schedule. 32 V.S.A. § 1674(3). If the delinquent taxes are paid before the issuance of the warrant, the penalty and interest must also be collected. 32 V.S.A. § 5142. When taxes are paid in installments, no penalty may be assessed until after the final installment is due. This is in contrast to interest, which begins to accrue after each installment date.

In most instances, the collector may waive the commission, or portion of the commission, if the collector chooses to do so. However, if the collector is paid by salary or other compensation in lieu of the commission, the collector must collect the commission and turn it over to the treasurer at least once a month. 24 V.S.A. § 1530. Likewise, the collector has no discretion regarding interest. If the town has voted to collect interest on overdue taxes, that interest must be collected.

Where the town has voted to have the town manager collect taxes, he or she may collect the same fees and those fees must be paid into the town treasury. 24 V.S.A. § 1236 (10).

It should also be noted that some charters specifically provide for acceleration of future installments upon any installment delinquency, with interest and penalty accruing retroactively to the date of delinquency.

- 3. Other Fees.** According to statute, except when taxes are collected through a tax sale, when the delinquent tax collector must act to "levy" (collect) on persons or their personal property, the delinquent tax collector is entitled to be compensated by additional fees in the same amount as sheriffs are allowed for levying executions. 32 V.S.A. § 1674(4). Section 1591(1)(vii) of Title 32 sets out the fees paid to sheriffs on levy of execution.

## SUMMARY OF DELINQUENT TAX COLLECTOR'S DUTIES

- **Notify delinquent taxpayer.** Contact delinquent taxpayers to arrange for the payment of delinquent taxes, plus penalties and interest. (Try to work out a payment schedule). The collector's policy on the collection of delinquent accounts should be in writing and delivered to each delinquent taxpayer. (A best practice would be to include a copy of your policy with each current tax bill, to inform taxpayers ahead of time of the consequences of late payment.)
- **Keep accounts.** Keep accounts of every delinquent taxpayer, and the amounts of principal, interest and penalties owed, and payments made, if any. Provide an accounting to the treasurer (or selectboard, upon its request) at least every two months.



- **Pay town.** Pay over to the town treasurer all taxes, penalties and interest collected by you. This must be done at least once every two months. The treasurer should then issue you a paycheck of the penalties collected, minus payments for FICA and income tax withholding.
- **Direct application of payments.** You must also direct the application of the payments you receive by indicating which accounts should be credited and by indicating how a particular payment must be allocated (principal/interest/penalty).
- **Inform selectboard and/or treasurer.** At least quarterly, provide the selectboard or treasurer with a list of the taxpayers that you have collected from (with the amounts paid), when the taxes were due, and outstanding accounts.
- **Conduct tax sales.** When necessary for the collection of taxes, you must conduct tax sales of property or use other methods for collecting delinquent taxes for the town.
- **Deliver tax bill to successor.** When your term has expired, or if you resign, the delinquent tax collector must immediately lodge with the treasurer the tax bill committed to him or her which remains uncollected (in whole or in part), along with any money collected.

## CHAPTER 3 COLLECTION OF DELINQUENT TAXES

### A. NOTIFYING DELINQUENT TAXPAYERS

The first task of the delinquent tax collector, once he or she has received the warrant from the treasurer, is to endorse and date the tax bill and immediately mail notices to all delinquent taxpayers telling them when and where taxes, plus the commission and interest, should be paid. The notice must allow residents at least ten days and nonresidents at least 20 days (but not more than 40) to pay the amount due before the collector proceeds with a tax sale or other action. 32 V.S.A. §§ 4842, 4874. A sample notice is included in the Appendix. **Many tax collectors find that it is easier for them to allow all taxpayers at least 20 days before taking formal collection action.**

Most delinquent tax collectors include in their initial notice to the delinquent taxpayer an explanation of how the commission, interest and fees will be added to the bill. In addition, collectors who have adopted a written collection policy (discussed below) should include a copy of that policy with the notice. It is also good practice for the collector to include his or her phone number on the notice and to invite the taxpayer to call to make arrangements for paying the outstanding amounts. In addition, the collector should include in the initial notice a statement that the taxpayer has the right to apply for an abatement of his or her taxes under 24 V.S.A. § 1535. See *Fysh v. Town of Bristol*, Vt. No. S110-95Ac (Aug. 9, 1995).

It is also good practice to notify lien holders and mortgagees about delinquent taxes early, even though the law mandates such notice only at the time of an impending tax sale. Lien holders want and need to protect their interest in the property. Under some types of loans banks have the authority to foreclose when taxes become overdue, even though mortgage payments are current. Early notice to lien holders is a courtesy rather than an obligation, so it is at the discretion of the tax collector. If the practice of providing early notice to lien holders and mortgagees is undertaken, it should be done uniformly.

### B. ACCEPTING PAYMENTS

1. **Generally.** Once the treasurer issues a warrant, the responsibility for collection of delinquent taxes rests on the collector of delinquent taxes. After notifying the delinquent taxpayers, most delinquent tax collectors will receive phone calls from those who wish to pay part or all of the outstanding amounts. It is the delinquent tax collector's responsibility to make prompt arrangements to accept those payments.

**Note that anyone can make a payment on a delinquent tax bill. This means that the delinquent tax collector must accept payment on a tax bill, even if the payment is being proffered by someone other than the delinquent taxpayer (e.g., mortgagee, lessee, relative).**

- 2. Accepting Partial Payments.** In many cases delinquent taxpayers wish to make partial payments towards their overdue taxes. Each delinquent tax collector can decide whether or not to accept such payments. *Villeneuve v. Town of Underhill*, 130 Vt. 446 (1972); *Rooney v. Town of Pownal*, 140 Vt. 150, 154 (1981).

The acceptance of full or partial payment of overdue taxes by a town official will not preclude the town from collecting any unpaid balance of taxes and any interest and collection fees accruing to the town, whether relating to the collected or uncollected portion of the taxes. 32 V.S.A. § 5142(a). Therefore, there is no reason not to accept partial payments. Such payments represent a real effort by the delinquent taxpayer to pay the money owed, and acceptance of partial payments reduces the delinquent accounts while not waiving any of the collector's rights regarding the outstanding balances.

- 3. Payments Over Time.** Often, when a delinquent tax collector decides to accept partial payments from a delinquent taxpayer, he or she will set up a regular payment plan to help ensure that the entire outstanding balance will be paid off by a particular time. In such cases it is imperative for the delinquent tax collector to draft a written agreement. The agreement may require a monthly payment toward the outstanding taxes, interest and penalty owed, in exchange for the delinquent tax collector foregoing additional collection action. When establishing an agreement for payments over time the delinquent tax collector should make sure that the payment amount and schedule is realistic. Otherwise, the delinquent tax collector may find him or herself constantly having to be after the taxpayer for the payments, and threatening formal collection action. In addition, collectors should make it clear that they do not accept postdated checks in satisfaction of delinquent accounts.

**Agreements to accept payments over time should always be made in writing and be signed by the delinquent taxpayer, and should make clear that in the event that a payment is missed the delinquent tax collector can proceed with other collection actions, including tax sale of the property.**

- 4. Allocating Partial Payments.** When a partial payment is received, you must decide how much of the payment to allocate to the outstanding tax, the interest and the penalties. The delinquent taxpayer would always prefer that the entire amount be applied to the principal since only the principal amount of overdue taxes accrues interest and penalties. This is, of course, the very reason that the payment should not be directed solely at the principal. Once the principal was all paid off, there would be no incentive for the taxpayer to pay off the remaining amounts of principal penalty and interest.<sup>2</sup>

Some delinquent tax collectors allocate partial payments first to their own fee, then to interest, and then to the principal. This system, while ensuring that the delinquent tax collector gets paid right away, is neither fair to the taxpayer who reasonably expects to pay down a portion of the outstanding principal, nor fair to a newly elected delinquent tax collector that may get stuck with the task of collecting the principal and interest due on an

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<sup>2</sup> In normal commercial transactions involving the accrual of interest and payment of principal, partial payments must be applied first to accrued interest, and the remainder to unpaid principal.

account in which the commission has already been paid. The practice also invites the allegation that that the tax collector is putting his or her interest ahead of the town. (See sample record of partial payment in the Appendix.)

The best method for allocating a payment is by directing a proportionate amount to the principal, interest and penalty. This will result in the taxpayer accruing smaller amounts of interest on the declining outstanding principal amounts, and will enable the delinquent tax collector to collect a fee that is related proportionately to the amount of the taxes he or she has actually collected for the town.

**Keeping the tax and the commission columns in proportion so that the commission remaining to be collected is always proportional to the tax outstanding will ensure that a newly elected collector will not end up with unpaid taxes to collect and no commission.**

The delinquent tax collector should adopt a policy about allocating partial payments. This policy statement should be included in the initial notice of delinquency, which is sent to all delinquent taxpayers and should state that all partial payments accepted will be allocated in proportionate amounts to principal, interest, and penalty.

When a taxpayer is delinquent for more than one year, it is up to the taxpayer to determine to which year the payment should be allocated. The delinquent tax collector must then direct the application of the payment to the particular account. 32 V.S.A. § 4647. Note that it is important for the collector to pay careful attention to the wishes of the delinquent taxpayer since failure to properly apply the tax payment will result in the delinquent tax collector's surety (bonding company) having to pay the proper account for the money misapplied. *Ferrisburg v. Martin*, 60 Vt. 330 (1888); *Tunbridge v. Smith*, 48 Vt. 648 (1876).

### C. RECORD KEEPING

It is important to keep accurate records of all payments received. Because the payments you receive must be allocated to principal, interest and penalty, the bookkeeping involved with delinquent tax collection is often fairly complex.

- 1. Receipts.** All payments received must be recorded in triplicate in a consecutively numbered, bound receipt book or other permanent record. 32 V.S.A. § 5137. The receipt books are to be purchased at the expense of the municipality in sufficient quantity such that the sets of books will have receipts that are consecutively numbered. **Each receipt must indicate the date of payment, the year in which the tax was assessed, the name of the person making the payment, the name of the person against whom the tax was assessed, and, if it is a partial payment, the allocation of that payment.** The original receipt must be delivered to the person making the payment and one copy must be delivered to the town clerk. 32 V.S.A. § 5137.

According to the statute, the original receipt must be given immediately to the person making the payment (usually the taxpayer). One copy of the receipt must be sent to the town clerk

within 30 days after the payment has been made. (The clerk must keep a copy of the receipt on file). The remaining receipt should stay in the bound volume, in the delinquent tax collector's possession. On or before February 5th of each year the book must be submitted to the town auditors for their audit of the receipts for the preceding year, ending on January 31. After the completion of the audit, the auditors must return the books to the delinquent tax collector. If the town has voted to eliminate the office of town auditor under 17 V.S.A. § 2651b, the books should be submitted to the licensed public accountant hired by the selectboard.

Delinquent tax collectors in towns that use a fiscal year for their accounts must still submit their receipts to the auditors on February 5, even though the town audit might not take place on all receipts until the end of the fiscal year. Receipts must be written in triplicate in a bound book or some other permanent record. Among other things, the receipt must indicate the date of the payment, the name of the person making the payment, the name of the person against whom the tax was assessed on which they payment is to be applied, and the year in which the tax was assessed. The original receipt must be delivered to the person making the payment and one copy must be delivered to the town clerk. 2 V.S.A. § 5137.

- 2. Bookkeeping.** In order to keep track of all of the delinquent taxpayer accounts it is necessary to keep a record of the amount due on each account and the date and allocation of all payments made. Even if no payments have been made on an account, each delinquent taxpayer's account must be updated monthly to reflect the new interest charges.

A growing number of delinquent tax collectors are doing this record keeping and the concurrent interest and penalty calculations on a computer spreadsheet. No matter how it is done, every delinquent tax collector must record the same information and understand how the calculations of interest and penalty are made. The following are examples of records of delinquent taxpayer accounts.

*Most delinquent tax collectors tally the unpaid tax, the commission, and the interest in separate columns, as shown in the following sample:*

<b>Sample Record for Delinquent Tax of \$100 with No Payments Made</b>					
<u>Date</u>	<u>Tax</u>	<u>8% Fee</u>	<u>Interest</u>	<u>Payment</u>	<u>Total Due</u>
Nov. 5	\$100	\$8.00	\$1.00	\$0.00	\$109.00
Dec. 5			1.00	0.00	110.00
Jan. 5			1.00	0.00	111.00
Feb. 5			1.50	0.00	112.50
Mar. 5	<u>        </u>		<u>+1.50</u>		114.00
	\$100	\$8.00	\$6.00		

The records of an account become somewhat more complex when partial payments are made. *Generally, delinquent tax collectors deduct partial payments first from the interest column, and then proportionally from the commission and tax columns.*

<b>Sample Record for Delinquent Tax of \$100 with Partial Payments of \$50</b>					
<u>Date</u>	<u>Tax</u>	<u>8% Fee</u>	<u>Interest</u>	<u>Payment</u>	<u>Total Due</u>
Nov. 5	\$100.00	\$8.00	\$1.00	\$0.00	\$109.00
Dec. 5			1.00	0.00	110.00
Jan. 5			1.00	0.00	111.00
Feb. 5			1.50	0.00	112.50
Mar. 5			+1.50		114.00
	<u>\$100.00</u>	<u>\$8.00</u>	<u>\$6.00</u>		
Mar. 7	<u>-\$40.74</u>	<u>-3.26</u>	<u>-\$6.00</u>	<u>\$50.00</u>	<u>-\$50.00</u>
	\$59.26	\$4.74	\$0.00	\$50.00	\$64.00

*In the above example, a partial payment of \$50 was received in March. The tax collector first applied the payment to the interest column, and subtracted the entire \$6, which had accumulated interest. This left \$44 to allocate to tax and commission. The amount that was allocated to tax, \$40.74, was calculated by dividing \$44 by 1.08. The amount that was allocated to the commission, \$3.26, was calculated by subtracting the tax amount from \$44.*

**Please note that the interest on a delinquent account is calculated on the amount of the remaining tax only; it is not calculated on the commission, and it is not compounded.**

Additional examples of delinquent tax bookkeeping are included in the Appendix.

- 3. Other records.** It is important to keep a permanent record of all correspondence and conversations with taxpayers. Any agreement or plan that you arrived at with the taxpayer should also be documented, as well as the date of such agreement. A complete and consistent record of what happened may help to avoid accusations of harassment or charges of lack of due process or unequal treatment.

#### **D. THE MONEY**

According to statute, the delinquent tax collector must pay to the town all money collected at the end of every two months, or whenever requested (in writing) by the selectboard or other proper officer.<sup>3</sup> 32 V.S.A. § 4646. Generally, delinquent tax collectors set up a special bank account in which the taxes collected are deposited until the bimonthly transfer to the town treasury. Since in almost all cases the delinquent tax collector is an employee of the town, and FICA and income tax must be withheld from his or her “commission,” delinquent tax collectors may not pay themselves the fees collected. Rather, they must pay to the town all of the monies collected (tax, penalty and interest). The treasurer then pays the tax collector his other fees less the required FICA and income tax withholding

Some delinquent tax collectors do not keep a separate account for the delinquent taxes, but rather immediately remit all monies collected to the town treasurer. A principal benefit of handling the

<sup>3</sup> Another “proper officer” might be the town treasurer, since the treasurer is responsible for the receipts of the town.

tax money in this way is that the delinquent tax collector can get paid his or her commissions much sooner than if he or she waited for the bimonthly payment to the town.

**Under no circumstances should any receipts on delinquent accounts be deposited into a personal or business account of the delinquent tax collector. There are absolutely no exceptions to this rule, even for the briefest period of time.**

## E. REPORTING

- 1. Bi-Monthly Reports.** The statutes require the delinquent tax collector to file a report with the treasurer every two months or when demanded by the selectboard. 32 V.S.A. § 4646. The report must include a list of the taxpayers from whom taxes have been collected, showing the amounts collected and the years in which the taxes collected were due.
- 2. Annual Reports.** The delinquent tax collector must file an additional report by January 15 of each year. This report must list all taxes remaining unpaid on December 31, and must include the name of the delinquent taxpayer and the year that the taxes were due. This report must be certified by the delinquent tax collector and delivered to the treasurer. 32 V.S.A. § 5162. (See Appendix C for a sample annual report of a delinquent tax collector.)

**The annual report of the delinquent tax collector must be “certified under oath.” This can be done by having the delinquent tax collector’s signature notarized by a notary public.<sup>4</sup>**

In addition to providing the annual report to the town treasurer, the delinquent tax collector must also furnish the annual report to the town auditors. 32 V.S.A. § 5163. However, if the town has voted to eliminate the office of auditor under authority of 17 V.S.A. 2651b, the records should be submitted to the licensed public accountant hired by the selectboard. The auditors or accountant must verify the report and certify it as correct. Independent auditors and accountants hired by the town also are entitled to receive this information and to inquire into the state of the tax collector’s accounts.

- 3. Report to the Director of Property Valuation and Review.** The delinquent tax collector must report to the director every six months. This report must include the amount of delinquent taxes contained in the warrant that the delinquent tax collector has collected and paid into the treasury during the preceding six months.<sup>5</sup> 32 V.S.A. § 5166.
- 4. Failure to Report.** If a delinquent tax collector fails to make the required bi-monthly or annual reports, he or she may be subject to a fine of up to \$100. 32 V.S.A. § 5164.

<sup>4</sup> 12 V.S.A. § 5854 lists additional officials who may administer oaths.

<sup>5</sup> Note that within six days after each annual town meeting the municipal clerk must notify the Director of Property Valuation and Review, in writing, of the method to be employed in the town for collecting its taxes (delinquent and current). The agency issues a form for that purpose. 32 V.S.A. § 5167.

**5. Public Records Law.** The Access to Public Records Act states that all public records must be made available for public inspection and copying upon reasonable notice. 1 V.S.A. § 316. Public records are defined very broadly and would certainly include all of the delinquent tax collector's reports. Correspondence between the tax collector and the town attorney is confidential under attorney-client privilege and exempt from disclosure. 1 V.S.A. § 317(4). If you have a question about a whether a particular document must be disclosed, you should consult your town attorney or call the VLCT Municipal Assistance Center at 800/649-7915.

## **F. TOWN POLICY**

Most delinquent tax collectors adopt a policy that explains how the collector collects delinquent taxes in the town. The adoption of a policy is necessary since the statutes provide delinquent tax collectors with considerable latitude to determine when and how delinquent taxes will be collected. The written policy tells the taxpayer what to expect and it defines the steps for the delinquent tax collector. This helps the delinquent tax collector to treat all people fairly and equally and provides considerable protection against a challenge that alleges the collection



practices violate constitutional protections of due process and equal protection. **Note that this is the tax collector's policy. The selectboard has no authority to approve or disapprove of the town delinquent tax policy. However, it is advisable for the delinquent tax collector to present the policy to the board members so that they understand and support it. Do not hesitate to ask the town attorney to review and suggest revisions to the proposed delinquent tax collection policy.**

## TAX COLLECTION POLICY

Delinquent tax collection policies vary considerably from town to town, but most policies include the following information:

- How the delinquent tax collector will initially notify delinquent taxpayers of their delinquency, and whether and how they will be notified of any outstanding balances.
- When the delinquent tax collector will institute collection action. (How long will the taxes be delinquent before action is taken?)
- Whether the delinquent tax collector will accept partial payments and how they will be allocated.
- Whether the delinquent tax collector will set up payment plans, and whether there are any limitations on those plans.
- What types of collection actions will be pursued.
- What costs will be incurred and passed on to the taxpayer.
- Whether lien holders will be notified of delinquencies.

### G. DISPOSITION OF RECORDS WHEN LEAVING OFFICE

When a collector of delinquent taxes leaves office, he or she must *immediately* turn over the records to the treasurer, along with any money collected. Such records and accounts must be audited and passed on to the new tax collector. When a tax collector dies or is placed under guardianship, the selectboard may demand that the guardian, administrator or executor provide the same records, so they can be audited and passed on. 32 V.S.A. § 4671.

Records should be available and produced promptly and in some sort of *usable* form. At times, tax collectors have used rather unique or “secret code” computer programs for their records, which they then refuse to decode for their successor. Obviously, this is not a responsible way to perform one’s duties. In addition, statutes require that records be kept in triplicate hard copy.



32 V.S.A. § 5137. Therefore, no matter what sort of electronic records the outgoing collector has, there should also be a usable paper copy of the necessary records and those records should be provided *immediately*.