



2016



**ANNUAL TAXPAYER
ADVOCATE REPORT**

2015 Activity

[January 1 to December 4, 2015]

January 15, 2016



State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

January 15, 2016

*To The Honorable Members of:
House Committee on Ways and Means
Senate Committee on Finance*

In accordance with Title 32 V.S.A. §3205(c), I submit the Vermont Taxpayer Advocate's Annual Report for activity in calendar year 2015. The Vermont Taxpayer Advocate Annual Report is required to identify problems encountered by taxpayers interacting with the Vermont Department of Taxes as well recommend administrative and legislative actions to resolve those problems. The report shall also identify problems that affect an entire class of taxpayer or specific industry and present solutions.

The reporting period of this year's report contains activity from January 1 to December 4, 2015. Thus, there will be minor discrepancies as previous reporting periods reported 52 weeks of activity and this year reports 49 weeks of activity. The reporting period change facilitates timely preparation of this report.

The number of cases reviewed by the Taxpayer Advocate overall increased in the 2015 reporting period with increases in renter rebates and personal income tax cases in particular. Personal income tax issues comprised 47% of case intake and reflected increased compliance and collection activity. The property tax adjustment program continues to be a significant percentage of case intake and requests for extraordinary relief.

Due to the nature and complexity of Vermont tax laws, it is understandable why the Department continues to receive a high volume of questions and concerns from taxpayers. Just by law of averages and nature of the statutory mandates the Department administers, not all taxpayers will be happy with the Department. Even so, identifying issues and concerns does not imply failures, but instead prompts the Department to be remain mindful of the public's concerns.

Respectfully submitted,

gloria Hobson

Gloria Hobson
Taxpayer Advocate
Vermont Department of Taxes



Table of Contents

	PAGE
Description of Vermont Taxpayer Advocate	2
Summary of 2015 Taxpayer Advocate Intake.	3
Taxpayer Advocate Intake Details	
Population	5
Issues and Next Steps/Resolution	5
Taxpayer Advocate Recommendations	
Procedural/Systemic	8
2016 Legislative	8
Prior Legislative	10
Industries or Class Tax Issues	14
Extraordinary Relief	15

DESCRIPTION OF VERMONT TAXPAYER ADVOCATE

The Vermont Commissioner of Taxes created the Taxpayer Advocate in 2001. Title 32 V.S.A § 3205 requires the Vermont Department of Taxes to maintain a Taxpayer Advocate. The Duties of that position include:

1. Identifying subject areas where taxpayers have difficulties interacting with the Department of Taxes;
2. Identifying classes of taxpayers or specific business sectors who have common problems related to the Department of Taxes;
3. Proposing solutions, including administrative changes to practices and procedures of the Department of Taxes;
4. Recommending legislative action as may be appropriate to resolve problems encountered by taxpayers;
5. Educating taxpayers concerning their rights and responsibilities under Vermont's tax laws;
6. Educating tax professionals concerning the Department of Taxes' regulations and interpretations by issuing bulletins and other written materials; and
7. Assisting individual taxpayers in resolving disputes with the Department of Taxes.

The legislation serves to codify the longstanding role and functions performed by the Taxpayer Advocate and highlights the Taxpayer Advocate's position to improve taxpayer services.

The legislation also requires the Taxpayer Advocate to report annually to the House Committee on Ways and Means and the Senate Committee on Finance. 32 V.S.A. § 3205(c). The Legislature prescribed the following information for the report:

- Actions taken by the Taxpayer Advocate to improve taxpayer services and responsiveness of the Department of Taxes
- Identification of problems encountered by taxpayers in interacting with the Department of Taxes, including specific recommendations for administrative and legislative actions to resolve the identified problems
- Identification of any problems that span an entire class of taxpayer or specific industry, proposing class or industry-wide solutions.

SUMMARY OF 2015 TAXPAYER ADVOCATE INTAKE

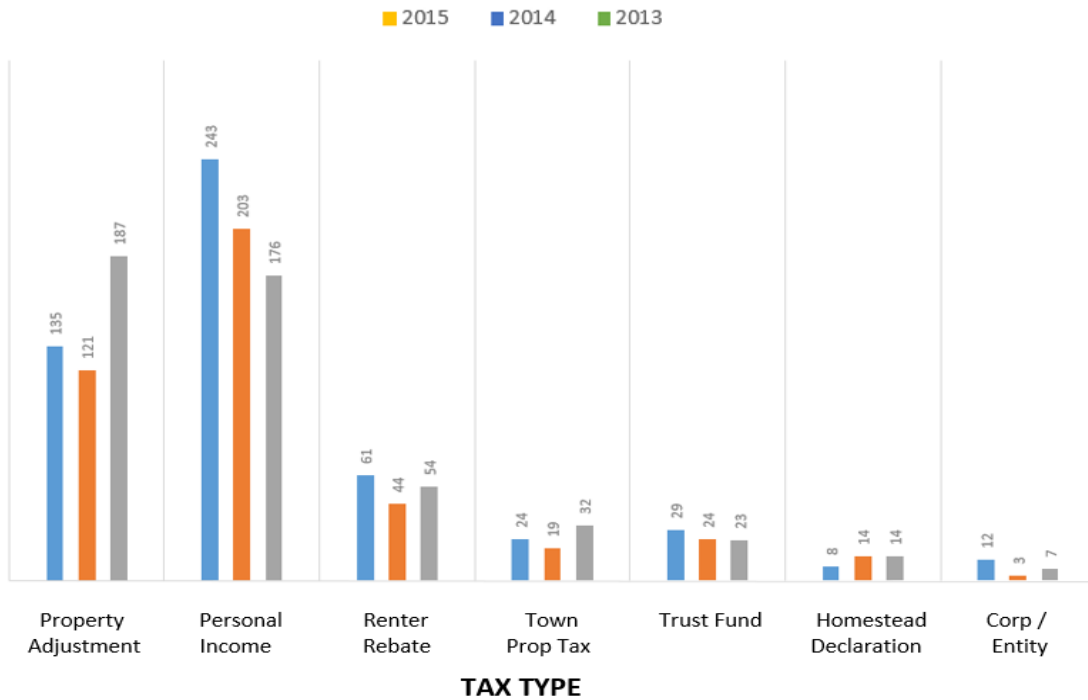
(as of 12/04/2015)

TOTAL TAXPAYER ADVOCATE INTAKE						
[2013 and 2014 by calendar year; Jan. 1, 2015 To Dec 4, 2015]						
Description	Year	Number	Year	Number	Year	Number
General Intake	2015	544	2014	460	2013	493
Extraordinary Relief Intake	2015	22	2014	21	2013	35
Hardship Waiver	2015	10	2014	2	2013	0
TOTAL		576		483		528

TAXPAYER ADVOCATE CASE TAX TYPE									
[2013 and 2014 by calendar year; Jan. 1, 2015 To Dec. 4, 2015]									
	Year	Number	% Cases	Year	Number	% Cases	Year	Number	% Cases
Description	2015								
Property Tax Adjustment Claim	2015	135	26%	2014	121	28%	2013	187	38%
Personal Income	2015	243	47%	2014	203	48%	2013	176	36%
Renter Rebate	2015	61	12%	2014	44	10%	2013	54	11%
Municipal Property Taxes, Current Use, Land Gains	2015	26	5%	2014	19	4%	2013	32	6%
Business Taxes [Sales/Use; Meals/Rooms; Withholding]	2015	29	6%	2014	24	6%	2013	23	5%
Homestead Declaration	2015	8	2%	2014	14	3%	2013	14	3%
Corporate/Entity	2015	12	2%	2014	3	1%	2013	7	1%

NOTE: The number of tax type cases will not be the same as the number of case intake as some taxpayers had multiple tax type issues

TAXPAYER ADVOCATE CASE BY TAX TYPE



TAXPAYER ADVOCATE INTAKE CASE SOURCE						
[2013 and 2014 by calendar year; Jan. 1, 2015 To Dec. 4, 2015]						
	Year	Number	Year	Number	Year	Number
Description	2015		2014		2013	
Taxpayer Advocate Direct Contact						
Telephone		431		259		301
Email		162		161		156
Mail		35		42		26
Walk-in		4		7		2
Subtotal:	2015	495	2014	469	2013	344
Referred to Taxpayer Advocate by Commissioner of Taxes, Governor's Office, State Legislators, VT Congressional Delegation	2015	2	2014	8	2013	12
Referred to Taxpayer Advocate by outside agency – IRS, Community Action, AG Consumer Protection Hardship Waiver	2015	2	2014	2	2013	0
Department Referrals	2015	3	2014	4	2013	0
Total Intake	2015	502	2014	483	2013	493

TAXPAYER ADVOCATE CASE ISSUES									
[2013 and 2014 by calendar year; Jan. 1, 2015 To Dec. 4, 2015]									
	Year	Number	% Cases	Year	Number	% Cases	Year	Number	% Cases
Description									
General Information	2015	151	26%	2014	146	30%	2013	140	21%
Status	2015	84	15%	2014	49	10%	2013	176	25%
Adjustment Notice Explanation	2015	49	9%	2014	27	6%	2013	35	5%
Property Tax Adjustment Claim Renter Rebate Late file; Denial	2015	168	29%	2014	165	34%	2013	241	36%
Collection Action Offsets, Judicial Proceedings	2015	18	3%	2014	21	5%	2013	28	4%
Abatements	2015	3	1%	2014	2	1%	2013	8	1%
Homestead Declaration Late File Fee	2015	17	3%	2014	13	3%	2013	8	1%
Audits, Assessments & Estimated Tax Liability	2015	27	5%	2014	62	13%	2013	45	7%
Facilitation	2015	56	10%	New issue type (connecting taxpayer to appropriate staff member)					

NOTE: The number of case issues will not be the same as the number of case intake as some cases had multiple issues.

TAXPAYER ADVOCATE INTAKE DETAILS

POPULATION

The Department interacts with over 500,000 members of the public through return filings, letters, email, and audits. In addition, the Department fielded in excess of 130,000 telephone calls from January 1 to December 4, 2015. Some difficult interactions are inevitable and a complete elimination of issues will never occur. However, issues need to be acknowledged.

From January 1 to December 4, 2015, the Taxpayer Advocate handled 576 individual taxpayer contacts. Taxpayer difficulties reported through those contacts, highlighted in this report, were selected due to the number of taxpayers affected, number of taxpayer reports that suggest a potential trend, and/or the severity of the difficulty reported by taxpayer.

ISSUES AND NEXT STEPS/RESOLUTIONS

General Information, Status, Adjustment Notice Explanation, and Facilitation Issue Types (60%)

#1 Issue: These include taxpayers seeking general tax information and the status on the processing of their return. There appears to be a direct correlation to the number of status inquires to processing schedules and workloads. Facilitation of issues involves connecting taxpayers with the right staff member to receive an update on their case or to resolve their issues.

Next Steps/Resolution: Once the Department finishes implementation of the new tax system and there is increased opportunity to obtain information through myVTax, the status inquiries should reduce. More information available through the website, as well as updated correspondence, should help as well.

Property Tax Adjustment Claim, Renter Rebate, Late file; Denial Issue Types (29%)

#2 Issue: An increase in cases involving homestead declarations and property tax adjustments occurred in the Fall of 2015 and continues as of the writing of this report. Case issues involved failure to file required forms/returns or filing improperly completed adjustment claim forms. An improperly completed form is not always apparent to prompt further research. Corrections to a property tax adjustment can be made up to the October 15 deadline. Homeowners called either after receiving their property tax bills or notification from their escrow company that payments increased, but this was after the October 15 deadline. It should be noted that some towns issue their property tax bills after the deadline, preventing any correction.

Next Steps/Resolution: Further review needs to be conducted to determine what, if any trends are occurring. An evaluation of current procedures and notices related to trends discovered also needs to be conducted. Results of review and evaluation will be included in next year's report.

#3 Issue: A subset of the first issue are homeowner errors on the entry lines for the property tax adjustment claim, which reduce the adjustment or result in no property tax adjustment. A common error involves the ownership interest percentage. When this line has no entry, the default is 0% ownership interest eliminating eligibility for the property tax adjustment. Other common errors occur when the taxpayer uses the wrong housesite value or prior year property taxes paid. The housesite value or property taxes may be truncated making a significant difference in the calculations. Absent the Department making a change on the form, often the taxpayer does not become aware of the issue before the October 15 deadline to fix.

Currently, the only available potential remedy after October 15 to address this type of issue is through the extraordinary relief process. However, taxpayers making the same error may not be treated the same if they do not meet the significant financial hardship.

Next Steps/Resolution: The Department should consider implementing a notification to taxpayers who will have a substantial change from the prior tax year. Additional resolution is outlined in Legislative Recommendation #2.

Audits, Assessments & Estimated Tax Liability Issues (5%)

#4 Issue: Taxpayers who fail to file a Vermont return continue to have issues with estimated tax assessments made by the Department for personal income liability. If the taxpayer fails to appeal the estimated tax assessment, often derived from data received from other sources, within the 60-day period provided, the liability becomes fixed. This prohibits the taxpayer from filing an original return with the actual tax liability. The quest for finality may have unintended consequences that may affect filing an original or amended return within the three-year statute of limitations. See 32 VSA § 5887.

Next Steps/Resolution: In November 2015, the Department implemented a Notice of Intent to Assess (NOIA) process for all tax types in the new tax system.¹ However, it is important to note the majority of the issues dealt with during this reporting period relate to personal income, which the NOIA process will not effect until November 2016.

New tax system NOIA Process (related to estimated returns): For tax types in the new tax system, the taxpayer is advised of the information that will be used to estimate tax liability if they fail to file the required return within 20 days of the due date. If the taxpayer is registered for myVTax (online Department portal for filing returns), the taxpayer will receive an electronic reminder of filing responsibility the day after the due date prior to NOIA being issued. When the assessment is issued the tax payer is directed to take one of three actions: File the return, pay estimated amount (or set up payment plan), or appeal. A subsequent reminder of the assessment and the necessity to take action is sent 30 days before end of appeal period. In sum, there will be situations where the taxpayer receives 4 notices advising the need to file a missing return before the assessment becomes final.

#5 Issue: Taxpayers under audit do not feel they receive clear explanations of the process or results of the audit.

Next Steps/Resolution: During the summer of 2015 direct leadership of the Audit programs changed, which has resulted in a massive shift in how the Department approaches and resolves audits. This shift includes increased meetings, changed expectations, additional training, and standardizing audit procedure. These changes address the majority of a Taxpayer Advocate recommendation from 2013. Additionally, we have, for the first time, provided a Tax Audit Guide on our website. This includes information about what to expect when you are audited, as well as audit FAQs.

Homestead Declaration Late File Fee Issues (3%)

#6 Issue: Assessment of late filing penalty on homestead declarations filed between April 16 and October 15.

Next Steps/Resolution: Refer to Legislative Recommendation #3.

Collection Action, Offsets, Judicial Proceedings (3%)

#7 Issue: Hardship status may be granted when the tax liability is a legitimate tax liability and the taxpayer is in dire financial circumstances with no likelihood the debt can be collected.

Hardship status puts active collection proceedings in abeyance but does not abate the bill. The taxpayer continues to receive bills. If the taxpayer receives an income tax refund, property tax adjustment, renter rebate, any payment from State of Vermont, or abandoned property due the taxpayer, that money is offset to pay the bill in hardship status during the period of time the bill can be collected upon. Hardship status benefits the taxpayer by relieving the stress of collection and saves Department resources by not pursuing a debt with high probability it will not be collected.

¹ Corporate, Business Entity, Sales & Use, Meals & Rooms, Income Tax Withholding, Fuel Gross Receipts, Local Option, Fiduciary, Insurance, Bank Franchise, Health Care, and other Miscellaneous taxes.

In 2015, the Taxpayer Advocate received ten communications from taxpayers considered to be hardship status issues. Six were granted hardship status and two are pending determination by the Collections Division.

Six of these cases involved medical issues as well as financial issues. The other four involved financial difficulties.

Next Steps/Resolution: Hardship status can be obtained through the Collection Division. There is a feeling that taxpayers go to our website, find the Taxpayer Advocate contact information, and believe this is the path to a hardship waiver. Placing information on the website regarding hardship status and a self-help eligibility form to complete would be a more direct method for hardship status.

TAYPAYER ADVOCATE RECOMMENDATIONS

PROCEDURAL/SYSTEMIC

For 2015, the Taxpayer Advocate again held procedural recommendations in abeyance as the Department devoted significant resources in the preparation for the next phase to implement the new tax system. Phase 2 went live on November 12, 2015.

The new tax system allows continued implementation of three important recommendations made in 2013:

- Elimination use of Social Security number on letters generated by the Department
- Cease use of Federal Employer Identification Number as Vermont business account number
- Improve computer-generated correspondence to taxpayers

2016 LEGISLATIVE

Examples within the recommendations are generalized and aggregated and represent issues brought to the Taxpayer Advocate to assure compliance with confidentiality provisions 32 V.S.A. § 3201 and IRC § 6103.

Class of Taxpayer	Industry	Recommendation #1 Statutory Change
Homeowners and Renters filing between April 16 and October 15	None	Modify appeal rights to clarify that property tax adjustment or renter rebate considered statutory late filed [Apr. 16 – Oct. 15] have appeal rights.
Discussion		
Property Tax Adjustment claims and Renter Rebate claims filed by April 15 are statutorily designated as timely filed.		
Filings between April 16 and October 15 are statutorily designated as late filed; however, the claimant receives the benefits and the imposition of a late filing penalty.		
Provisions for appealing a denial of the property tax adjustment claim or renter rebate claim prohibit any appeal for a late filed claim. Since there is a statutory late filed category, the existing appeal provisions would seem to preclude appeal of the claims filed between April 16 and October 15.		

Processing of these benefit claims that occur during this statutory late filed period may receive a letter of denial due to missing information or a change to information on the claim. Administratively, the Department allows the claimant to supply the information up to October 15 as the claimant could file a new claim to that date. If a strict reading of §6072 is made, a claimant loses the right to appeal the change to information as it is on a late filed claim.

NOTE: This recommendation is made, not as a result of an issue that was raised by a taxpayer, but instead review of existing law.

Statutory Recommended Change

Amend 32 V.S.A. §6072 to read:

Any person aggrieved by the denial, in whole or in part, of relief claimed under this chapter, except when the denial is based upon ~~late~~ filing of claim for ~~relief~~ after the date established in §6068(c), may appeal to the Commissioner by filing a petition of appeal within 60 days after the denial. This appeal shall be the person’s exclusive remedy for denial of a benefit claimed under this chapter. The Commissioner’s determination may be further appeal in the manner described in subsection 5885(b) of this title.

Class of Taxpayer	Industry	Recommendation #2 Statutory Change
Homeowners	None	Allow amendment of property tax adjustment claims after October 15 deadline to correct erroneous housesite value, property taxes and ownership interest

Discussion

Homeowners continue to make mistakes on the entries for the property tax adjustment claim, which reduce the adjustment or result in no property tax adjustment. A common error involves the ownership interest percentage. When this line has no entry, the default is 0% ownership interest eliminating eligibility for the property tax adjustment. Other common errors occur when the taxpayer uses the wrong housesite value or property taxes. The housesite value or property taxes may be truncated making a significant difference in the calculations. Absent the Department making a change on the form, the taxpayer does not become aware of the issue before the October 15 deadline to fix.

Currently, the only available potential remedy after October 15 to address this type of issue is through the extraordinary relief process. However, taxpayers making the same error may not be treated the same as they do not meet the significant financial hardship.

NOTE: Should the following recommendation be acted on, changes made to property tax adjustment claims after October 15 will not impact municipalities billings.

Statutory Recommended Change

Amend 32 V.S.A. §6074 to read:

At any time within three years after the date for filing claims under subsection 6068(a) of this chapter, a claimant who filed a claim by October 15 may file to amend that claim to correct the amount of household income reported on that claim. No later than April 15 of the year following a claim filed under subsection 6068(a) of this chapter, a claimant who filed a claim by October 15 may file a correction to the housesite value, property taxes and ownership interest reported on that claim.

PRIOR LEGISLATIVE RECOMMENDATIONS

The following recommendations were included in last year's report. These recommendations are being presented again as the issues continued to occur in 2015.

Class of Taxpayer	Industry	Recommendation #3 (Statutory Change)
Homeowners filing after April 15	Municipalities	Amend late filing penalties for Homestead Declarations filed after April 15 but before October 15 deadline.
Discussion		
<p>The law considers Homestead Declarations filed by April 15 as timely filed.</p> <p>The law also establishes a period between April 16 and October 15 where a Homestead Declaration can be filed but it is designated as late filed. Any Homestead Declaration filed after April 15 is late and a late filing penalty applies under 32 V.S.A. § 5410. This section also allows municipalities the option to assess, bill and collect a late filing penalty up to 3% or up to 8% of the education property tax. This is a small change due to Act 174, Sec. 17. 32 V.S.A. §5410(g). Any appeal by the homeowners of the penalty is to the municipality.</p> <p>Under 32 V.S.A. §5410 (g), a property incorrectly declared or undeclared as a homestead receives a penalty up to 8% of the education property tax rate when the homestead education property tax rate is lower than the non- residential rate. The up to 3% penalty rate applies when a property incorrectly declared s a homestead in a municipality with a lower non-residential rate. It appears the goal was to prevent declaration of or failure to declare homesteads to receive a lower education property tax rate.</p> <p>During the statutory “late but accepted” period between April 15 and October 15 created in 32 V.S.A. § 5410(i), a Homestead Declaration filing changes the classification to homestead on the grand list and the property is taxed at the homestead education property tax rate. Homestead Declarations filed October 16 and after do not change the classification to homestead on the grand list and the property is taxed at the higher education property tax rate. However, the same late filing penalty in 32 V.S.A. § 5410(g) applies.</p> <p>The late filing penalty on Homestead Declarations filed between April 16 and October 15 comes as a surprise to many homeowners who believe they filed within the allowed filing period. Some homeowners are on extension for their income tax return and wait until the extended return is filed to reduce preparer time expenses. In 2015, 52% of municipalities had lower non-residential education property tax rates so homeowners are billed at the 8% penalty rate. For 2015, 4,525 homeowners filed the declaration in the late period. Using the \$1.4794 median homestead education property tax rate² where it is more than the non-residential rate on the \$200,000 median price for single family home in Vermont,³ the homeowner filing a declaration between April 16 and October 15 incurs a \$235.00 penalty at the 8% rate.</p>		
Statutory Recommended Change		
Amend 32 V.S.A. §§5410(g) to apply a flat rate late filing penalty for Homestead Declarations filed between April 16 and October 15 and correct filing date by creating a new subsection (1), with the current language becoming new subsection (2).		

² FY2014 Education Property Tax Rates <http://tax.vermont.gov/research-and-reports/tax-rates-and-charts/education-tax-rates>

³ Vermont Housing Data <http://www.housingdata.org>

g) (1) For an owner filing a new or corrected declaration, or rescinding an erroneous declaration, between April 16 and October 15, the municipality shall issue a corrected tax bill that may, as determined by the governing body of the municipality, include a penalty up to \$50.

(2) If the property identified in a declaration under subsection (b) of this section is not the taxpayer's homestead, or if the owner of a homestead fails to declare a homestead as required under this section, the Commissioner shall notify the municipality, and the municipality shall issue a corrected tax bill that may, as determined by the governing body of the municipality, include a penalty of up to three percent of the education tax on the property. However, if the property incorrectly declared as a homestead is located in a municipality that has a lower homestead tax rate than the nonresidential tax rate, or if an undeclared homestead is located in a municipality that has a lower nonresidential tax rate than the homestead tax rate, then the governing body of the municipality may include a penalty of up to eight percent of the education tax liability on the property. If the Commissioner determines that the declaration or failure to declare was with fraudulent intent, then the municipality shall assess the taxpayer a penalty in an amount equal to 100 percent of the education tax on the property; plus any interest and late-payment fee or commission which may be due. Any penalty imposed under this section and any additional property tax interest and late-payment fee or commission shall be assessed and collected by the municipality in the same manner as a property tax under chapter 133 of this title.

Notwithstanding section 4772 of this title, issuance of a corrected bill issued under this section does not extend the time for payment of the original bill, nor relieve the taxpayer of any interest or penalties associated with the original bill. If the corrected bill is less than the original bill, and there are also no unpaid current year taxes, interest or penalties and no past year delinquent taxes or penalties and interest charges, any overpayment shall be reflected on the corrected tax bill and refunded to the taxpayer.

Class of Taxpayer	Industry	Recommendation #4 (Statutory Change)
Homeowners	Attorneys Financial Institutions Realtors	Clarify when property tax adjustment shall be allocated upon sale of the homestead

Discussion

Current law regarding property tax adjustments and the sales of homesteads reads:
 In case of sale or transfer of a residence, any property tax adjustment amounts related to that residence shall be allocated to the seller at closing unless the parties otherwise agree.
 32 V.S.A. § 6063(b)

This section infers that a seller received a property tax adjustment that was applied to the residence. The buyer receives the benefit of the adjustment for his or her portion of the taxable year and the law treats the property tax adjustment as if the seller paid those property taxes.

In some instances, none or a portion of the property tax adjustment claim is applied to the property taxes. The offset program may use a property tax adjustment to pay a homeowner's unpaid Vermont tax liability. 32 V.S.A. § 6064. In such cases, only the homeowner receives notification of the amount of adjustment directed to the unpaid Vermont tax liability and the property tax adjustment amount.

The wording in 32 V.S.A. § 6063(b) defines allocation to be appropriate upon "any property tax adjustment amounts related to that residence." Reading this phrase literally, if the seller received a

property tax adjustment, allocation of the amount can be done regardless of whether the full adjustment applied to the property taxes. This wording does not direct buyer, seller, attorneys or other real estate closing officials to verify beyond the fact that the seller received an adjustment.

Situations have arisen where the seller asserts allocation from the buyer on the full amount of the adjustment even though all or a portion went to the seller's unpaid State tax liability. This results in the buyer paying an excess amount to the seller and then having to pay the same amount to the town for property taxes.

The buyer's only recourse is legal action against the seller is to negotiate with the seller or to file legal action to recoup the excess allocation of the property tax adjustment. Current language of the law does not require the property tax adjustment to have been applied to the property tax bill. In cases where the property tax adjustment has not yet been issued and/or there is an offset for tax liability, holding the claimed property tax adjustment amount in an escrow account will provide the buyer with assurance that the amount being allocated is correct.

Statutory Recommended Changes

Amend 32 V.S.A. § 6063(b) to read:

In case of sale or transfer of a residence, ~~any property~~ tax adjustment amounts related to that residence and applied to the property taxes of that residence shall be allocated to the seller at closing unless the parties otherwise agree. In instances where the amount of the property tax adjustment on the seller's property cannot be verified, the buyer shall place the property tax adjustment allocation amount in escrow until the property tax adjustment is verified unless the parties otherwise agree.

NOTE: See 32 V.S.A. § 3260 for similar situation that requires the buyer of a business to establish an escrow to cover past or potential tax obligations of the seller.

Class of Taxpayer	Industry	Recommendation #5 (Statutory Change)
All	Attorneys Department Courts	Allow taxpayers to voluntarily waive statute of limitations for all tax types

Discussion

The Sales and Use tax law allows a consensual extension of the statute of limitations:

When, before the expiration of the period prescribed herein for the assessment of an additional tax, ***a taxpayer has consented in writing that the period be extended the amount*** [emphasis added] of the additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. If a taxpayer has consented in writing to the extension of the period for assessment, the period for filing an application for credit or refund pursuant to section 9781 of this title shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the consent to extend the time for assessment of additional tax. 32 V.S.A. § 9815(c). See also 32 V.S.A. § 9273(b)

A similar ability to allow consensual extension of statute of limitations would be beneficial to the Department, the taxpayers, and our court system.

When a payment plan amount will not pay off the bill within the statute of limitations, the only way the Department can continue to pursue collection is to obtain a court judgment - even if the taxpayer is in a payment plan and current on payments.

The court action presents financial harm to the taxpayer by making the tax debt a public court record and has a tacit implication that a taxpayer made no effort to meet the tax obligation. Taxpayers may incur legal fees to respond to the Department's action. Court action requires additional expenses for the Department to collect a tax debt such as court costs and fees for service. Court action also burdens the court system with these collection judgment cases.

A voluntary extension of the statute of limitations aids in auditing taxpayers by increasing the accuracy of the audit through review of actual records rather than sampling.

The option to allow the taxpayer to voluntarily extend the statute of limitations is not an exclusive option. If the taxpayer refused to voluntarily extend the statute of limitations, the Department still has the ability to use other collection methods or seek court judgment.

The benefits for the option to allow taxpayers to voluntarily extend the statute of limitations for taxes other than sales and use tax are:

1. Protecting taxpayers' financial record;
2. Protecting state revenues for all taxes administered by the Department;
3. Increasing the quality of an audit when there are timing issues;
4. Reducing expenses for the Department, Taxpayer and Courts; and
5. Reducing the burden on the court system.

Statutory Recommended changes

Enact legislation in 32 V.S.A. Chapter 103 to read:

When, before the expiration of the statute of limitation prescribed under this title for taxes administered by the Vermont Department of Taxes for the assessment of additional tax or collection of a tax debt, a taxpayer consents in writing that the period be extended to a reasonable time, and the amount of additional tax may be determined at any time within the extended period or collection of tax debt may be collect at any time within the extended period. The extended period may be further extended by subsequent consents made in writing if made before the expiration of the original extended period. If a taxpayer consents in writing to the extension of the period for assessment or collection, the period to file an application for credit or refund pursuant shall be six months from the expiration of the extended period under which an assessment of tax was made or a tax debt collected.

Note: refund provision already contained in Chapter 225 and 233 of Title 32 and adds the time for other taxes.

TAXPAYER CLASS OR INDUSTRY TAX ISSUES

Class or Industry	Issue	Recommendation
Contractors	Misinterpretation of exempt purchases for the business such as materials, tools, office supplies, fixed assets, software, repair/maintenance parts for sales & use tax	Issue comprehensive written guidelines; work with contractor associations; taxpayer education
Manufacturing	Misinterpretation of exempt purchases for manufacturing such as taxable fuels, fixed assets, office supplies, materials, tools and when direct sales are taxable.	Issue comprehensive written guidelines; taxpayer education
Retailers	Purchasing items tax free for business use that are taxable such as software, fixed assets, office supplies, materials & supplies. Collecting local option tax continues to be overlooked. Problems occur when untaxed sales are erroneously purchased with exemption certificates. These issues are commonly detected during audits.	Issue comprehensive written guidelines; work with retail associations; taxpayer education
Food & Lodging	<p>Purchasing items sales tax free for business use that are taxable such as fixed assets, office supplies, materials & supplies</p> <p>Tax free sales of meals and under reporting of alcohol sales occur.</p> <p>Local option tax compliance issue with both sales & meals/rooms taxes.</p>	Issue comprehensive written guidelines; taxpayer education
Services	Purchasing items tax free for business tax that are taxable such as fixed assets, office supplies, materials & supplies, tools	Issue comprehensive written guidelines; taxpayer education

Source: Compilation of 2015 audit results and issues.

EXTRAORDINARY RELIEF

OVERVIEW OF EXTRAORDINARY RELIEF

In 2012, the legislature enacted 32 V.S.A. § 3206 to provide taxpayers with an opportunity to seek a remedy when Vermont tax laws apply to the taxpayer's circumstances in a way that is unfair and unforeseen or that results in significant hardship; and the taxpayer has no available appeal rights or administrative remedies to correct the issue that led to such unfair result or hardship. This provision became effective July 1, 2012.

The first year of extraordinary relief consisted mostly of requests for relief on property tax adjustment or a renter rebate. The majority of these relief requests cited that they had always received a property tax adjustment or renter rebate but forgot to file or filed just a day or two after the deadline. Of the 59 requests for extraordinary relief, 18 (30.5%) met the criteria for relief.

The 2013 extraordinary relief requests decreased as taxpayers became more familiar with the extraordinary relief program criteria. Legislation to extend the deadline to October 15 for filing a property tax adjustment or renter rebate claim also served to reduce claims for extraordinary relief for these cases. Of the 35 requests for extraordinary relief, 11 (31%) met the criteria for relief.

The 2014 extraordinary relief requests again decreased. Of the 17 requests for extraordinary relief, 8 (47%) met the criteria for relief. While the percentage is higher, the requests granted met the extraordinary relief criteria in the legislation.

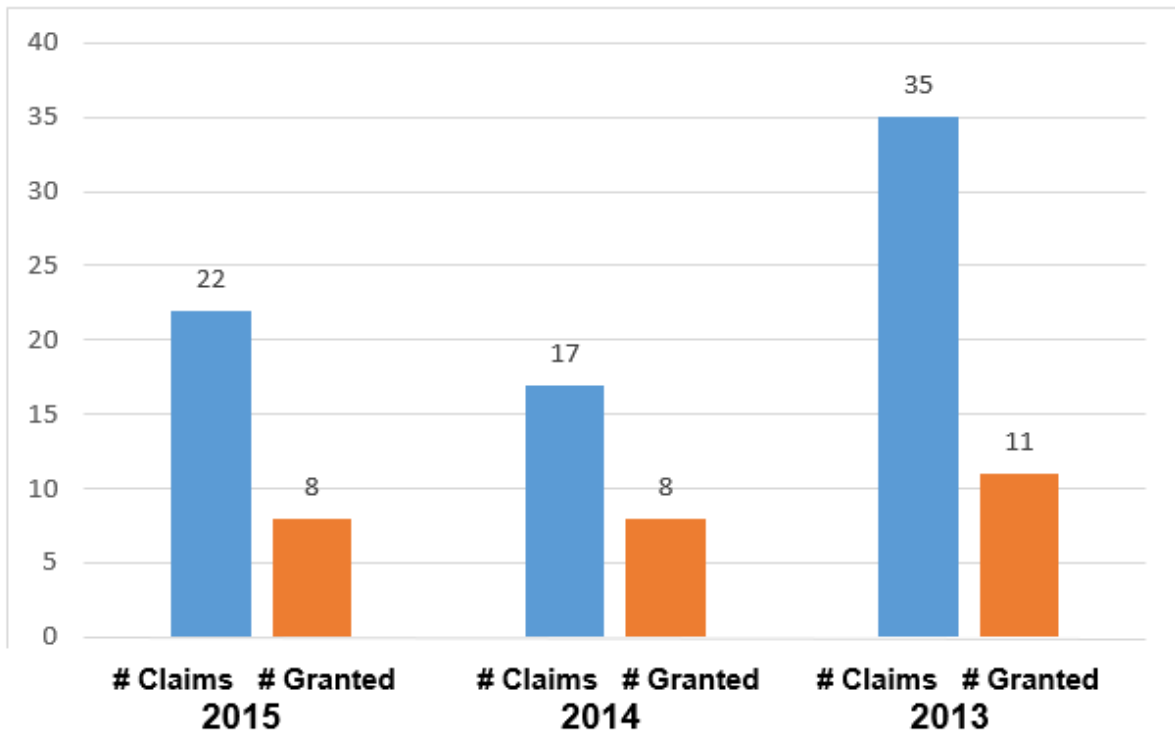
SUMMARY OF 2015 EXTRAORDINARY RELIEF REQUESTS

Requests for extraordinary relief still predominantly involved failure to file or complete property tax adjustment and renter rebate claims by the deadline. The majority of taxpayers made requests for property tax adjustment relief. Of the 22 extraordinary relief requests, 8 (35%) met the extraordinary relief criteria. Four extraordinary relief requests were converted to hardship status requests as the circumstances were deemed more appropriate for hardship status.

EXTRAORDINARY RELIEF REQUEST CASE SOURCE						
[2013-2014 by calendar year; Jan. 1, 2015 to December 4, 2015]						
Description	Year	#	Year	#	Year	#
Requests Received	2015	22	2014	17	2013	35
Relief Granted		8		8		11

EXTRAORDINARY RELIEF REQUESTS

[2013-2014 by calendar year; 2015 January 1 – December 4, 2015]



EXTRAORDINARY RELIEF REQUEST TAX TYPE

[2013-2014 by calendar year; Jan. 1, 2015 – December 4, 2015]

Description	Year	#	Year	#	Year	#
Property Tax Adjustment	2015	16	2014	14	2013	31
Renter Rebate		1		1		2
Personal Income Tax		1		2		0
Current Use		0		0		0
Sales/Use		1		0		0