

Reg. § 1.5401(7) **HOMESTEAD** (Effective 8/6/04)

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Reg. § 1.5401(7) **Homestead** (Effective 8/6/04)

(a) Introduction

A statewide education tax is imposed on all homestead and nonresidential property. 32 V.S.A. § 5402(a). However, the tax is imposed at different rates on those two categories of property. Therefore, all property on the education grand list will be classified as either homestead or nonresidential. The basis for this classification is the homestead declaration. Any property that is not homestead property, is nonresidential property.

In order for a property to be classified as homestead property for any tax year, the department of taxes must receive a homestead declaration on or before April 15¹. On this form, a resident is required to declare his or her homestead as of April 1. 32 V.S.A. § 5410. In the absence of a declaration, the education tax will be billed by municipalities at the nonresidential rate. If a Homestead Declaration is filed late but prior to December 1, the property tax bill will be adjusted but the filer will be subject to a penalty. Declaring a nonresidential property as a homestead will also subject the filer to a penalty.

This rule addresses the eligibility requirements for declaring a homestead and issues with respect to what constitutes a homestead. It is authorized by 32 V.S.A. § 5410(e) which provides specific rule-making authority to the commissioner of taxes with respect to homestead declarations; by 32 V.S.A. § 3411(3) which provides that the division of property valuation and review adopt rules for the uniform administration of the property tax; and by 32 V.S.A. § 3201(a)(1) which gives the commissioner general rule-making authority with respect to tax administration.

(b) Homestead Declaration

Annually, on or before April 15, an individual must declare a homestead if the individual is:

- (1) domiciled in Vermont; and
- (2) owns and occupies a dwelling in Vermont as his or her principal dwelling on April 1.

The declaration must be in the form prescribed by the commissioner of taxes. 32 V.S.A. § 5410. The requirements of “domicile” are addressed in Reg. 5811(11)(A)(i).

(c) Definition of Homestead

“Homestead” is defined in 32 V.S.A. § 5401(7) as follows:

¹ If April 15 falls on a Saturday, Sunday or holiday, the due date is the next business day. An extension to file the income tax return does not extend the time to file the declaration.

(7) "Homestead":

(A) "Homestead" means the principal dwelling and parcel of land surrounding the dwelling, owned and occupied by a resident individual as the individual's domicile.

(B) The parcel of land surrounding the dwelling shall be determined without regard to any road which intersects the land. If the parcel of land surrounding the dwelling is owned by a cooperative housing corporation incorporated under 11 V.S.A. chapter 14, or owned by a nonprofit land conservation corporation or community land trust with exempt status under Section 501(c)(3), the homestead includes a pro rata part of the land upon which the dwelling is built, as determined by the cooperative corporation, nonprofit corporation, or land trust.

(C) A homestead may consist of a part of a multi-dwelling or multi-purpose building, including cooperative property occupied as a permanent residence by a member of a cooperative housing corporation incorporated under 11 V.S.A. chapter 14. A mobile home may constitute a principal dwelling for purposes of this chapter.

(D) A dwelling owned by a trust may qualify as a homestead if it meets the requirements of subsection 6062(e) of this title.

(E) A homestead also includes a dwelling on the homestead parcel owned by a farmer as defined under section 3752 of this title, and occupied as the permanent residence by a parent, sibling, child, grandchild of the farmer or shareholder, partner, or member of a farmer-owner, provided that the shareholder, partner, or member owns more than 50 percent of the farmer-owner, including attribution of ownership of a parent, sibling, child, or grandchild.

(F) A homestead also includes any other improvement or structure on the homestead parcel which is not used for business purposes. A homestead does not include that portion of a principal dwelling used for business purposes if the portion used for business purposes includes more than 25 percent of the floor space of the building.

(d) Principal Dwelling

An individual can only have one homestead. 32 V.S.A. § 5410(a). A mobile home may be a homestead. Second homes and camps are not homesteads and should be listed as nonresidential property on the grand list. A camp may be an exception to this statement if it is in fact the taxpayer's principal dwelling. If it could not be occupied year-round under typical conditions, it does not qualify as a homestead.

A home that is temporarily impossible or impractical to occupy because of major renovation or damage due to natural disaster may still be a taxpayer's principal dwelling as long as no other residence is claimed as the homestead. A dwelling that is being built cannot be claimed as a homestead until it is occupied

as the principal dwelling of the owner. New construction does not constitute a dwelling that is temporarily uninhabitable – rather, it has never been inhabited.

On the other hand, a house that could be occupied year-round is not a homestead simply because the owner spends a considerable amount of time there. Ownership and occupation of a house are not sufficient to make it a homestead. The owner must be domiciled in Vermont and the house must be occupied “as the principal residence” of the individual. See Reg. 5811(11)(A)(i) Domicile.

(e) Ownership of the Homestead

(1) Joint Ownership

Spouses and civil union partners who own and occupy a residence together should only file one declaration. With respect to other joint owners who occupy the dwelling as their principal residence, it is only necessary for one owner to file a declaration. If only one of two or more joint owners occupies the dwelling as a principal residence, only that owner should file a homestead declaration. The dwelling will be taxed at the homestead education tax rate.

(2) Life Estates

The owner of a life estate interest who occupies the dwelling as his or her principal residence must declare a homestead. The legal instrument granting the life estate is not required to be filed with the declaration, but should be available upon request of the department.

(3) Revocable Trusts

A dwelling held in trust and occupied by the beneficiary of the trust as the principal dwelling should be declared as the homestead of the beneficiary only if: (1) the declarant is the sole beneficiary of the trust, (2) the declarant or the declarant’s spouse or civil union partner was also the grantor of the trust, and (3) the trust is revocable or became irrevocable solely by reason of grantor’s death. The requirement that the trust beneficiary be the “sole” beneficiary is satisfied if a husband and wife or civil union partners together are the only beneficiaries of the trust. The trust instrument is not required to be filed with the Homestead Declaration, but should be available upon request of the department.

(4) Title in Other Entities

When title is held by an entity such as an S corporation, partnership or limited liability company, none of the attributes of ownership are retained by an individual and therefore the property cannot be an individual’s homestead. This is true regardless of whether a shareholder, partner or member uses the property

as his or her homestead, except in the case of the entities addressed below when they earn more than half of their income from the business of farming.

(5) Farmers

If a dwelling is owned by a farmer and occupied as the permanent residence by a parent, sibling, child or grandchild of the farmer, it is the homestead of the related person and that person must file a Homestead Declaration.

If title to the homestead is held by a corporation, partnership or limited liability company that qualifies as a farmer, and the occupant of the homestead owns more than 50 percent of the corporation, partnership or limited liability company, it is the homestead of the occupant and that person must file a homestead declaration. In determining whether the occupant owns more than fifty percent of the farmer-owner, the ownership interest held by a parent, sibling, child or grandchild of the occupant shall be attributed to the occupant.

To qualify as a farmer, a person must earn at least one-half of his annual gross income from the "business of farming" as that term is defined in Regulation 1.175-3 issued under the Internal Revenue Code of 1986. That regulation provides that:

"The business of farming" means cultivating, operating, or managing a farm for gain or profit, either as owner or tenant. A person who receives a rental (either in cash or kind) which is based upon farm production is engaged in the business of farming. However, a person who receives a fixed rental (without reference to the production) is engaged in the business of farming only if he participates to a material extent in the operation or management of the farm. Forestry or the growing of timber is not the business of farming. Cultivating or operating of a farm for recreation or pleasure rather than a profit is not the business of farming. "Farm is meant in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantation, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised, e.g., fed, protected, cared for, as opposed to merely caught or harvested.

Example 1: Elliot owns a farm consisting of 180 acres with two houses, a barn and an equipment-storage shed. He derives 90 percent of his income from operating the farm. Elliot occupies one house as his principal dwelling. His son occupies the other house as his principal dwelling. Both dwellings and the land are homestead property and a homestead declaration must be filed. The barn and storage shed are not homestead property and will be taxed at the nonresidential rate. However, if the farm buildings are enrolled in the Use Value Appraisal Program, classifying the barn and shed as nonresidential would have

no impact on the owner's taxes because the taxable value of enrolled farm buildings is zero.

Example 2: Fairfield Corporation owns a dwelling on a 100-acre parcel. The entire income of Fairfield is derived from operating a dairy farm on the parcel. Smith owns 75 percent of Fairfield's stock. He occupies the dwelling as his principal dwelling. Smith must file a Homestead Declaration; the 100 acres will be taxed at the homestead rate. Although Fairfield Corporation, not Smith, is the owner of the property, the law recognizes that many farmers operate in a corporate form and makes an exception from the ownership requirement in cases where the occupant and certain related persons own more than 50 percent of the corporation. Structures and buildings on the parcel that are used in the farm business are not homestead property and will be taxed at the nonresidential rate unless it is enrolled in the Use Value Appraisal Program (see note in Example 1 above).

Example 3: Same as above except Smith owns 30 percent of Fairfield's stock. Smith's daughter owns 25 percent. Since together Smith and his daughter own more than 50 percent of the stock of Fairfield, Smith qualifies as a farmer. Smith must file a Homestead Declaration.

(f) Occupation of the Homestead

A homestead must be owned "and occupied" by the resident. The law does not specify any requisite number of days that the resident must occupy the dwelling in order for it to qualify as a homestead. An individual's employment may require him or her to spend a majority of days away from the dwelling, but if the individual is domiciled in Vermont, and the dwelling is his or her permanent dwelling, and if no other homestead has been claimed, it constitutes the homestead.

While the law does not specify a requisite number of days the dwelling must be occupied, it requires a declaration of homestead "as of, or expected to be as of, April 1 of the year in which the declaration is made." The fact the owner is temporarily away from the dwelling on April 1 for employment, vacation or a similar reason, does not disqualify the dwelling as a homestead. However, if the property is rented on April 1 so that the owner does not have the right to occupy the dwelling on that date, it cannot be declared as the owner's homestead.

Example 1: Jackson is domiciled in Vermont and owns his principal dwelling in Vermont. On April 1, he is overseas on a temporary assignment for his employer; the assignment lasts from February 1 until the end of the year. He should declare the dwelling as his homestead because he owns it on April 1 and has the right to occupy it on April 1.

Example 2: Smith is domiciled in Vermont. He leaves for Florida on January 2, renting his Vermont dwelling until May 15. He cannot claim it as his homestead because he did not occupy the dwelling on April 1 and he had no right to occupy it.

(g) Parcel

A homestead includes “the parcel of land surrounding the dwelling, determined without regard to any road which intersects the land”.

Parcel is defined in 32 V.S.A. § 4152(a)(3) as “all contiguous land in the same ownership, together with all improvements thereon”. There is no acreage limitation on a homestead.² Accordingly, even if there are buildings or improvements on land contiguous to the homestead that are not homestead property (see section (j) below), the land is part of the homestead and will be taxed at the homestead tax rate.

If a homestead crosses town lines, the property owner must file a Homestead Declaration for each town in which the homestead lies. SPAN numbers are town-specific so each Homestead Declaration will require a different SPAN.

If part of the homestead is enrolled in the Use Value Appraisal Program (Title 32, Chapter 124), the owner should declare the entire property as his or her homestead. The entire parcel is taxed at the homestead rate.

Example 1: Smith is domiciled in Vermont. His principal dwelling is on three acres that are improved by a swimming pool, a detached garage, and a storage shed. All of Smith’s property is homestead property.

Example 2: Blackburn’s homestead is on a 60-acre parcel. His business, an auto body repair shop with an adjacent paved parking lot, is also located on the parcel. The dwelling and 60 acres are taxed at the homestead rate. The repair shop and parking lot improvement are taxed at the nonresidential rate. Blackburn should indicate business use on his Homestead Declaration.

Example 3: Johnson operates a commercial racetrack on five acres across the road from his principal dwelling. He owns ten acres on the dwelling side. The track is paved and lined with stands for viewing. This is an improvement that is separately valued and taxed at the nonresidential tax rate.

² In this way, a homestead differs from the “housesite” which is relevant to determining an education tax payment or rebate under Chapter 154, Title 32. A housesite is “that portion of a homestead...which includes as much of the land owned by the claimant surrounding the dwelling as is reasonable necessary for use of the dwelling as a home, but in no event more than two acres per dwelling unit; and in the case of multiple dwelling units, no more than two acres per dwelling unit up to a maximum of 10 acres per parcel”. 32 V.S.A. § 6061(11).

The dwelling, the ten acres on which it sits and five unimproved acres across the road are all homestead property.

Example 4: Jackson's principal dwelling is located on a 12-acre parcel that crosses a town line. The house and 5 acres are in one town; the other 7 acres are located in the adjacent town. Jackson should file two homestead declarations, each identifying one town and the SPAN assigned by that town. The house and entire twelve acres are taxed at the homestead rate.

(h) Multiple Homes on a Parcel

An individual can only own and "occupy" one principal dwelling. If an individual owns a parcel with two dwellings, only one can be claimed as the homestead on the individual's homestead declaration. However, the entire parcel is included in the homestead³. If the second dwelling is neither rented nor used for a commercial purpose, it is taxed at the homestead rate.

If there are two dwellings on jointly owned property and each dwelling is occupied by a co-owner, only one owner needs to file a homestead declaration since it is all one parcel. The entire parcel will be taxed at the homestead rate.

Example 1: Jackson and Corrigan hold joint title to a 120-acre parcel with two dwellings. Each occupies one of the dwellings as his principal residence. A Homestead Declaration must be filed for the parcel. This will result in all of the land and the two dwellings being taxed at the homestead rate. Either owner may file the declaration.

Example 2: Same as above except Jackson lives out-of-state and the co-owners rent the second dwelling to a third party. Corrigan must file a Homestead Declaration. Her dwelling together with the land is homestead property. The second house is not homestead and is taxed at the nonresidential rate.

Example 3: Same as example 2 except instead of renting the second dwelling, Jackson uses it as a vacation house. Corrigan must file a Homestead Declaration. Her dwelling together with the land is homestead property. The second house is a building detached from the home but it is not used for business purposes; therefore it is classified as homestead property and taxed at the homestead rate.

(i) Multi-dwellings and Multi-purpose Buildings

³ This rule anticipates a law change that will delete the provision: "[I]f two or more homestead dwellings are located on a single parcel, the value of the parcel allocated to each homestead shall be the total value of the parcel divided by the number of principal dwellings, unless otherwise determined by ownership of record of the land."

“A homestead may consist of a part of a multi-dwelling or multi-purpose building, including cooperative property occupied as a permanent residence by a member of a cooperative housing corporation incorporated under 11 V.S.A. chapter 14.”

(1) **Cooperative Property.** Although a cooperative interest is personal property, the law specifically waives the ownership requirement and provides that if such a property is occupied as a permanent residence by a member of a cooperative housing corporation incorporated under the Cooperative Housing Ownership Act it is homestead property.

Example: Elliot belongs to a cooperative that owns 16 units of attached housing on five acres of land. He occupies one of the units as his principal dwelling. He should file a homestead declaration. His unit and one sixteenth of the five acres is his homestead property.

(2) **Condominium and Common Interest Property.** A condominium unit occupied by the owner as his or her principal dwelling is a homestead. In addition, the owner’s interest in the common elements, such as contiguous land, outbuildings and structures, is also homestead property. See 27 V.S.A. § 1306 (Condominium Ownership Act); 27A V.S.A. § 1-105(a)(Uniform Common Interest Ownership Act).

However, any portion of the common elements in which the developer has reserved any development right is a separate parcel that is separately assessed and taxed to the developer and is not homestead property. See 27A V.S.A. § 1-105(b).

Example 1: Goddard owns and occupies as her principal dwelling a condominium located on a 38-acre parcel of common land with a swimming pool and three tennis courts. There are twenty condominiums in the development. The pool and tennis courts are for the use of condominium owners and their guests. The town assesses Goddard for her unit and a one-twentieth interest in the land and improvements because the declaration establishing the condominium community provides that the common elements are owned equally by the unit owners. Goddard should file a homestead declaration. The entire assessed value of Goddard’s property is taxed at the homestead rate.

Example 2: Townsend owns and occupies as his principal dwelling one unit in a 200-unit development formed under the Uniform Common Interest Ownership Act. The development includes 100 acres of common property, with an additional 50 acres reserved by the developer. Townsend’s homestead is his unit and 1/200 of the 100 acres of common property. The 50 acres reserved by the developer is nonresidential property.

(3) **Multi-purpose Buildings.** The portion of a mixed-use building that is owned and occupied as a principal dwelling is homestead property. This could be an apartment building in which the owner occupies one unit as her principal dwelling. It could be an apartment in a building that contains the owner's business. The owner must file a Homestead Declaration for the property that identifies the percentage of the building that is used for commercial or rental purposes. (Also see section (j) below.)

Example: Garrett owns a downtown building on one-quarter of an acre. The building has retail space on the first floor. Garrett occupies the entire second floor, which is 40 percent of the building's floor space, as his principal residence. The listers must determine the contributory value of the homestead portion of the building and the contributory value of the nonresidential portion of the building. They may allocate the building's value based on square footage - in this case, 40 percent as homestead property and 60 percent as nonresidential property. This is not the only method for allocating value. There may be circumstances that make another allocation method equally or more reasonable. The land value should be listed as homestead property.

(j) **Detached Buildings and Improvements**

A homestead does not include buildings or improvements detached from the home and used for business purposes. Conversely, a detached building or improvement, such as a shed, garage, or swimming pool, that is located on the parcel and not leased or used commercially is homestead property. Whether an improvement qualifies as part of a homestead depends upon how the improvement is used as opposed to what the improvement is. A barn that is used to park the dwelling owner's car may be homestead property, whereas a barn that is used as a gift shop is not. A swimming pool outside the owner's principal residence is homestead property while a swimming pool outside a hotel and used by guests is not homestead property even though the owner lives at the hotel. A declarant should indicate on the Homestead Declaration whether there are commercial buildings or improvements on the parcel.

Example 1: In addition to his dwelling, Jackson has a garage and a barn on the property in which he stores his antique automobiles. The dwelling, garage and barn, as well as the land, qualify as homestead property.

Example 2: Newlon owns a house, which he occupies as his principal dwelling, and commercial garage on 25 acres. He should file a homestead declaration and indicate business use of a structure on the declaration. The garage structure should be valued separately by the listers and it should be taxed at the nonresidential rate. The dwelling and land are taxed at the homestead tax rate.

Example 3: McLean owns a house, which she occupies as her principal dwelling, a horse barn and a riding ring on 60 acres. The barn and ring are used to house and exercise her own horses. All of the property is homestead property.

Example 4: Same as above except, McLean boards horses in the barn as a business. The house and land are homestead property. The barn is not and will be taxed at the nonresidential rate. If the riding ring constitutes an improvement because significant value has been added, e.g., fixtures or surface improvements, it should be listed separately and taxed as nonresidential property. If it is unimproved land, it need not be separately assessed and is taxed at the homestead tax rate.

Example 5: Johnson operates a dairy farm on 100 acres. There are 4 structures on the land – a barn, a shed for storing farm equipment, Johnson’s dwelling and a dwelling Johnson provides to his farmhand. Johnson’s dwelling and the 100 acres are homestead property. The barn, shed and farmhand dwelling are nonresidential property since they are used for the business purpose of operating a farm.

Example 6: Elwood owns and occupies a dwelling on 130 acres. There is also a caretaker’s house on the property which he provides to his caretaker as part of their employment arrangement. Elwood should declare his dwelling and the 130 acres as his homestead. The second dwelling is not part of his homestead even though it is not used for a business purpose by Elwood. Elwood gave up the right to “occupy” the dwelling in return for the caretaker services. This is true whether rent is actually paid for the dwelling or deemed to be paid as part of the terms of employment.

(k) Business Use of Dwelling

A homestead “does not include that portion of a principal dwelling used for business purposes if the portion used for business purposes includes more than 25 percent of the floor space of the building”. A home office, a business workshop, a bed and breakfast operation are examples of business uses of a dwelling. If the portion of the dwelling used for business purposes does not exceed 25 percent of the floor space, there is no requirement to indicate business use on the homestead declaration. If the portion so used exceeds 25 percent, the actual percentage must be reported on the homestead declaration and the entire value attributable to business use is taxed at the nonresidential tax rate.

This diminimus does not apply to either separate structures used for business purposes or to leased portions of the dwelling. This is because the separate structure or leased space is not “occupied” by the owner as a dwelling. In those cases, the entire value attributable to the leased portion of the dwelling or to the separate structure is taxed at the nonresidential rate.

Example 1: Jacksons own a large house, which they operate as a bed and breakfast. They also occupy this house as their principal dwelling. Three of the five bedrooms are leased to guests and guests also use the living room and dining room. The kitchen is used to prepare breakfast for guests, but is not otherwise for guests' use. The Jacksons should file a homestead declaration that indicates the percentage of the house that is used as part of their business. This is the percentage of floor space that the three bedrooms, the living room, the dining room and the kitchen bear to the total floor space of the house. The owners are required to file a federal Schedule C to report their net profit from the business. The percentage reported on the homestead declaration should be the same percentage used to report business use of the home on the federal schedule.

Example 2: Shaughnessey leases an apartment in the house he owns and occupies as his principal dwelling. The apartment takes up 20 percent of the floor space of the house. He should file a declaration and indicate this percentage of rental use. Eighty percent of the dwelling is homestead property; 20 percent is nonresidential property.

Example 3: Smith works out of his home. His home office occupies 20 percent of the floor space of the house. He does not need to indicate any business use on his homestead declaration because his office does not exceed 25 percent of the floor space of his principal dwelling.

Example 4: Garrett uses the barn attached to her house as a workshop and retail space for her furniture business. In most cases, the listers will have a separate value on the barn. If this is true, the entire value of the barn would be allocated as nonresidential. If there isn't a separate barn value, then the percentage allocation reported by the taxpayer on the homestead declaration could be used to determine the business allocation. If the taxpayer fails to provide an allocation percentage for business use or the lister disagrees with the taxpayer's percentage, then the listers could choose to do an allocation based on square footage of the entire structure. The property owner may appeal that valuation decision to the listers pursuant to 32 V.S.A. § 4111(g).

(l) Failure to File a Timely Declaration

Failure to file a timely declaration has several consequences. Tax will be imposed on the property at the nonresidential rate. This can be corrected if a declaration is filed before December 1. Regardless of whether the tax bill is corrected to the homestead rate, a penalty is imposed. If the tax was underpaid as a result of late filing, additional tax, interest and a late payment commission may also be due.

(1) **Penalty.** A homestead owner who fails to file a homestead declaration by April 15 is subject to a penalty equal to one percent of the education tax on the property. However, if the commissioner determines that the failure to file a timely homestead declaration was with fraudulent intent, the penalty equals 100 percent of the education tax on the property. The penalty shall be assessed and collected by the municipality in the same way it collects property tax under Chapter 133 of Title 32. The municipality may retain the penalty.

A taxpayer may appeal assessment of the one percent penalty to the listers within 14 days after the date of mailing of notice of the penalty, and from the listers to the board of civil authority and then in the same manner as an appraisal appeal under Chapter 131. A taxpayer who wishes to appeal assessment of the 100 percent fraud penalty must appeal to the commissioner of taxes in the same manner as an appeal under chapter 151 of title 32.⁴

(2) **Tax Rate.** Declarations filed after the April 15 due date will be accepted by the department and the department will notify the municipality of the late-filed declaration. If the homestead declaration information is **filed prior to December 1**, the municipality will issue the owner a new tax bill reflecting the correct tax rate. If the tax has been paid and the corrected bill results in a lowered tax, the municipality will refund the overpayment to the taxpayer. Municipalities are not required to make refunds due to late declarations until May 15. Any refund due to the taxpayer from the municipality shall be net of the one percent penalty.

A corrected bill does not extend the date on which the original billed amount is due. Therefore, if the corrected rate resulted in additional tax and the payment date has passed, the municipality may assess interest and a commission under 32 V.S.A. § 1674(2) with the additional tax.

If a declaration is **not filed prior to December 1**, the municipality is not required to reduce the homestead owner's education tax to reflect a lower homestead tax rate. The owner is liable for the one percent penalty and also for any underpaid tax and interest. Any additional tax and interest due will constitute a penalty to be assessed and collected by the municipality in the same manner as property tax under Chapter 133 of Title 32.

Any increase or decrease in education tax assessed against a property owner that is the result of a declaration filed prior to December 1 will be reflected in the net amount of education tax due to or from a municipality pursuant to 32 V.S.A. § 5402 and 16 V.S.A. § 4028.

(m) **Non-residential Property Declared as Homestead**

⁴ Similarly, a taxpayer who wishes to appeal a determination of domicile must appeal to the commissioner of taxes in the manner for appeals under chapter 151 of title 32.

If the property identified in a Homestead Declaration is not the taxpayer's homestead, the taxpayer is subject to a penalty equal to one percent of the education tax on the property. If the commissioner determines that the declaration was made with fraudulent intent, the penalty shall be in an amount equal to 100 percent of the education tax on the property. The penalty is imposed and collected by the municipality in the same manner as property tax under Chapter 133 of Title 32.

The taxpayer is also liable for the difference between the education tax calculated at the homestead rate and at the nonresidential rate if the latter is higher together with any interest and a commission under 32 V.S.A. § 1674(2).

(n) Abatement of Penalties

The legislative body of a municipality may abate all or a portion of the one percent penalty in cases of hardship. Hardship means:

- (1) an owner's inability to pay as certified by the commissioner of taxes in his or her discretion; or
- (2) failure to file a homestead declaration by April 15 or the filing of a homestead declaration with respect to nonresidential property was due to:
 - (a) full-time active military duty of the declarant outside the state;
 - (b) serious illness or disability of the declarant;
 - (c) serious illness, disability or death of an immediate family member of the declarant