

information from Bruce Cunningham

for testimony regarding S.134 on 2/5/14
(excerpts from www.vermontadvocate.com/dltpay.htm)

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(boxes indicate important points)

This bill will remove the statute that specifically allows a longstanding unconstitutional practice engaged in by almost every town in Vermont, which impacts about 10,000 property tax payers every year.

HIGHLIGHTS

- affects 10% of Vermont citizens every year
- § 1674, creating the 8% commission, was enacted before 1797 (less than 6 years after statehood) – clearly there was no *penalty* intended
- *commission* apparently calculated to pay for about one hour of work (about 75¢ in 1900)
- elected delinquent tax collectors' *commissions* today: approx. \$100-200 per hour of work needed
- 1919 – 0.5% per month interest enacted – increased many times to adjust for economic conditions – easily amended to assure no loss to towns
- today up to 1% - interest allowed for 3 months; 1.5% thereafter (16.5%/year) – allowing approximately 2X total cost of being late – i.e., net financial gain to town without penalty
- T. 24: § 932; § 933 – voters/selectboard set compensation for all employees
- Loss of 8% revenue will be balanced by changing to reasonable pay for tax collector in most towns

- Other towns – small price to pay for justice (probably less than 0.5¢ on the tax rate)
- § 1674 now specifically permits municipal officials to punish citizens who have done no harm
- Any penalty is disproportional to the “offense” because: 1. no law has been violated and 2. the town at least breaks even on interest alone
- constitutionality question will not go to court – it is up to the legislature to fix this problem

Delinquent property tax penalty is clearly unconstitutional

Note: This issue has not and likely will not go to court – it is up to the legislature to resolve this conflict with the Vermont and U.S. constitutions.

- Amendment VIII to the U.S. Constitution: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
- The Vermont Constitution, Chapter II, ...”§ 39... And all fines shall be proportioned to the offences.”
- The 8% “commission” allowed by Vermont law for delinquent property taxes is perceived as a penalty and is identified by the word “penalty” in articles passed by Vermont towns and “penalties” in state law. It constitutes a “fine” in the context of the constitutions.
- Since the payment of property taxes is strictly a financial transaction, the actual or potential harm of the “offence” against the town for a late payment must be defined in financial terms.
- Annualized interest rate for delinquent taxes is 12% for three months and 18% thereafter with interest charged for any part of a month. (32 V.S.A. § 5136)
- Total interest collected on delinquent property taxes averages more than twice the total cost to the towns of collecting the delinquent taxes. The net effect of late payment of property taxes is therefore a benefit to the towns rather than harm.
- A “penalty” in the form of a fine of 8% in addition to the interest charged on delinquent property taxes violates both the U.S. and Vermont constitutions because the delinquent taxpayers are being punished for what amounts to an act that benefits rather than harms a town.
- Since VSA T.32, § 1674 {“*The fees and penalties collected by collectors of taxes shall be as follows: ... (2) On all taxes collected after the expiration of the time established in the notice required by section 4772 or 4792 of this title, the collector may charge and collect from the taxpayer a commission of eight percent on the amount of the tax, unless a municipality votes otherwise pursuant to subdivision (3) of this section.*”}, in effect specifically allows an unconstitutional fine, it should be repealed.

WHAT IS THE OFFENSE?

For any punishable offense in Vermont, it is usually easy to identify a federal or state law or a municipal ordinance that defines a prohibited act and the punishment that is possible for it in the form of a fine or imprisonment or both. For offenses such as local ordinances for parking regulations, there may not be due process in implementing this form of justice, and fines for violation of municipal ordinances are generally limited to \$500.

None of these things appear to be true for what we know as the “8% penalty” for delinquent property taxes.

The current law that establishes this so-called “penalty” has the following language in part:

“Title 32: § 1674. Delinquent tax commission and collection costs

The fees and penalties collected by collectors of taxes shall be as follows: ...

(2) On all taxes collected after the expiration of the time established in the notice required by section 4772 or 4792 of this title, the collector may charge and collect from the taxpayer a commission of eight percent on the amount of the tax, unless a municipality votes otherwise pursuant to subdivision (3) of this section. ...”

The word “penalties” in the introductory phrase was added in 2003, but that word does not appear anywhere else in the body of this law. It clearly applies to the 8% “commission” that virtually everyone now calls a “penalty” because, *de facto*, that’s what it is today.

This statute (§ 1674) describes an alternative for compensating the delinquent tax collector for the time spent collecting a tax. It does not define an offense for the taxpayer.

Other laws regarding collection of property taxes also define allowed alternatives for the municipality to assure collection of the amount due but do not define an offensive act for the taxpayer. A maximum interest rate is defined for the principal owed and a process for foreclosing on the debt if it is considered to be in default by selling the property at auction. An offense for the taxpayer and a penalty are not mentioned. An option is prescribed for the taxpayer for paying the taxes due within one year after the tax sale to cancel the sale but it is not a penalty – just another option in the collection process.

Not surprisingly, there is no due process for this so-called “8% penalty” because there is no offense defined for prosecution.

Most towns vote on an article at town meeting that describes this 8% commission as a “penalty”. One might think this establishes it as a local ordinance except for the fact that it exceeds the customary \$500 limit for such ordinances for any tax bill of more than \$6,250 and town officials claim that the article is simply conforming to the state law cited above. Many of those officials still believe that the “8% penalty” is required by state law while that has never been true. It was previously “allowed” and it is now a “may charge”.

There seems to no basis in the language of Vermont’s laws for this common practice. One might expect a court to support the practice on the basis of precedent except for the apparent conflict with section 39 in Chapter 2 of the state constitution

MYTHS AND FACTS ABOUT THE 8% PENALTY

Myth: When some people are late, others have to pay more.

Fact: The interest alone (12-18% annualized) more than covers the net cost of paying late (about 2X). Others actually pay *less* if some taxpayers pay late.

Myth: We need a deterrent for paying late.

Fact: Since the net profit from interest actually benefits the town financially, deterring lateness would actually slightly increase the tax rate for everyone.

Myth: The 8% penalty acts as a deterrent.

Fact: Interviews with on-time and late payers show that the 8% penalty has no significant effect as a deterrent.

Myth: An 8% penalty is allowed by law.

Fact: What the law actually allows is a *commission* of up to 8%. The legislature apparently never intended for there to be a penalty.

EXAMPLE for \$1,000 and \$10,000 property tax:

with: - 1% interest for 3 mo. then 1.5% (no penalty)

- no penalty

- estimated total cost of delinquency to town subtracted

<u>WHEN PAID</u>	<u>NET TO TOWN</u>	<u>NET TO TOWN</u>
on time	\$1,000	\$10,000
1 day late	\$1,010	\$10,100
3 mo. late	\$1,022	\$10,292
6 mo. late	\$1,069	\$10,432

The following are my thoughts regarding what I understand to be three concerns of municipal officials (and the VLCT) regarding repeal of the 8% penalty:

1. HOME RULE: There are many statutory limits to home rule. One example directly related to this issue is the interest rate on overdue taxes – limited to up to 1% per month for three months and 1.5% thereafter. But regardless of statutory limits, municipal actions should never violate the protections provided by the constitutions – which is the case for the 8% penalty. In addition, every town should be able to decide how much to pay every person on the town payroll – and every town can do that with one exception: the delinquent-tax collector. A “commission” set according to statute provides compensation that is not directly related to the services rendered in terms of either hours worked or the nature of the work. This actually denies home rule in setting this compensation, and repeal will restore it. In fact, this bill would lift the current limit for compensation of delinquent-tax collectors and allow towns to pay them even more if they choose to. (see more about local control at the end of this page)
2. LOSS OF A REVENUE SOURCE: First, how much revenue? Overdue taxes are only about 5% of property tax revenue in most towns. Eight percent of five percent is only about 0.4%. In addition, in towns with elected delinquent tax collectors keeping the penalty as a commission, most of the “lost” revenue would be recovered by setting a fair compensation for overpaid tax collectors. This will reduce the net loss to less than 0.1% of property tax revenue. More importantly, because the penalty is unjust to begin with, we should not be collecting it no matter how much it is.
3. OPPOSITION BY ALMOST ALL DELINQUENT TAX COLLECTORS: There’s no question that repeal of this commission law will result in fair compensation for tax collectors as determined by voters or select boards. This may result in income reductions for some tax collectors if keeping the penalties as a “commission” provides excessive compensation now. Every protesting tax collector should be asked for an opinion regarding a fair hourly rate for the work that they do. Three towns are now paying elected tax collectors between \$11 and \$16 per hour and electing a tax collector is optional under current law. The tax collector in Windham is requesting \$12.50 per hour.

Basic facts (which act as deterrents) regarding overdue property taxes:

1. You do not have a choice about whether to pay your property tax – it is only a matter of when
2. As soon as your tax is overdue, the town has the equivalent of a first mortgage on your house and can initiate a tax sale at any time
3. As soon as your tax is overdue, you owe an additional 1% interest for the first month regardless of whether or when you pay the tax during that month
4. The annualized interest rate is 12% for the first three months and 18% thereafter – much higher than the 3.6% that the V.D.F.R. allows for a standard mortgage
5. Your name and the fact that your tax is overdue will appear on the warrant to the tax collector (public information)

Does the 8% “commission” (penalty) have a deterrent effect for overdue taxes?

Here are a few facts:

1. The penalty was eliminated in Hinesburg nine years ago, and the number of penalties has not changed significantly since then.
2. New Hampshire has no penalty for overdue taxes, and its percentage of overdue taxes is approximately the same as Vermont's.
3. Most people who are late paying their property tax either forgot to pay them by the due date or had trouble coming up with the cash. The penalty was not a consideration in either circumstance.
4. The most common reasons for paying on time are: it's the law; the annualized interest rate is 12-18% if you are late; having a lien on your property is something to avoid.
5. Not paying the tax is not an option. The only choice is to pay either before or after the due date. Being overdue is the only thing that is subject to deterrence. The interest alone assures that the town benefits financially if payment is late. Therefore, even if the penalty actually worked as a deterrent (which it does not), it would be deterring taxpayers from doing no harm. A deterrent isn't even needed.

Part of the misunderstanding regarding deterrence is related to awareness of the need for and effectiveness of the penalty for overdue *income* taxes. They are not the same. It is possible to hide income from the IRS; cheating on your tax return is possible; and there is no automatic lien on your real property if you are unwilling to pay. That's why the deterrent is needed for income taxes. None of these are true of property tax.

THE DELINQUENT TAX PENALTY PROBLEM:

We need to do two things:

1. stop the injustice of delinquent tax penalties
2. repeal the "commission law" for delinquent-tax collectors

We have an out-of-date statute, which I refer to as the "commission law", which is the historical cause of about 10% of Vermont's citizens being victims of a significant injustice every year and is also causing the wasting of hundreds of thousands of property tax dollars each year.

This law, VSA T.32, § 1674 says in part: "(2) On all taxes collected after the expiration of the time established in the notice required by section 4772 or 4792 of this title, the collector may charge and collect from the taxpayer a commission of eight percent on the amount of the tax, unless a municipality votes otherwise pursuant to subdivision (3) of this section."

Note that it still says "*may* charge" – not "shall", "must", or even "should".

This law was enacted before 1797. It is important to consider the historical perspective of this law to understand its intent.

According to records from 1900 in Hinesburg, the effect of this law at that time was to provide a commission for the delinquent-tax collector that averaged about 75 cents for each delinquent tax collected. Considering inflation, that 75¢ was equivalent to about \$13

in today's economy. Reliable information from many Vermont municipalities shows that the average time required to collect a delinquent tax is approximately 1.4 hours.

The nature of the work required to collect a delinquent tax is approximately the same as the work done by assistant town clerks and assistant treasurers in Vermont towns. For these employees, \$13 to \$15 per hour is considered a reasonable hourly wage. It is clear that the original intent and effect of this law was to provide compensation for the elected position of delinquent-tax collector that would provide about an hour's worth of pay for an hour's worth of work.

With the evolution of the size of government and the economy, the same 8% applied to the average delinquent property tax today yields approximately \$150 – which is 10 times a reasonable hourly rate. This has caused the dual problem of injustice and waste that we have today.

First, what was intended to be only a reasonable “commission” in the 18th century has evolved into a *penalty*, in the form of a fine, which is excessive considering there is no actual offense against the municipality. But it is very clear from both the language of the original law and its actual effect even as late as 1900 that no penalty was ever intended.

When the additional interest law was enacted in 1919, the commission should have been repealed because the interest alone provided more than enough revenue to pay for all possible costs to the municipalities – including paying the collector a reasonable wage.

In addition, there is now an issue of conflict with the Vermont and U.S. Constitutions. Amendment VIII to the U.S. Constitution says: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Also, The Vermont Constitution, Chapter II, ...”§ 39. [Forms of prosecutions and indictments; fines] All prosecutions shall commence, By the authority of the State of Vermont. All Indictments shall conclude with these words, against the peace and dignity of the State. And all fines shall be proportioned to the offences.” This excessive 8% fine now violates both of these constitutional protections.

I have heard some people argue that the 8% penalty is “proportional” to the offence because it is a percentage of the amount owed. To consider this interpretation, imagine a similar law that imposed a penalty of 1,000% for a similar financial delinquency. The obvious injustice of such a penalty makes it clear that the language of the constitution is not referring to a simple mathematical ratio. The penalty must be considered in relation to the actual or potential harm to the community. The harm in this case needs to be considered in relation to the net financial effect of paying late instead of on time.

It is, of course, fair that the delinquent taxpayers should cover the extra cost of collecting their taxes past the due date. The fact is that they do just that through the interest rate applied to the principal of their delinquent taxes. State law allows up to 1% per month for three months and 1.5% per month after three months. That's an *annual* rate of 12% for three months and 18% after that. The absence of the delinquent tax principal in the town bank account costs the town money either in the form of interest earned on that account or interest paid on money borrowed to make up for the missing delinquent taxes. Annual rates for interest on reserves or interest on borrowed money are less than 4% annually for municipalities. This means that the net interest earned by a town on delinquent taxes (interest earned minus interest lost) is about 13%. A quick business analysis in any municipality in Vermont will show that this net interest earned is greater

than the total cost of collecting the delinquent taxes if reasonably efficient methods are used and a reasonable hourly rate is paid for the actual work done.

Below is information collected from some Vermont cities and towns showing estimated costs of efficient delinquent-tax collection and the interest collected on those delinquent tax debts.

<u>TOWN</u>	<u># DT/YR</u>	<u>TOTAL INT./YR.</u>	<u>TOT. INT./DT</u>	<u>NET INT./YR</u>	<u>EFF. COLL. COST</u>
Bennington	495	\$98,000	\$197	\$84,933	\$17,325
Chelsea	70	\$3,600	\$51	\$3,120	\$2,450
Enosburg Falls	57	\$750	\$13	\$650	\$1,995 *
Hartford	500	\$34,000	\$68	\$29,467	\$17,500
Hinesburg	150	\$14,000	\$93	\$12,133	\$5,460
Huntington	94	\$10,000	\$106	\$8,667	\$3,300
Hyde Park	150	\$12,500	\$83	\$10,833	\$5,250
Moretown	40	\$9,000	\$225	\$7,800	\$1,400
Newfane	150	\$30,000	\$200	\$26,000	\$5,250
Newport	245	\$33,400	\$136	\$28,947	\$8,575
Pittsford	140	\$14,500	\$103	\$12,567	\$4,900
Ripton	25	\$2,000	\$80	\$1,733	\$875
Rutland	621	\$62,900	\$101	\$54,513	\$21,735
St. Johnsbury	250	\$20,000	\$80	\$17,333	\$8,750
Westminster	325	\$41,000	\$126	\$35,533	\$11,375
Bristol	200	\$9,800	\$49	\$8,493	\$7,000
Colchester	450	\$45,800	\$102	\$39,693	\$15,750
Windham	40				\$1,400
Shelburne	(3 payments)	(\$17,000)			
totals		\$441,250		\$382,418	\$138,890

effective collection \$ = \$35 X # DT/yr (estimate assumes about \$25/hour + other expenses)

NOTE: any expenses related to tax sales up to 15% of principal are paid by taxpayer

int.: some towns charge a flat 1% while most go to 1.5% after 3 mo.

* 2-3 mo. to tax sale – e.g. lower cost/lower int. - estimated cost high for this case

It is clear that the interest earned on delinquent taxes exceeds the total cost required for collecting those same taxes. Since any “offence” against the municipality must be defined in financial terms, this means that the interest alone is more than sufficient “punishment” and that any further punishment in the form of a “penalty” violates the constitutions.

Also, about 80% of Vermont towns still allow the elected delinquent tax collectors to keep the 8% penalties as their “commission”. This amounts to compensation in the range

of \$100 to \$200 per hour for the actual work required to collect the taxes – work that is worth about \$10 to \$15 per hour by reasonable standards. This waste of tax dollars adds up to hundreds of thousands every year for the state.

This dual problem of injustice and waste exists because the original state law that allows it to happen was based on a false assumption – that an “8% commission” would always be reasonable compensation for the actual extra work required to collect a delinquent property tax. While this assumption might have been true for more than 100 years after the law was enacted, it is certainly not true today. Not only has the 8% grown to an amount equal to about ten times the value of the work being done, the average value of a delinquent-tax principal also varies by as much as a factor of four from one municipality to another. Since the amount of work to collect a delinquent tax is not related to the value of the principal, the same “commission” will therefore pay four times as much for the same work in the town with the higher principals.

Is it possible for Vermont municipalities to solve this problem without fixing this law? Theoretically, yes. The language of the law “allows” but does not require a commission of 8%. Municipalities may set the “commission” anywhere from 0% to 8% to provide a reasonable amount of pay for the actual work done in that municipality. In addition, election of a delinquent-tax collector is optional. Towns may integrate this work with the responsibilities of the Treasurer or another elected official. Towns also have the option of paying the collector a reasonable salary or hourly wage instead of a commission.

But the reality is that only about 20% of Vermont municipalities have taken any action to date to stop the waste of tax dollars, and only the Town of Hinesburg has eliminated the penalty altogether. It is not reasonable to expect a significant number of our towns to solve either part of this problem in the future.

The fact is state law should not “allow” this kind of injustice and waste to happen in the first place. It only allows it now because the original intent of the law has been subverted by the evolution of our economy, the escalating cost of government, and the addition of interest charges in 1919. The law should have at least been updated many years ago – but updating it by reducing the allowed “commission” will not solve the problem of the wide disparity in the principals that it is applied to. This law was a bad idea when it was passed because it fixed a maximum commission in an economy that changes and there is no commission that translates to reasonable pay for all towns. We should solve this dual problem of injustice and waste now by *repealing* this law altogether.

How do we pay delinquent-tax collectors if we repeal the “commission” law? There is another state law that authorizes the voters of a municipality to decide how and how much to pay every employee of the municipality. If the voters do not do that at the town meeting, then this law authorizes the select board to do it. It could be an hourly wage, a salary, or even a commission of any amount. There would be no maximum. One of the differences with this law is the delinquent tax payers would be charged interest just as they are now but they would not pay for the compensation of the tax collector except through their taxes – just as they and the rest of the taxpayers pay for the compensation of every other employee. This law does not make an exception for delinquent tax collectors. If the “commission” law is repealed, then delinquent-tax collectors will have their pay determined just like every other employee.

Solving this problem is strongly opposed by two groups of people.

First, the beneficiaries of the waste part of the problem: almost all of the delinquent tax collectors in the state. They now have part time jobs that pay more than \$100 per hour and they do not want to give that up.

Second, many municipal officials (and other citizens) who mistakenly believe that an 8% penalty is both just and necessary to prevent an increase in delinquencies, and who have grown accustomed to receiving the revenue from the penalty. In fact, most people pay their taxes before the due date because it's the law and because the interest rate of 12% - 18% on a late payment is very high. A deterrent is not needed.

Both of these groups are represented by a very strong and effective lobbying organization, the Vermont League of Cities and Towns.

This opposition must be overcome by principles of justice and efficient government. This issue is actually very simple, basic, and compelling. State law should not allow this unconstitutional abuse and waste. The original intent of this law should be recognized and restored by repealing this statute:

§ 1674. Delinquent tax commission and collection costs

The fees and penalties collected by collectors of taxes shall be as follows:

(1) Where a municipality does not vote to collect its taxes by its treasurer, the collector shall not tax or collect of the taxpayer any commission or fees on taxes paid within the time established in the notice required by section 4772 of this title.

(2) On all taxes collected after the expiration of the time established in the notice required by section 4772 or 4792 of this title, the collector may charge and collect from the taxpayer a commission of eight percent on the amount of the tax, unless a municipality votes otherwise pursuant to subdivision (3) of this section.

(3) For all taxes collected after the expiration of the time established in the notice required by section 4772 or 4792 of this title, voters of a municipality may adopt by a majority vote of the municipality's members present and voting at an annual or special meeting:

(A) The percent of the amount of the tax collected that shall be charged as a commission, provided that the adopted percent does not exceed eight percent.

(B) A grace period or graduated commission schedule for taxes paid within a defined time frame after the established time of payment.

(4) Whenever it is necessary to levy on persons or personal estate, the collector shall be allowed to tax and collect from the taxpayer, as further compensation, such fees as sheriffs are allowed for levying executions. (Amended 1993, No. 68, § 1; 1997, No. 26, § 1; 2003, No. 100 (Adj. Sess.), § 1.)

INFORMATION FROM OTHER CITIES AND TOWNS:

Burlington -

4 payments per year

1% penalty for 7 days then 5% for payments prior to June 12

8% on June 22 with a warning notice prior to June 22

estimated total time spent = 1.5 hours per delinquent taxpayer (DT) per year

Essex Junction -

2 payments per year

notices sent monthly

estimated 500 hours per year with approx. 275 DT's per payment or 550 DT's per year

estimated total time spent = .9 hours per DT per year

Essex Town -

2 payments per year

notices sent 4 times per year (3X for Hinesburg with monthly notices)

estimated 500 hours per year with approx. 500 DT's per payment or 1000 DT's per year

.5 X 3 = estimated total time spent = 1.5 hours per DT per year

Williston

3 payments per year

interest but no penalty for 2 payments - 8% penalty at last (Feb 10) payment

one notice at first two dates then monthly after Feb 10

estimated total time spent = .6 hours per DT per year

Starksboro -

DTC keeps penalties but is required to report hours worked monthly - estimated average 10 hours per week from Nov to June (tax sale every year in June which eliminates all DT's and ends the work) - estimated time = 170 hours

123 DT's after '99 due date

estimated total time spent = 1.4 hours per DT per year

West Windsor -

\$10.98 per hour wage for the Delinquent Tax Collector

70 delinquent taxes per year

56 hours worked for 70 taxes

estimated total time spent = .8 hours per DT per year

Brookline -

\$14 per hour wage for the Delinquent Tax Collector

Town Clerk, Treasurer, Delinquent Tax Collector are the same person

40 delinquent taxes per year

48 hours worked for 40 taxes

estimated total time spent = 1.2 hours per DT per year

The estimates from these cities and towns were based on total hours spent by anyone in the municipal government doing any work related to collecting delinquent taxes.

If it is true that a 1900 DTC received the equivalent of \$12.75 per DT, then a wage somewhere around \$13 per hour appears to be very close to what was intended by V.S.A. T.32 § 1674 (2) when it was enacted.

(After Hinesburg eliminated the penalty in 2005, the Selectboard decided to change the compensation for the elected delinquent tax collector to \$16 per hour instead of the annual salary of \$16,032 in the budget at that time. This was to pay for the estimated time of 200 hours needed to do the job. At this reasonable hourly rate, the compensation would have been reduced to about \$3,200. The tax collector quit and the Town Clerk/Treasurer/Delinquent Tax Collector budget for salaries was increased to cover 4 additional hours per week for collection work)

Responses to some arguments against eliminating the 8% “penalty”:

1. There will be a dramatic increase in delinquent taxes.

Probably not. Besides the draconian 8% “penalty”, there are several other reasons for paying property taxes on time.

- It’s the law. That’s enough reason for most people.
- Interest on a late-taxes “loan” would be 12% for three months then 18% until paid – much more than commercial lenders would charge.
- Being a “delinquent taxpayer” is embarrassing and it is public information.
- The taxes owed are a lien on your property.

If there were any increase in delinquent taxpayers, it would probably be insignificant. (Some towns in Vermont have already reduced their penalties to something less than 8%. Those towns should be asked whether this created a problem because of increased delinquencies. Hinesburg eliminated the penalty altogether nine years ago, and there has been no increase in delinquencies without the penalty.)

2. A municipality may have to borrow money to solve the cash flow problem caused by additional delinquent taxes.

The probability that any municipality might have to borrow money just because a few more taxpayers are delinquent is very small for two reasons. First, most delinquent taxpayers pay up within six months. Second, the delinquencies exist at the best time of the year as far as cash flow is concerned – i.e. right after most property taxes flow into the municipalities’ bank accounts.

3. Other taxpayers will have to pay more if there are more delinquent taxes.

This is not true. First, it is important to keep in mind the fact that there is no such thing as unpaid property taxes. Ultimately, property may be sold to pay the taxes. This is just a question of timing. Other taxpayers will never have to pay more.

Second, municipalities can borrow money short term at interest rates of less than 5% while collecting 12% for three months and 18% thereafter on delinquent taxes. This net profit to the municipality means other taxpayers will actually have to pay less if more people are delinquent.

Whether or not money is borrowed to make up for delinquent taxes, municipalities will earn less interest on money in their bank accounts because the delinquent taxes will not be deposited on time. Interest earned is usually less than the interest on borrowed money so this loss is also more than made up for by the interest charged on the delinquent taxes.

4. The 8% penalty is an effective disincentive to being late paying property taxes.

A country once had a death penalty for a first offense for drunk driving. Drunk driving was very rare in that country and there were no second offenses. Why don't we do that in this country? For the same reason we don't cut people's hands off for petty theft: Our Constitution forbids cruel and unusual punishment.

The point is this: If the 8% penalty is actually an effective deterrent (which is doubtful), that is not a good argument for doing it if it is draconian.

5. Collecting delinquent taxes is a tough job and the 8% commission is needed to get someone to do the job.

In fact, it takes less than 2 hours of work to collect the average delinquent property tax. An 8% commission amounts to approximately \$100 to \$200 per hour of actual work, depending on the municipality. The work is not that hard.

Also, how difficult the job actually is depends on the delinquent-tax policy and the methods employed by the delinquent-tax collector. It is possible to do the job in a way that is not significantly more difficult than the job of collecting current taxes.

Many towns in Vermont are now paying salaries to delinquent tax collectors (instead of commissions) that work out to approximately \$15 per hour. Other municipalities are getting the job done without having an elected delinquent tax collector and are paying regular staff members reasonable wages for doing the work. It is not hard to get someone to do this work for a reasonable wage.

Suppose no one chooses to run for the office of delinquent tax collector if it has a reasonable and fair compensation. Consider the fact that electing a delinquent tax collector is optional in the first place. This work will get done whether or not a tax collector is elected – and usually get done better at lower cost.

The 8% penalty and "local control":

Local control is important for local government for the same reasons that the framers of our federal constitution were very careful to allow the states as much control as possible over their own affairs.

But states rights are not unlimited. All states rights are subject to the protections provided in the bill of rights. In addition, there are many federal laws that regulate some of the things states are allowed to do.

Similarly, our state constitution and our state laws limit what local municipalities are allowed to do. In this specific case, we have a limit in state law that was set in 1797 and has never been updated. This limit was set in consideration of economic conditions that were very different than

today and it was apparently designed to provide about one hour's worth of pay for about one hours worth of work (a "commission") by a delinquent tax collector.

The 8% "penalty" (and it is now commonly called a penalty because *de facto* that's what it is) today yields more than \$150 for a typical delinquent tax while it only takes about 1.5 hours to collect that tax. It no longer serves the intent of the legislature and it needs to be updated.

Article VIII in the bill of rights says: "Excessive bail shall not be required, *nor excessive fines imposed*, nor cruel and unusual punishments inflicted." Our 8% penalty is clearly a fine. The question related to this article is whether it is "excessive".

The Vermont Constitution says: "And all fines shall be proportioned to the offences." In this case, we need to understand what the "offence" is and where is the line where it ceases to be "proportional".

Local control is important regarding delinquent taxes because circumstances can vary significantly from one municipality to another and it is very important that no town should lose money because some people miss the due dates. The people who pay late must reimburse the town for all costs related to their actions.

In 1919, section 5136 of Title 32 was enacted "to permit towns to provide for the payment of interest on overdue taxes". This fixed the rate at 0.5% per month until the taxes are paid. This law has been updated to adjust for changing economic conditions (most recently in 1973, 1981, and 1997). It now allows control by only setting a limit (e.g. "not more than one percent") which allows enough interest to provide approximately twice the revenue necessary to cover all costs to the town. (It is ironic that the 1919 rate of 0.5% would allow towns to approximately break even on delinquencies today.) Towns may charge only enough to break even, or more if they choose to make a net profit on delinquencies. The maximum rate allowed may easily be increased by the legislature as the economy warrants. This local control will not be affected by repealing the 8% "penalty".

Repealing the 8% commission law will also enhance local control in deciding how much a delinquent tax collector should be paid. A significant power of the voters and the selectboards is provided by the following laws in T.24:

§ 932. Town may vote compensation

A town may vote to compensate any or all town officers for their official services. Such town in annual meeting may fix the compensation of such officers and of town employees.

§ 933. Selectboard may fix; when

When a town does not fix the amount of the compensation to be paid such officers and town employees, the selectboard shall fix and determine the same except as to their own pay which shall be fixed by the auditors at the time of the annual town audit. If the town has voted to eliminate the office of auditor and the voters fail to fix the compensation to be paid to members of the selectboard, selectboard members shall be compensated at the rate at which they were compensated during the immediately preceding year. (Amended 1997, No. 83 (Adj. Sess.), § 3.)

While these laws are followed annually for every other employee, the compensation for the elected delinquent tax collectors in most towns is set by the state in the 211-year-old 8% commission law. This is the only position on the town payroll not controlled by these laws. Repeal

would automatically subject compensation for this position to the same control as every other employee.

§ 5136. Interest on overdue taxes (originally enacted in 1919 with a fixed rate of 0.5%)

(a) When a municipality votes under an article in the warning to collect interest on overdue taxes, such taxes, however collected, shall be due and payable not later than December 1, and shall bear interest at the rate of not more than one percent per month, or fraction thereof, for the first three months and thereafter one and one-half percent per month or fraction thereof, from the due date of such tax. Such interest shall be imposed on a fraction of a month as if it were an entire month. A municipality having so voted to collect interest as hereinbefore provided, and the amount thereof, shall thereafter collect such interest each year until the municipality shall vote otherwise at a meeting duly warned for the purpose of voting on such question.

(b) Whenever a municipality votes to collect interest on over-due taxes pursuant to this section, interest in like amount shall be paid by the municipality to any person making any overpayment of taxes occurring as a result of a redetermination of the grand list of the taxpayer on appeal provided by chapter 131 of this title. (Amended 1973, No. 86, § 3, eff. for the tax year beginning April 1, 1974, and thereafter; 1981, No. 133 (Adj. Sess.), § 4, eff. April 2, 1982 for tax year beginning April 1, 1982, and thereafter; 1997, No. 50, § 12, eff. June 26, 1997.)