

## Memorandum

TO: Senate Finance Committee  
FROM: Jill Remick, Director of Property Valuation & Review, Department of Taxes  
DATE: February 11, 2022  
RE: S. 214 Valuation of Time-Share Estates

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Thank you for the opportunity to respond regarding the current 32 V.S.A Chapter 135 provisions regarding municipalities' responsibility for reimbursing the Education Fund dollars in the event of a failed or settled appeal. Essentially, when a property is appealed and the appeal stretches over multiple grand list years (which is often the case), the town collects and pays those tax dollars into the Education Fund based on the listed value. If the appeal is resolved at a lower value in a future year, the town is responsible for reimbursing the taxpayer for the "over collected" Education Fund dollars for all grand list years impacted, in addition to municipal revenue collected. Statutory language limits the total allowable reimbursement statewide annually to \$100,000 across all towns.

### **Current Statutory Construct**

Foundational to the Education Property Tax statutory language is the responsibility of the municipalities to meet the full Education Fund obligations.

### **32 VSA:**

#### ***§ 5402. Education property tax liability***

*(c) The treasurer of each municipality shall by December 1 of the year in which the tax is levied and on June 1 of the following year pay to the State Treasurer for deposit in the education fund one-half of the municipality's statewide nonhomestead tax and one-half of the municipality's homestead education tax, as determined under subdivision (b)(1) of this section. The Secretary of Education shall determine the municipality's net nonhomestead education tax payment and its net homestead education tax payment to the State based on grand list information received by the Secretary no later than the March 15 prior to the June 1 net payment. Payment shall be accompanied by a return prescribed by the Secretary of Education. The municipality may retain 0.225 of one percent of the total education tax collected, only upon timely remittance of net payment to the State Treasurer. The municipality may also retain \$15.00 for each late property tax credit claim filed after April 15 and before September 2, as notified by the Department of Taxes, for the cost of issuing a new property tax bill.*

Towns are assessed interest for failure to pay their education tax collected:

#### ***§ 5409. Duties of municipalities and administration***

*(1) Late payments of the tax by a municipality to the State shall be assessed interest at a per diem rate of eight percent per annum of the amount due. If a payment is more than 90 days overdue, any State funds due the municipality shall be withheld.*

PVR annually considers requests from municipalities for a recalculation of education property tax liabilities when the municipal education grand list has lost value due to a determination, declaratory judgement, or settlement. The maximum appropriation annually is \$100,000, which must be prorated across requests:

***§ 5412. Reduction of listed value and recalculation of education tax liability***

*(a)(1) If a listed value is reduced as the result of an appeal or court action made pursuant to section 4461 of this title, a municipality may submit a request for the Director of Property Valuation and Review to recalculate its education property tax liability for the education grand list value lost due to a determination, declaratory judgment, or settlement. The Director shall recalculate the municipality's education property tax liability for each year at issue, in accord with the reduced valuation, provided that:*

*(A) The reduction in valuation is the result of an appeal under chapter 131 of this title to the Director of Property Valuation and Review or to a court, with no further appeal available with regard to that valuation, or any judicial decision with no further right of appeal, or a settlement of either an appeal or court action if the Director determines that the settlement value is the fair market value of the parcel.*

*(B) The municipality submits the request on or before January 15 for a request involving an appeal or court action resolved within the previous calendar year.*

*(C) [Repealed.]*

*(D) The Director determines that the municipality's actions were consistent with best practices published by the Property Valuation and Review in consultation with the Vermont Assessors and Listers Association. The municipality shall have the burden of showing that its actions were consistent with the Director's best practices.*

*(2) A determination of the Director made under subdivision (1) of this subsection may be appealed within 30 days by an aggrieved municipality to the Commissioner for a hearing to be held in accordance with 3 V.S.A. §§ 809-813. The Commissioner's determination may be further appealed to Superior Court, which shall review the Commissioner's determination using the record that was before the Commissioner. The Commissioner's determination may only be overturned for abuse of discretion.*

*(3) Upon the Director's request, a municipality submitting a request under subdivision (1) of this subsection shall include a copy of the agreement, determination, or final order, and any other documentation necessary to show the existence of these conditions.*

*(b) To the extent that the municipality has paid that liability, the Director shall allow a credit for any reduction in education tax liability against the next ensuing year's education tax liability.*

*(c) If a listed value is increased as the result of an appeal under chapter 131 of this title or court action, whether adjudicated or settled, and the Director determines that the settlement value is the fair market value of the parcel with no further appeal available with regard to that valuation, the Director shall recalculate the municipality's education property tax for each year at issue, in accord with the increased valuation, and shall assess the municipality for the additional tax at the same time the Director assesses the municipality's education tax liability for the next ensuing year, unless the resulting assessment would be less than \$300.00. Payment under this section shall be due with the municipality's education tax liability for the next ensuing year.*

*(d) Recalculation of education property tax under this section shall have no effect other than to reimburse or assess a municipality for education property tax changes that result from property revaluation.*

*(e) A reduction made under this section shall be an amount equal to the loss in education grand list value multiplied by the tax rate applicable to the subject property in the year the request is submitted. However, the total amount for all reductions made under this section in one year shall not exceed \$100,000.00. If total reductions for a calendar year would exceed this amount, the Director shall instead prorate the reductions proportionally among all municipalities eligible for a reduction so that total reductions equal \$100,00.00.*

*(f) Prior to the issuance of a final administrative determination or judicial order, a municipality may request that the Director certify that best practices were followed for purposes of meeting the requirements of subdivision (a)(1)(D) of this section. The Director may choose to grant certification, deny certification, or refrain from a decision until a request is submitted under subdivision (a)(1) of this section. The Director shall consider the potential impact on the Education Fund, the unique character of the subject property or properties, and any extraordinary circumstances when deciding whether to grant certification under this subsection. The Director shall be bound by a decision to grant certification unless the municipality agrees to a settlement after such certification was made.*

### **In practice, what does this mean?**

Due to limited available funds, towns must often, out of necessity, perform a cost/benefit analysis, wherein they determine how much they are willing to spend to defend the value. Considerations may include the cost of both litigation and Education Fund revenue for which they would be responsible, rather than whether they believe their valuations are correct. This disincentive has potentially significant implications for the Education Fund.

An example from the 2021 Report of the Vermont Tax Structure Commission illustrates this issue of misaligned incentives: “Consider a \$4,000,000 property in a town with a municipal tax rate of 30 cents. If the listed property were reduced to \$2,000,000 as the result of an appeal, the town would be out \$6,000 per year, which is not enough to warrant an expensive defense. The State, on the other hand, would be out \$32,560 per year.”

The State has a vested interest in Education Fund revenue and there is a tension with towns “being out front” in defending values that have a larger impact on the Education Fund than their

municipal revenue (in most but not all cases). The Education Fund is reduced by settlements and appeals because towns may not have sufficient resources to establish and defend values. Towns often deplete the funds available for reappraisal and grand list dollars on single appeals.

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