

## Joe Colangelo

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**From:** Jim Barlow <jbarlow@vlct.org>  
**Sent:** Friday, January 11, 2013 3:03 PM  
**To:** Joe Colangelo; hinesburgclerk@gmavt.net  
**Subject:** Delinquent Tax Policy

Hi Joe and Missy,

Regarding our telephone conversation, municipalities are authorized under 32 V.S.A. 5136(a) to vote to impose interest on delinquent taxes 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." The statute goes on to state, "Such interest shall be imposed on a fraction of a month as if it were an entire month." This means that if a taxpayer is one day late, the taxpayer is charged for an entire month's interest. Interest is not pro-rated on a daily basis. Here is the text of the statute:

### **32 V.S.A. § 5136. Interest on overdue taxes**

(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.

It is our opinion at VLCT that this particular provision, "Such interest shall be imposed on a fraction of a month as if it were an entire month," is non-discretionary. That is, if a town has voted to collect interest on delinquent taxes, neither the voters, nor the selectboard, nor the delinquent tax collector have the authority to adopt a policy that is contrary to this. We base this opinion on the fact that there is nothing that specifically authorizes the voters, selectboard or DTC to pro-rate interest, in contrast to other provisions that allow, for example, the voters to reduce or eliminate the statutory penalty on delinquent taxes (32 V.S.A. 1674(3)) (or to reduce or eliminate the imposition of interest on delinquent taxes (32 V.S.A. § 5136(a))).

I hope that this helps. Let me know if you have any additional questions.

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