

## MEMORANDUM

**TO:** Vermont Tax Structure Commission  
**FROM:** Kirby Keeton, Tax Policy Analyst  
**DATE:** November 4, 2019  
**RE:** Prorating a Property Tax Adjustment

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### Issue

This memo explains how a property tax adjustment (“PTA”) should be prorated when a homestead is transferred to a new owner.

### Background

A PTA is calculated using the household income of the owner on April 1 of the year in which the claim is filed. 32 V.S.A. § 6066. The residence must have been the person’s homestead in the previous year. In the case of sale or transfer, the statute states that the claim is “personal” and that “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.

Ownership on April 1 determines who can claim a PTA for the year. The homestead declaration and PTA claim are due on April 15. The due date for the property tax bill is determined by the municipality, which is often July 1 but not always. 32 V.S.A. §§ 4772-4773. The bill may include up to four separate due dates if the municipality bills in installments. 32 V.S.A. § 4872.

When a property tax payment is late, a municipality may impose a late penalty. 32 V.S.A. §§ 4772, 4792, 5258. When the tax is not paid, the municipality may eventually foreclose on the lien. 32 V.S.A. § 5075. Only the April 1 owner qualifies as an aggrieved person who may appeal a property valuation by a municipality. 32 V.S.A. § 4403.

### Prorating the PTA

The statute is unambiguous in that the PTA claim defaults to the seller but that proration of the PTA is allowable. The statute intentionally leaves proration up to the parties as a matter for negotiation. That means it clearly was not meant as a bright line that precludes negotiation.

Currently, the law offers flexibility at the expense of more complicated closings. It may be that the Legislature included the flexibility because the circumstances can vary significantly from transaction to transaction. The buyer may not intend to use the residence as a homestead, which would ordinarily preclude a PTA. The buyer may be an entity, such as an LLC, which would not qualify for a PTA. The buyer may be an individual whose household income would disqualify them for a PTA. On the other hand, the seller may be moving to a different state, which means that Vermont would be assisting them with property tax payments somewhere else for that year. The seller may alternatively be staying in Vermont but as a renter who is not personally

responsible for property taxes. Additionally, because the PTA is calculated based on the seller's income, it is almost never the correct amount for a buyer, even if the individual would qualify for an adjustment themselves.

Considering there is no practical way to accurately prorate an adjustment to fully reflect the new circumstances of the buyer and seller, there does not appear to be an obvious solution.

A bright line full or partial allocation to buyer, seller, or both would probably have undesirable policy outcome in some situations. For example, if the PTA always reverted to seller, you would have the undesirable outcome of some retirees taking their property tax adjustment with them to help pay their new Florida taxes.

### **Timing of Property Tax Bills**

Proration also interacts with the property tax billing timeline. There is a period after April 1 in which no property tax bill has been issued to the seller. This creates a number of complications for closings that take place during that window. Our current system puts a burden on the attorneys in a transaction to prorate a PTA without complete information. Further, it puts the responsibility on attorneys to notify buyers of their property tax related obligations because the bill will be issued exclusively to the seller as the April 1 owner. A buyer will not be notified by the municipality, even though the individual can be penalized for failing to pay on time and their residence will be subject to a lien. Likewise, the buyer cannot appeal a property assessment without the seller's permission.

There may be a few relatively easy fixes. A post-April 1 buyer could be granted the ability to appeal a property assessment (it would require removing liability from the seller for that year and an appeal would nonetheless have to be timely). A municipality could also be required to provide actual notice of the property tax due date before it could penalize a new owner for failure to pay.<sup>1</sup>

Some of the other issues would likely require major changes. No matter what property taxation system we use, there will always be a gap between the date of municipal property valuation and the issuance of a tax bill. I do not think it would be possible to eliminate all of the problems at closing without decoupling the PTA from the seller's income. Additionally, if the desire is to eliminate work for attorneys and the inefficiency that comes with negotiation, proration should be automatic and predictable. It seems that would necessitate a flat PTA benefit amount.

Please contact me if you have further questions.

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<sup>1</sup> This is not to say that a municipality is required to incur the cost to send a bill to new owners. It just means it would have to do that if it intends to penalize those people.