July 7, 2026
12:00 – 1:00 p.m.

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

Legal Lunch and Learn: **The Purpose and Effect of Tax Abatements**

C. Christine Johnston- Legal Services Counsel
Tammy Letson- Government Finance Advisor

1

The information presented in NHMA's training events and materials is accurate as of the date of the presentation. NHMA's training events do not constitute legal advice. For legal advice, city and town officials may contact Legal Services at legalinquiries@nhmunicipal.org or their own municipality's legal counsel. Please refer to NHMA's Legal Services FAQ for details about how our service works. For Government Finance Advice, please contact financeinquiries@nhmunicipal.org.

2

ZOOM INSTRUCTIONS

1. Click the “CC” (Show Captions) button at the bottom of your Zoom screen.
   a. If you don’t see it, click “More (...)” and then select “Show Captions.”
2. Captions will appear at the bottom of your Zoom window.
3. To change the font size, click the arrow (^) next to the CC button, then choose “Caption Settings,” then change Font Size on scale to either Small or Large.

3

Questions?

Please type your questions in the Q&A section. Questions will be answered out loud for the recording during scheduled question breaks. Please keep questions to general concerns about the content of the presentation. If your question is about a specific situation you are dealing with, it is better sent to legalinquiries@nhmunicipal.org.

Not all questions may be addressed due to time constraints. If we do not get to your question, please feel free to send it to our legal inquiries department and we will provide a response.

4

NHMA's Legal and Finance Advisory Services

Open 8:30 a.m. – 4:30 p.m.

- Email: legalinquiries@nhmunicipal.org
- Email: financeinquiries@nhmunicipal.org
- Phone: 603-224-7447

Provide general legal advice

- Not comprehensive legal review of documents,
- Not drafting individualized ordinances or charters,
- Not reviewing specific applications before local boards,
- Not settle intra-municipal disputes.

Provide general financial advice

Goal: Response w/in 48 hours.

info@nhmunicipal.org/603.224.7447/www.nhmunicipal.org

5

AGENDA

Abatement Basics

Relationship to Fund Balance

Relationship to Taxes

Effect of Abatement on Finances

6

The Law of Tax Abatements

7

Municipal Authority

- Fundamental rule of municipal government in NH:
  - Towns and cities have no inherent authority to act
  - All authority comes from the legislature through statutes
  - Municipal officials and employees must find a statute that either specifically grants authority or "necessarily implies" that authority
  - *Girard v. Allenstown*, 121 N.H. 268 (1981)
- Not enough to say "no statute says we can't do it"

8

Authority to Tax

Towns and cities must be authorized by the legislature to tax real estate and can only do it in the way that the legislature provides.
- *DirectTV v. Town of Hampton*, 170 N.H. 33 (2017)
- *Canaan v. Enfield Fire Dist.*, 74 N.H. 517 (1908)

Similarly, towns and cities must be authorized by the legislature to relieve taxes and may only do so in the way the legislature provides (through credits, exemptions, deferrals, and abatements).
- *Opinion of the Justices*, 115 N.H. 228 (1975)

9

Authority to Grant Abatements

- Selectmen or assessors, "for good cause shown, may abate any tax, including prior years' taxes, assessed by them or their predecessors, including any portion of interest accrued on such tax…." RSA 76:16.

- Abatements are a way to eliminate any "irregularity or illegality" in the assessment of a tax. *Briggs' Petition*, 29 N.H. 547 (1854)

- Critical issue: is the taxpayer is unlawfully or unjustly taxed as between them and other taxpayers? *Bretton Woods Co. v. Carroll*, 84 N.H. 428 (1930); *Appeal of City of Berlin*, 174 N.H. 733 (2022).

10

What Is "Good Cause"?

- Not defined by statute
- Traditionally, courts have upheld abatements for:
  - Disproportionate assessment
  - Poverty/Inability to pay
- Even when noting that "good cause" is not necessarily limited to these two things, NH Supreme Court has focused on the "remedial justice" that abatements are supposed to accomplish. In other words, **the point of an abatement is to correct an unfair situation.**
  - *See Carr v. Town of New London*, 170 N.H. 10 (2017)

11

Disproportionate Assessment

- NH Constitution requires property taxes to be assessed proportionately and equally. Part I, Art. 12; Part II, Art. 5.
- Each citizen is bound to contribute their share of the tax burden, and no part of one individual's burden can be extracted constitutionally from another. If one person pays less than their **fair share**, it leaves that share to be paid by others, which would be a violation of a constitutional right.
  - *Morrison v. Manchester*, 58 N.H. 538 (1879)

12

Disproportionate Assessment

- Taxpayers are entitled to have their property assessed using the same standard of value as is applied to all other property in the town/city and pay their proportional share of the tax burden.
- Town/city must appraise all taxable property at its full and true value. RSA 75:1.
- Disproportionality: if the assessed value of a property is incorrect, then the taxes assessed on that property are incorrect and the taxpayer pays more (or less) than their fair share of public expenses.
- Burden is on the taxpayer to prove valuation, and thus taxation, is disproportionate to that of other property in the town/city

13

Valuation Methods

- Replacement Cost Less Depreciation Approach
  - Value of land + cost of reconstructing existing buildings, less (physical, economic and functional) depreciation of buildings.
  - Can sometimes inflate value by using a price higher than actual market negotiations would produce
  - Use when:
    - Other approaches are not feasible
    - The structure is unique or has special characteristics not found in comparable properties
    - It is the "exceptional" case where owner might reasonably be expected to replace it with one of similar character or a functional equivalent

14

Valuation Methods

- Comparable Sales/Market Data Approach
  - Compare subject property with similar properties which have been offered for sale or sold in recent times at known prices
  - Every property is unique, so adjustments must be made to control for differences between subject and comparables (time, location, size, topography, access, etc.)
  - Actual sale price is an element to consider regarding value, unless the court finds it was not a fair market
  - Auction sale prices are not generally considered indicative of FMV

15

Valuation Methods

- Capitalization of Income Approach
  - Measure present value of property based on the future net income it could produce for the owner
  - Well-accepted for use with income-producing property
  - Divide the net income of the property by a capitalization rate
  - Capitalization rate = fair return on this sort of investment with this sort of risk. Elements include depreciation, allowance for return on investment, and a tax factor
  - Idea is to look at capacity for earning income rather than actual income, but actual earnings are an element. (Poor management or bad deals shouldn't artificially lower value using this approach.)

16

Valuation Methods

- No single method is required in all cases. Sometimes a combination of methods makes sense.
- Court/BTLA is not required to follow the method the town or city has used, but they will generally follow it if there is a reasonable basis for choosing it in that situation.
- NH Supreme Court will not overturn a trial court/BTLA decision if there is a reasonable basis for the valuation method chosen.

17

Mistakes and Unjust Circumstances

- If all or part of the property was taxed to someone who did not own it, or if the taxpayer can demonstrate a mathematical error, an abatement is proper.
  - *Winnipiseogee Lake Cotton & Woolen Mfg. Co. v. Laconia*, 74 N.H. 82 (1906)
- If property was granted an exemption under a statutory category but was then taxed anyway, an abatement would be proper because a mistake had been made.
  - *Appeal of Taylor Home (BTLA)*, 149 N.H. 96 (2003)
- If property is damaged/destroyed after April 1, owner who does not apply for abatement under RSA 76:21 may still be able to obtain a traditional abatement for "good cause."
  - *Carr v. Town of New London*, 170 N.H. 10 (2017)

18

Poverty, Hardship, Inability to Pay

- Has long been a basis for abatement – a poor person who has lost their health or their wealth by misfortune, "to save them from the cold charity of the work house," has good cause for an abatement of taxes. *Briggs' Petition*, 29 N.H. 547 (1854).
- However, if taxpayer has equity in the property, they must show it is not reasonable to sell, refinance, or obtain additional public assistance. The mere fact that they spend all income on essentials is not sufficient for abatement. *Ansara v. Nashua*, 118 N.H. 879 (1978).
- If taxpayer actually pays taxes they are asking to have abated, BTLA will usually deny an abatement for "inability to pay."

19

What Is NOT "Good Cause"?

- Select Board policy: grant $1,000 tax abatement to all taxpayers who pay to send students to school outside of the district.
  - Rationale: they reduced taxes for the district by sending students out of district but bore an unfair portion of the tax burden by being required to pay the same amount as others.
  - Court: Nope. Taxpayer in this situation is not "aggrieved" under RSA 76:16 merely because they do not personally add to the expenses being funded by taxes. This is part of living in society. Good cause is not "boundless".

20

What Is NOT "Good Cause"?

- No statute or court opinion authorizes the use of an abatement under the umbrella of "good cause" as a method of encouraging development or to encourage or discourage specific taxpayer behavior

- However, a variety of statutes require or authorize other preferential property tax treatment in situations where the legislature has made the policy decision that it is a good idea, either to encourage/discourage particular behavior or because of fairness considerations

21

Mandatory Tax Advantages

- Standard veteran's credit (RSA 72:28); credit for service-connected disability (RSA 72:35)
- Blind exemption (RSA 72:37)
- Exemption for disabled veterans (RSA 72:36-a)
- Elderly/disabled tax deferral (RSA 72:38-a)
- Exemptions for property owned/occupied and used by charitable, religious, or educational entities (RSA 72:23)
- Current use (RSA 79-A)
- Discretionary preservation easements (RSA 79-D)

22

Optional Tax Advantages

- Optional veteran's credit (RSA 72:28)
- Elderly tax exemption (RSA 72:39-b)
- Reduced assessments for qualifying barns (RSA 79-D), qualifying historic structures (RSA 79-G)
- Exemptions solar, wind, and woodheating systems (RSA 72)
- Incentives for commercial and industrial construction (RSA 72:81)
- Community revitalization tax incentives (RSA 79-E)

23

Questions?

24

Relationship to Fund Balance

NHMA
NEW HAMPSHIRE MUNICIPAL ASSOCIATION

25

NHMA
NEW HAMPSHIRE MUNICIPAL ASSOCIATION

What is Fund Balance?

Fund Balance is the total accumulation of operating surpluses and deficits since the beginning of a local government's existence.

>


= Surplus

<


= Deficit

26

The Five Components

Nonspendable	Restricted	Committed	Assigned	Unassigned
Inventories	Prepaid grants	Capital reserves	Purchase orders	The remainder of fund balance not in the first four categories
Prepaid Expenses	Prepaid bond proceeds	Taxpayer expendable trust funds	Contractual commitments	
Tax Deeded Property	Donated expendable trust funds	Nonlapsing appropriations		
Principal portion of permanent funds	Income portion of a permanent fund	Fund balance usage appropriations not yet spent		

27

Use of Unassigned Fund Balance

Legislative Body

- Through the town meeting process the legislative body can use fund balance to offset appropriations

Emergency Spending

- Through the emergency spending process the town can ask DRA to approve emergency spending out of fund balance

Governing Body

- The governing body can use fund balance to offset the tax effort during the tax rate setting process

28

Fund Balance Policies

NH RSA 41:9, VI states the selectmen shall be responsible for establishing and maintaining appropriate internal control procedures to ensure the safeguarding of all town assets and properties.

The Governmental Accounting Standards Board (GASB) and the Government Finance Officers Association (GFOA) both recommend one of those internal controls be a fund balance policy.

29

Fund Balance Policies

NH Department of Revenue Administration (DRA) recommends an annual fund balance retainage between 5% and 17%. GFOA recommends the percentage be two months, or 16.67%, of your operating budget.

Each municipality sets their own retainage percentage in their fund balance policy.

30

Where Found

The fund balance percentage and various ranges are printed annually on the tax rate breakdown as provided by NH DRA.

Fund Balance Retention	
Enterprise Funds and Current Year Bonds	**$10,484,687**
General Fund Operating Expenses	**$149,550,377**
Final Overlay	**$494,464**

2025 Fund Balance Retention Guidelines: Salem	
Description	Amount
Current Amount Retained (9.62%)	**$14,381,362**
17% Retained *(Maximum Recommended)*	$25,423,564
10% Retained	$14,955,038
8% Retained	$11,964,030
5% Retained *(Minimum Recommended)*	$7,477,519

31

Relationship to Taxes

32

Overlay

- Overlay is an extra amount added to the tax warrant and, like veterans' credits, is proportionately raised by all taxpayers above and beyond the net appropriations. This is the money raised in anticipation of writing off tax revenue due to abatements.
- NH RSA 76:6 allows the selectmen to assess a sum not exceeding 5% more than the amount of such tax, to answer any abatements that may be made.

33

Calculating Taxes

When the annual tax rate / tax effort is calculated, the amount raised for overlay is added to the total amount to be raised in taxes.

Appropriations

+ War Service Credits

+ Overlay

- All Other Revenues

- Use of Fund Balance

= Tax Effort

34

Property Tax Calculation

NHMA NEW HAMPSHIRE MUNICIPAL ASSOCIATION

As shown in this example tax calculation, overlay is added into the total amount of taxes to be raised (tax effort). In this example, the overlay is $0.07 of the tax rate.

	Tax Rate Calculation	Tax Rate Calculation Example	
	MS-232-R Gross Appropriation	$77,512,537	
−	MS-434-R Revenues	34,015,879	−
−	Fund Balance Use	5,008,000	−
+	Overlay (5% Max)	494,464	+
+	Veterans Credits	856,975	+
=	Net Municipal **Tax Effort**	39,840,097	=
÷	MS-1 Assessed Property Valuation	6,747,807,691	÷
×	1,000	1,000	×
=	**Tax Rate** per $1,000 Valuation	$5.90	=

35

NHMA NEW HAMPSHIRE MUNICIPAL ASSOCIATION

History of an Overlay Impact

	Overlay Raised	Tax Rate Impact	Cost for a $500,000 house	Actual Abatements Granted	Impact on Unassigned Fund Balance
2022	918,901	0.14	70.00	1,094,831	(175,930)
2023	1,001,005	0.15	75.00	323,598	677,407
2024	705,343	0.11	55.00	683,201	22,142
2025	494,464	0.07	35.00	156,474	337,990

36

What Does an Abatement Do to Town Finances?

NHMA
NEW HAMPSHIRE MUNICIPAL ASSOCIATION

37

Interest

NHMA
NEW HAMPSHIRE MUNICIPAL ASSOCIATION

- NH RSA 76:17-a states 4% interest SHALL be awarded on the taxes abated IF the taxes have been paid.

- This interest is owed from the date of payment to the date of refund.

- If multiple bills have been issued and paid and are affected by the abatement, each bill needs a separate calculation.

- The calculation is:
  Abatement Amount x 4% Interest / 365 Days = Per Diem
  Date of Refund – Date of Payment = Number of Days
  Per Diem x Number of Days = Interest Owed

38

Interest Calculation

- As an example, an abatement changing an assessed value by $50,000 was approved for a 2024 levy. Due to whatever reason, that abatement was not issued until after the second issue 2025 tax bill was posted. The following calculates the interest owed.

	Date of Refund	Date Paid	Number of Days	Abatement Amount	Per Diem	Interest Owed
2024 2nd Issue Tax Bill	4/20/2026	11/15/2024	521	880.00	0.10	50.24
2025 1st Issue Tax Bill	4/20/2026	6/20/2025	304	440.00	0.05	14.66
2025 2nd Issue Tax Bill	4/20/2026	12/10/2025	131	468.00	0.05	6.72

39

Where to Post Interest

- Neither the RSA nor NH DRA's Revenue Rules state where to post the interest owed. NHMA does not take a stand on where to post this interest. Examples of where we and DRA have seen the interest posted include:
  - 3110 – Property Taxes or Overlay
  - 4199 – Other General Government
  - 4790 – Other Debt Service Charges
- As long as the interest is being properly calculated and applied or paid, where it hits your revenues or expenses is not as important.

40

Refund Abatements

- NH RSA 76:17-d Abatement Refund grants a municipality the right to apply all or a portion of the amount abated *along with interest* computed to any outstanding (subject to interest) taxes owed by the taxpayer to the municipality.

- There is no negative impact on this method of abating taxes vs issuing a refund. Both methods will either reduce property tax revenue or increase overlay. The only difference is a refund reduces cash where an abatement refund reduces taxes receivable.

41

Who Processes Abatements

- If an abatement is granted to a taxpayer who has outstanding taxes, the tax collector MUST process the abatement to reduce the amount of taxes owed by the taxpayer. The accounting office also needs to record this transaction.

- If a refund is to be issued, it does not matter if the abatement is only processed by the accounts payable department or if both the accounts payable and the tax collector process the abatement. If the tax collector does process this abatement, they need to both abate the taxes, which will create a credit balance, then enter a refund of the credit balance.

42

An Abatement's Impact on Finances

- Abatements either reduce property tax revenue or increase overlay (contra revenue)
- Abatements are a reduction of revenue which will negatively affect fund balance at yearend
- Abatements reduce the receivable if the taxpayer has unpaid bills, or reduces cash if a refund is paid
- Paying this interest also reduces fund balance at yearend

43

QUESTIONS?

44

Our Vision

NHMA is known as the premier source of information and support needed for town and city officials to effectively serve the public.

Our Mission

NHMA supports effective municipal government by leveraging the collaborative strengths of New Hampshire cities and towns through education, training, advocacy, and legal services.

Our History

The New Hampshire Municipal Association, Inc. (NHMA) is a nonprofit, non-partisan membership organization of municipalities. Founded in 1941 for the purpose of exchanging information to facilitate more efficient and effective local government, NHMA was reorganized in July 2003 under the umbrella of the New Hampshire Local Government Center (LGC). At that time all services provided to municipalities by NHMA were assumed by LGC except legislative advocacy, which remained in NHMA LLC, a separate subsidiary of LGC. In the fall of 2012 all "traditional municipal league services" including legislative advocacy, legal advisory services, training programs, and educational publications, were consolidated under NHMA with oversight by the NHMA Board of Directors. Currently, NHMA, Inc. operates as a totally separate, independent organization from the former LGC risk pools (HealthTrust, Inc. and Property Liability Trust, Inc.) with a board comprising only elected and appointed municipal officials elected by NHMA members.

45

CONTACT US

Phone: 603.224.7447
Email: legalinquiries@nhmunicipal.org
financeinquires@nhmunicipal.org
Address: 25 Triangle Park Drive, Concord, New Hampshire 03301

Please refer to NHMA's Legal Services FAQ for details about how our service works.

46

MEMBER FEEDBACK

47