Tax Cap Guidance

March 2012

General Information

Who must comply

All New York State school districts (common, union free, central and city) except the big five city school districts of New York, Buffalo, Syracuse, Rochester and Yonkers which are fiscally dependent on their municipalities for their budget. The cities of Buffalo, Syracuse, Rochester and Yonkers are subject to the tax cap on municipalities while New York City is not.

Steps to calculating the tax levy limit

At the onset, it should be noted that under the tax cap law, “prior school year” or “previous year” means the school year immediately preceding the coming school year. Accordingly, for purposes of tax cap calculations, the references herein to “prior school year” or “previous year” means the current school year.

Each school district, subject to the cap, shall calculate the tax levy limit for the coming school year as follows:

First, determine the total amount of taxes levied, whether or not collected, in the previous year.

Second, if a "tax base growth factor" has been reported to the district by the Commissioner of Tax and Finance, the total amount of taxes levied in the prior year is to be multiplied by the growth factor.

Third, add any PILOTs that were receivable in the prior school year. The total amount of PILOTs receivable is to be included in the calculation of the tax levy limit. No adjustment for uncollected PILOTs is permitted.

Fourth, beginning in the 2013-2014 school year, subtract the tax levy necessary to support expenditures for tort actions for any amount that exceeds 5 percent of the school district’s tax levy in the prior school year. There is no subtraction for these expenditures in the 2012-2013 school year.

Fifth, subtract the tax levy necessary to support Capital Local Expenditures in the prior school year.

Sixth, multiply the result by the allowable levy growth factor which will be calculated by the Office of the State Comptroller.

Seventh, subtract any PILOTs receivable in the coming school year. The total amount of PILOTs receivable is to be included in the calculation of the tax levy limit. No adjustment is permitted.

Eighth, beginning with 2013-2014 school year budgets, add any available carryover from the prior school year. There is no available carryover for the 2012-2013 school year. Unused exclusions associated with capital, growth in pension costs or tort judgments may not be carried forward.

Limited Exclusions

The tax cap law allows for a limited number of exclusions to the tax levy limit.

These exclusions are:

Torts. School districts can increase their property tax levy above the tax levy limit (see the calculation set forth above) for certain costs resulting from court orders or judgments against the district arising out of tort actions to be paid in the coming school year. **Such an increase in the tax levy above the tax levy limit is only permitted for costs of those court orders or judgments to the extent they exceed 5 percent of the total prior year's tax levy.** Tax certioraris and breach of contract actions are among the types of actions that **are not** tort actions.

Pensions. The pension exclusion is triggered if the annual growth in the average actuarial contribution rate for the Employees' Retirement System (ERS) or the normal contribution rate for Teachers' Retirement System (TRS) exceeds two percentage points. Under the exclusion, pension costs associated with the annual growth in the employer contribution rate above two percentage points are exempted from the cap.

Variance in Plans. In years in which the pension exclusion is triggered, the ERS pension exemption rate is the same percentage of salary (growth in the

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year increase in the ERS average contribution rate and multiplying the result by the salary base.

TRS has issued its February 2012 Administrative Bulletin with a more precise estimate of the Employer Contribution Rate for the 2012-13 school year of 11.84 percent.Districts should use this estimate to calculate the Tax Levy Limit and for their 2012-13 school year budgets. The Office of the State Comptroller has issued guidance for calculating the pension exclusion. Please see the pension exclusion calculator for more information:

http://www.osc.state.ny.us/localgov/realprop/index.htm

Sample calculation (for ERS and for TRS when the growth in the Estimated Employer Contribution rate exceeds two percent)

The following examples are provided for ERS and for TRS in years when the rate increases by more than two percentage points. The example below assumes a 2.1 percentage point increase in the TRS employer contribution rate applicable to budget year salaries, which would yield a 0.1 percentage point exemption (the 2.1 percentage point increase less two percentage points). For purposes of estimating the pension exclusion, current year salaries may be used as the best estimate for budget year salaries.

For a hypothetical employer with a $1 million ERS salary base and a $5 million TRS salary base, the ERS exemption would be calculated by multiplying 0.6 percent by the $1 million salary base ($6,000), and the TRS exemption would be calculated by multiplying 0.1 percent by the $5 million salary base ($5,000), for a total pension exemption of $11,000. All other pension costs fall within the property tax cap limitation.

When calculating the ERS pension exemption, the system average contribution rate is to be used in calculating the amount of the exemption, even when the system average contribution rate is different than the actual contribution rate that

When calculating the ERS pension exemption, the system average contribution rate is to be used in calculating the amount of the exemption, even when the system average contribution rate is different than the actual contribution rate that the school district pays for its ERS pension plans.

Capital Local Expenditures. School Districts can increase their property tax levy above the levy limit (see the calculation set forth above) for certain costs resulting from Capital Local Expenditures, as discussed further below.

Capital Expenditures and Capital Local Expenditures

Capital Expenditures is defined as those expenditures resulting from the financing, refinancing, acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for school district capital facilities or school district capital equipment, including debt service and lease expenditures, and transportation capital debt service, subject to the approval of the qualified voters where required by law. These capital expenditures must be for projects with a period of probable usefulness as defined in local finance law. Capital Expenditures do not include expenditures for maintenance or operations.

Capital Local Expenditure means the taxes associated with the budgeted Capital Expenditures.

<u>Calculation of Prior Year Capital Local Expenditures</u>

For purposes of the tax cap law, Capital Local Expenditures, which are subtracted from the total tax levy in the prior school year, shall be calculated by first determining the amount of payments made or that will be made for Capital Expenditures by the school district during the prior school year, and then subtracting from the total amount of those payments (i) any Capital Expenditures that were paid for or will be paid for from a reserve fund or fund balance during the prior school year, (ii) the total amount of State and federal aid and any other outside funding (including gifts) for all past, present and future capital-related projects that was received or will be received by the school district during the prior school year, excluding deferred building aid received in the prior school year that is attributable to a school year before the prior school year, and (iii) deferred building aid attributable to the prior school year that is expected to be received after the prior school year. See question 6 in the Frequently Asked Questions for specific account codes and aids to include in the calculation.

Calculation of Coming School Year Capital Local Expenditures

Ballot Statement

If a district proposes to raise the levy (not including permissible exclusions) in an amount equal to or LESS than the tax levy limit, approval by more than 50 percent of those that vote on the budget is required. If a district proposes to raise the levy (not including permissible exclusions) by MORE than the tax levy limit, approval by 60 percent or more of those that vote on the budget must be obtained.

Only districts that propose to raise their levy (not including permissible exclusions) above the tax levy limit will need to include in their ballot statement the total percentage change in the total tax levy (including the tax levy for those permissible exclusions from the tax levy limit) from the previous year, as well as the statutory tax levy increase limit.

Districts must use a statement substantially similar to the following statement set forth in the Tax Cap law, which provides:

"Adoption of this budget requires a tax levy increase of _______________[1] which exceeds the statutory tax levy increase limit of _______________ [2] for this school fiscal year and therefore exceeds the state tax cap and must be approved by sixty percent of the qualified voters present and voting."

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anticipates taking out a bond in 2012-13 to fund the projects. Will the debt service (principal and interest) payments for the bond be excluded from the tax levy cap calculation?

Answer: Debt service payments for Capital Expenditures are included in the calculation of the tax cap exclusion for Capital Local Expenditures. . See Calculation of Capital Expenses and Capital Local Expenses above.

10. *Are district capital expenses for BOCES projects excluded from the Tax Cap?*

    Answer: No.

11. *Are districts still required to adopt a contingent budget under the tax cap?*

    Answer: Yes. If voters do not approve the proposed budget initially or after a re-vote, a district must adopt a contingent budget, excluding the same non-contingent items as defined currently. The contingent budget will be subject to a cap where the school district can levy no more taxes than the amount of taxes levied in the prior school year by the district.

12. *If a school district adopts a contingent budget and State Aid is larger than expected, is the district allowed to increase its spending to spend the State Aid?*

    Answer: Yes. The Tax Cap is a cap on levy, not spending.

13. *If voters do not approve a budget and a contingency budget is adopted, are exclusions irrelevant?*

    Answer: Yes. In a year when a budget is defeated twice or a district chooses to go to a contingency budget after the budget is defeated the first time, the school district can levy no more taxes than it levied in the previous school year. There are no exclusions from this limit when a contingency budget is adopted.

14. *The law states: "Available carryover" means the amount by which the tax levy for the prior school year was below the applicable tax levy limit for such school year, if any, but no more than an amount that equals one and one-half percent of the tax levy limit for such school year.*

    If a district's budget is defeated and ends up with a budget that includes no increase in the tax levy, does that allow them to carryover up to 1.5 percent of unused tax levy the following year?

proposition shall be approved if sixty percent of the votes cast thereon are in the affirmative.

18. *What are the different kinds of school district propositions?*

Answer:

a. Proposition for additional transportation service
b. Proposition for educational programs
c. Proposition for capital expenditure
d. Proposition for transportation capital expenditure

19. *How is each proposition treated under Chapter 97 of the Laws of 2011?*

Answer:

a. Proposition for additional transportation service: expenditures for additional transportation service are subject to the Tax Levy Limit.
b. Proposition for educational programs: expenditures for educational programs presented as propositions are subject to the Tax Levy Limit
c. Proposition for capital expenditure: local capital expenditures net of deductions as described above are not subject to the property tax cap.
d. Proposition for transportation capital expenditure: local transportation capital expenditures net of deductions as described above are not subject to the property tax cap.

20. *If a school district budget is presented under the cap and the addition of a proposition creates a budget Td.612 0 0 1231 Tc 0ition of01*

21. *If a school district budget is presented under the cap and the addition of a proposition creates a budget over the cap, and the proposition passes and the budget fails what is the obligation of the district?*

Answer:

a. Proposition for additional transportation service: district must provide the additional transportation service approved by the voters within the contingency budget (zero levy increase)
b. Proposition for educational programs: district may have the authority to provide the educational programs approved by the voters or not, within the contingency budget (zero levy increase)
c. Proposition for capital expenditure: district may have the authority to make the capital expenditure approved by the voters or not, within the contingency budget (zero levy increase)
d. Proposition for transportation capital expenditure: district may have the authority to make the capital (transportation capital) expenditure approved by the voters or not, within the contingency budget (zero levy increase)

22. *If a school district budget is presented under the cap and the addition of a proposition creates a budget over the cap, and the proposition fails and the budget passes what is the obligation of the district?*

Answer:

a. Proposition for additional transportation service: there is no authority to provide the additional transportation service. The budget can be implemented only as approved
b. Proposition for educational programs: there is no authority to make the expenditures. The budget can be implemented only as approved
c. Proposition for capital expenditure: there is no authority to make the capital expenditures.The budget can be implemented only as approved
d. Proposition for transportation capital expenditure: there is no authority to make the transportation capital expenditures. The budget can be implemented only as approved

23. *How does the requirement for a three-part budget "reconcile" with Chapter 97 language potentially permitting propositions for items that previously were part of the 3-part budget?*

Answer: Districts still must comply with section 1716(1) and (4) regarding presentation of the budget in three parts, and requirements that all estimated expenses are included in the budget presented to the voters. However, if a district puts out a separate program proposition such as a proposition for music programs, that proposition can be shown as an add-on to the presented budget. The proposition (and its impact) should also be included in any materials required to be provided to voters prior to the budget vote. If the proposition is defeated, the budget can be implemented without the program supported by the proposition.

Payments in Lieu of Taxes

24. *Is there a floor on the tax levy limit (that is, a minimum of zero percent)? Districts with increasing or new PILOTS may have this issue.*

Answer: There is no floor to the tax levy limit. Districts with increasing or new PILOTS could have a tax levy limit that represents a change from the prior year that is less than zero. They would have to successfully seek an override from the voters to increase the levy above the limit. Decreases in capital local expenditures can also result in a levy limit that is less than the previous year's levy. For the calculation of the tax levy limit in circumstances not involving PILOTs or reduction in capital expenditures, the floor is zero. The tax base growth factor cannot be less than zero.

25. *What happens to the tax base growth factor when PILOTs go away? Is it growth when the PILOT goes away and the amount of taxable property increases?*

Answer: The Quantity Change Factor adjusts the tax levy limit to reflect an increase in the full value of taxable real property in a school district due to physical or quantity change – i.e., new growth or significant additions to existing properties. The Commissioner of Taxation and Finance will issue a Quantity Change Factor for all school districts that have experienced an increase in the full value of taxable real property due to a physical or quantity change.

Increases in full value due to changes in assessment only do not constitute a basis for a quantity change factor. In addition, a physical or quantity change does not result from the splitting or merging of parcels. Moreover, property returning to the tax rolls after the expiration of a PILOT does not constitute a basis for a Quantity Change Factor.

26. *What happens to the tax base growth factor if existing property goes on a PILOT and the tax base is reduced?*

Answer: If a property becomes subject to a PILOT during the year, the tax base will be reduced by the full value of the property subject to the PILOT. However, a quantity change factor cannot be less than one.

Reporting Methods

27. Will the data the districts need to submit to calculate the tax levy limit be done so electronically or on a web-based application?

Answer: OSC has created an online system. Districts will enter the data elements necessary to calculate their levy limit on page 1 of the form. Page 2 of the form will actually run the calculation and display the allowable levy limit

What's In and What's Out

28. Do budgeted expenditures subject to the tax cap include expenditures from a reserve fund?

Answer: The tax levy limit law applies a limit on the amount that a school district can levy – it does not apply a limit on the amount that a school district can spend. Accordingly, school district non-capital expenditures from a reserve account are not relevant to the calculation of a school district's tax levy limit. To the extent that a capital expenditure is made from a reserve account or fund balance, the amount of that expenditure is subtracted from the total amount of capital expenditures that may be excluded from a school district's tax levy limit.

29. Is the payroll used to determine pension growth the payroll from the budget year (e.g., 2012-13) or the base year (e.g., 2011-12)?

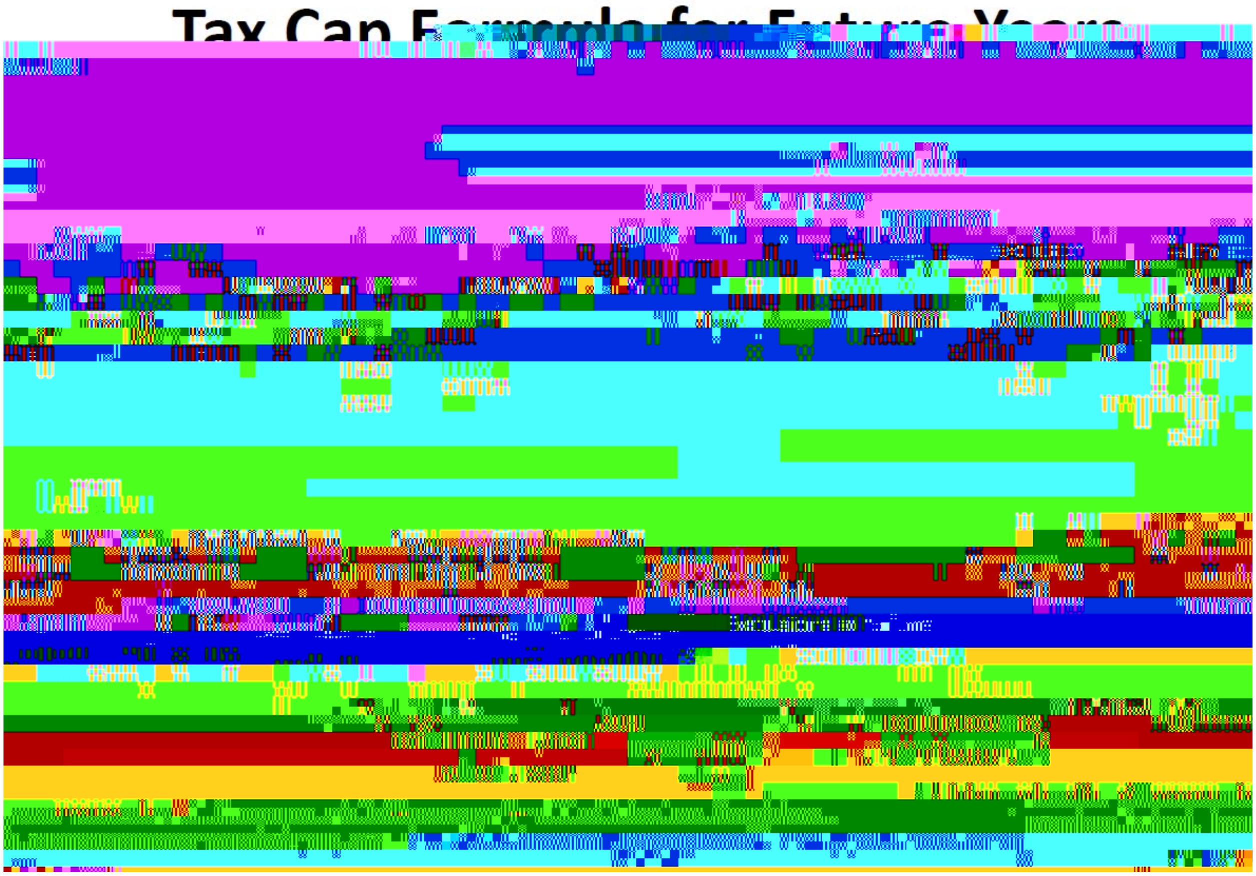
Answer: The payroll to be used is for the upcoming (2012-13) year. School districts may use the 2011-12 payroll as thei

32. Will retroactive pay for contract settlements be included in salary calculations for determining exclusions related to pension expenses?

Answer: No

33. Can you provide an example of the tax levy limit calculation using specific school years?

Answer: The following graphics illustrate the formula for calculation of the tax levy limit for the 2012-13 year and for subsequent years.



34. What reserve fund will the amount of "erroneous levy" be held in until the ensuing year?

Answer: If the levy exceeds the tax levy limit due to technical or clerical errors, the excess amount shall be placed in reserve in accordance with Office of the State Comptroller requirements. OSC has posted this information on its property tax cap information page: http://www.osc.state.ny.us/localgov/pubs/releases/2011_12taxcapreserve.pdf

35. Are incorrect calculations of salaries and pension costs considered "technical or clerical errors?"

Answer: Yes. Mathematical errors in calculation will be treated as errors. Very slight discrepancies based on the fact that they must use an estimated salary (as in the case of TRS) may not constitute an error.

36. What is a tort action? Does this include tax certs?

Answer: Tort actions include actions for personal injury and property damage. Tax certioraris and breach of contract actions are among the types of actions that are not tort actions.

37. Can a school district have an adjustment for transfer of function (such as tax certiorari responsibility that is transferred from the county to the school district)?

Answer: No.

Consumer Price Index

38. What CPI is to be used for the tax cap calculation?

Answer: The growth in annual levy is limited to the lesser of 2 percent or the Consumer Price Index (CPI), subject to certain limited exceptions and adjustments. For purposes of the cap the applicable CPI will be the unadjusted "All Items Consumer Price Index for All Urban Consumers" (CPI-U). The CPI-U is released on a monthly basis, generally in the third week of the subsequent month. It will be the unadjusted monthly average CPI-U change from January to December of the base year, as published by the Bureau of Labor Statistics.

39. When will the CPI inflation factor be published?

Answer: By the third week in January.