Real Property Tax Cap Information – Frequently Asked Questions

Notice: The answers listed below supplement the guidance issued by the New York State Department of Taxation and Finance and the New York State Department of State: "Property Tax Cap: Guidelines for Implementation". These answers are intended to assist in implementing the law. As new questions arise or answers need to be clarified, we will provide additional information. Some of the responses are derived from "Property Tax Cap: Guidelines for Implementation" [pdf].

Applicability

1. **Does the 2 percent cap on property taxes apply to tax levies, rates or real property assessments?**
   The legislation establishes a limit on the annual growth of real property taxes levied by local governments and school districts. The cap is not directly applicable to property tax rates, or to the assessed value of real property.

2. **Fire districts are already subject to spending limits under section 176 (18) of the Town Law. How does this limitation differ from the tax levy limit?**
   The tax levy limit is a separate limitation on the amount of the tax levy and is a restriction on fire districts that is in addition to the spending limitation. Fire districts must meet the requirements of both.

3. **Counties, cities and villages are already subject to a constitutional tax limit under article VIII of the State Constitution. How does this limitation differ from the tax levy limit?**
   The tax cap is a restriction on the year-to-year increase in the tax levy, while the constitutional tax limit is a restriction on the total amount of the levy in any single year. Therefore, the tax levy limit is a separate restriction imposed upon counties, cities and villages that is in addition to the threshold constraint of the constitutional tax limit. Counties, cities and villages must meet both requirements.

4. **Do special districts governed by separately elected commissioners but that include their budgets within the town budget have to report to OSC by November 20 when the town adopts its budget or when the commissioners approve the special district's budget?**

   Special districts that have separate, independent elected boards and which have the authority to levy a tax or can require a municipality to levy a tax on its behalf are subject to the tax levy limit and are not part of the municipality's tax levy limit. Therefore, these special districts must submit the report form to OSC before the board of commissioners adopts the special district's budget, regardless of when the town adopts it budget.

5. **Are BIDS (business improvement districts) separately subject to the levy limit?**

   No. BIDs do not have separate, independently elected or appointed boards which have the authority to either levy a tax or require a tax to be levied on their behalf. The BID itself should be distinguished from the District Management Association (DMA), which is a not-for-profit entity that carries out BID activities, usually under a contractual arrangement. This arrangement is generally prescribed in the BID plan. The DMA can make **recommendations**, but it is the board that makes the decisions as to the amount of the levy. Therefore, in accordance with DOB guidance, BIDs would not be considered an independent district, so the levies for BIDs must be incorporated into the municipality's levy limit.

6. **Are fire protection districts in towns separately subject to the levy limit?**

   No. Fire **protection** districts (as opposed to **fire districts**) are not governed by separately elected or appointed governing boards that can levy or require the levy of taxes on behalf of the district. Therefore, levies for fire **protection** districts are part of the town's tax levy limit.

7. **Do libraries have their own tax levy limit? If so, how is the limit overridden?**

   In accordance with guidance provided by the New York State Division of the Budget, a library (such as a special legislative district public library, school district public library, a municipal public library, or an association library) has its own tax levy limit if it (i) has a separate, independent elected or appointed governing board, and (ii) can require a municipality or school district to levy a tax on its behalf (which includes, where applicable, a tax levy approved by voters). To the extent the budget of a library is comprised of revenues

generated by a tax levy of a municipality or school district that the municipality or school district is required to impose on behalf of the library, those tax revenues fall within the tax levy limit of the library. To the extent the budget of that library is comprised of revenues generated by the taxing authority of a municipality (such as a town or village), and that municipality is not required to impose that tax levy on behalf of the library, those tax revenues fall within the tax levy limit of the municipality. The library's tax levy limit may be overridden by a resolution approved by a 60% vote of the total voting power of the library's governing board. If the library governing board overrides the tax cap and the library budget or taxes to support the library is subject to voter approval, the proposition must be approved by only a simple majority of the voters (i.e. more than 50%), unless, in the case of a special act library district, it is otherwise provided in the special act creating the district.

Calculating the Tax Levy Limit

8. **Our local government levied less than was allowable according to our prior year tax levy limit. How do we calculate the amount of "available carryover" we can include in determining our tax levy limit for the coming fiscal year?**

"Available carryover" generally refers to the amount, if any, by which the tax levy for the prior fiscal year was below the allowable tax levy limit for that year (before any exclusions for pension contributions and/or court orders/judgments arising out of tort actions), up to one and one-half percent (1.5%). In cases where a local government levied less than the amount of its allowable tax levy limit for the prior fiscal year, the amount of available carryover that the local government can include in calculating its tax levy limit for the coming fiscal year is the lesser of:

A. The difference between the prior year tax levy limit (before exclusions) and the actual levy for the prior fiscal year

   Or

B. 1.5 percent of the prior year tax levy limit (before exclusions).

<u>If a local government's actual levy was equal to or more than the prior year's calculated tax levy limit (before exclusions), there would be no amount available to be carried over.</u>

Before performing the "available carryover" calculation, you should confirm with the tax levying body the amount actually levied for the prior fiscal year.

Please note: OSC has developed an easy-to-use available carryover calculator to help you perform this calculation within the online reporting system.

9. We set up a reserve after having identified an error in our property tax cap calculation from last year. How should we account for this reserve amount in our tax cap calculation for the coming year?

When an excess tax levy has been identified and set aside in reserve, the law requires that the excess levy plus any interest earned must be used to offset the tax levy in the coming fiscal year. There are two steps involved in order to accomplish this:

1) **The Form:** OSC's online report form includes a dedicated field that captures the total amount the unit had to place in reserve. That figure will automatically be subtracted from the amount in the "Prior Fiscal Year Tax Levy" field—before the tax base growth factor is applied. In the example below, the unit had to put $10,000 in reserve in FYE 2012. Therefore, for the FYE 2013 calculation, the user would enter $10,010 (which includes interest earned) in the appropriate field. The resultant levy limit in this example is $105,444.
2) **Offsetting Tax Levy**: Once the total level of property taxes needed to support the budget for the coming year is set, the amount in reserve ($10,010) must then be used to offset the property taxes that will be levied for the coming fiscal year. This means that the entity would only have to levy the remaining $95,434.

Formula Element	FYE 2012 (year of the error)	FYE 2013 (year of correction)	FYE 2014 (year after correction)
Prior Fiscal Year Tax Levy	100,000	112,700	**105,444**
- Deferred Levy from Reserve + Interest	NA	**10,010**	0
Prior Fiscal Year Tax Levy Adjusted for Deferred Levy	NA	***102,690***	*105,444*
x Tax Base Growth Factor	1.0000	1.0000	1.0000
+ PILOTs Receivable in Prior Fiscal Year	10,000	10,000	10,000
- Prior Year Tort Exclusion	NA	0	0
x Allowable Levy Growth Factor	1.02	1.02	1.02
- PILOTs Receivable in Coming Fiscal Year	10,000	10,000	10,000
+ Net adjustments and exclusions (in this example, just pension exclusion)	500	500	500
Total Levy Limit with Adjustments, Exclusions (including any deferred levy from prior year excess)	**102,700**	**105,444**	**108,253**
+Amount of Excess Levy OR -Deferred Levy from Prior Year	10,000	**-10,010**	0
Actual Amount Levied in Coming Fiscal Year	**112,700**	**95,434**	**108,253**
Actual Amount Levied PLUS Deferred Levy	**NA**	**105,444**	108,253

Base Formula Tax Levy Limit Calculation

In the following year's calculation (FYE 2014 in this example) the starting point for the 2014 calculation ("prior year levy" field) will equal the prior year tax levy, irrespective of the $10,010 reserve amount. However, a local government may choose to use the lower prior year levy number, which is net of the reserve offset.

Note: for detailed instructions as to the actual accounting treatment and required journal entries associated with the placing of excess levy into reserve, please consult OSC's accounting bulletin on the topic.

10. **My local government overrode the property tax levy limit last year but levied less than the limit before any adjustments or exclusions. Can we still utilize the carryover amount?**

    Yes. If the total property tax levy was less than the tax levy limit in the prior year, a local government or school district is permitted to carryover up to 1.5 percent of the prior year levy limit. In accordance with guidelines issued by the Department of Taxation and Finance, there is no carryover permitted for unused exclusions associated with growth in pension costs or tort judgments.

11. **Are relevies of delinquent taxes and levies of delinquent user fees subject to the tax levy limit of the local government which relevies or levies the charges?**

    No. Relevies of delinquent taxes and levies of delinquent user fees are not subject to the tax levy limit of the local government which relevies or levies the charges. Delinquent school taxes were already subject to a school district's levy limit. User fees are not taxes subject to the levy limit. In each case, the relevy or levy process is simply a mechanism to collect delinquencies but does not change the character of the charge for purposes of the levy limit.

12. **Is the prior year levy to be adjusted for tax refunds that are granted after taxes are levied?**

    No. Your prior year levy should consist of the amount of taxes levied in support of your local government or school district's budgeted expenditures for that fiscal year. There is no authority to adjust the levy for tax refunds made during the prior year.

13. **How do I know my "allowable levy growth factor"?**

    OSC will pre-populate the prescribed report form with the appropriate allowable levy growth factor. The allowable levy growth factor is 1.02, or the sum of one plus the "inflation factor," whichever is less. The inflation factor is based on a calculation that uses the consumer price index for all urban consumers – unadjusted (CPI-U) published each month by the Bureau of Labor Statistics.

14. How do I get my "tax base growth factor"?

The tax base growth factor is derived using a "quantity change factor," which is calculated by the Department of Taxation and Finance. The Department of Taxation and Finance will provide each local government with the applicable tax base growth factor, if any. This information is also available on their website. In addition, OSC has pre-populated most local government's tax base growth factor into their electronic form.

Please contact the Department of Taxation and Finance at (518) 474-5666 if you have questions on how this figure is calculated or if your form does not have a pre-populated value.

15. Is the town tax levy limit calculated separately for the town-wide and town outside of village funds?

No. The tax levy limit is calculated based on the combined total levy for all funds for which the town board determines the amount of the levy, including the highway fund and funds for special districts that are governed by the town board.

16. We will not know how much our PILOT payments will be for the coming fiscal year until our tax rates are set. How should I go about filling out this part of the form?

The figure should be based on a good faith estimate of the amount you expect to receive. You should use the same process that you use to estimate your PILOTs receivable during budget development. Most local governments that receive PILOTs estimate the amount receivable pursuant to their respective PILOT agreements.

17. My municipality receives a payment made in lieu of real property taxes, but the formula by which the payment is derived is not based on the assessed value of the property or the tax rates. Are these types of PILOTs also included in the calculation of the tax levy limit?

Yes. The tax cap is based on all payments in lieu of taxes and does not distinguish between PILOT amounts that are based on assessed value, or some other methodology.

18. Is the tax levy limit calculated based on the aggregate levy necessary for each fund or is the levy limit calculated separately for each fund? What if some of the funds have different tax bases and/or are not coterminous with the municipality's boundaries (such as a town outside village fund, part town highway fund, or a water fund that

covers only a portion of the town)? What if some of the districts have a different type of levy (such as a per unit special assessment or an ad valorem tax) from the town or county's base property tax levy?

The tax levy limit should be calculated on the combined total levy for all funds and special districts that fall under the municipal levy. For additional guidance on which special districts are incorporated in the municipal levy, please see "Property Tax Cap: Guidelines for Implementation" [pdf] issued by the New York State Department of Taxation and Finance.

19. **My local government has benefitted from a transfer of function. Do I need to report this to OSC?**

    Yes, all transfers of function must be reported to OSC. Please call OSC to have an examiner calculate the effect of the transfer. You may contact us through your regional office [pdf]. Once OSC has calculated the costs/savings, a letter will be issued, and the amounts will then be pre-populated into your online form.

    If you do not report this transfer and are later audited and discovered to have levied in excess of your levy limit because of this omission, your government could be required to put the excess levy into reserve.

20. **If a local government's total levy in the coming fiscal year is higher than the tax levy limit based on the allowable growth and tax base growth factors, either due to the additional levy for excludable expenses or an override, what is its base levy when calculating the tax cap in the next fiscal year?**

    Pursuant to the guidance issued by the Department of Taxation and Finance ("The Property Tax Cap: Guidelines for Implementation" [pdf]), the total levy, including the levy for excludable expenses or the higher levy resulting from a successful override, becomes the base for the following year's tax levy limit calculation.

21. **How will the exclusion for certain expenses related to court orders or judgments work (tort actions only) if the cost has been financed?**

    If the annual debt service associated with the bonds or notes issued for this expense exceeds 5 percent of the prior year's levy, you may utilize this exclusion.

22. **Is an administrative consent order, such as one entered with the Department of Environmental Conservation, for violations of the Environmental Conservation Law or**

regulations (e.g. to remediate air or water pollution), covered by the court order/judgment language in the law?

No. The exclusion relates to court orders or judgments arising out of tort actions. An administrative consent order would not fall into this category.

23. Do we need a separate local law and/or resolution to override the levy limit for each fund or special district included within the overall municipal levy?

No. A county, city, town or village must enact a local law to override the tax levy limit that is based on the combined total levy for every fund and special district that falls within the municipal levy limit. If the levy for one special district included within the municipal levy limit increases by more than the allowable growth but does not cause the total municipal levy to exceed the levy limit, then no local law overriding the limit is needed.

24. The statute provides that the tax levy limit generally does not apply to the first fiscal year after a "local government" is newly established. When a town establishes a new special district, governed by the town board, is the first year's levy for the new district included in the town's tax levy limit calculation?

Yes. In accordance with the guidance issued by the Department of Taxation and Finance and the Department of State, the tax levy that supports the operations of a special district that is "established, administered and governed by the governing board of another municipality," is part of that municipality's tax levy and is subject to the municipality's overall property tax cap calculation. Therefore, under this guidance, the exception for a newly established local government does not apply and the levy for the special district is not exempt from the tax cap in the first year.

25. Is a unit-based charge imposed to fund a town or county special district (e.g. sewer or water district) subject to the tax levy limit?

A unit-based benefit assessment is subject to the limit. Special assessments (benefit assessments) and special ad valorem levies imposed within a town or county district are both included in the definition of "tax" in Chapter 97 of the Laws of 2011. Therefore, a benefit assessment, whether based on units or some other formula, constitutes a tax for purposes of the tax levy limit calculation. As noted earlier, however, user fees are not taxes subject to the levy limit. In limited circumstances, a user fee also may be properly based on units. It can sometimes be difficult to differentiate between a unit-based benefit assessment and a unit-

based user fee. As a general guide, a special assessment is imposed on an assessment roll, against benefited properties within the district, in proportion to the benefit received by the property. A user fee is a contractual charge to district users and must bear a rational relationship to the amount of use. If you are uncertain whether a certain charge is a special assessment or a user fee, you should consult your attorney. Our legal staff is also available to speak to your attorney at (518) 474-5586 for assistance.

26. What are omitted taxes?

"Omitted Taxes" is a broadly used term for several types of real property tax adjustments that are billed in a subsequent year, such as a change in property ownership that also changes the status of the property from exempt to non-exempt. In that instance, the new owner is responsible for the pro-rated portion of the taxes on the property for the rest of the tax year, but that pro-rated amount is not billed to the new owner until the next tax billing cycle.
Taxes imposed for the prior fiscal year pursuant to Real Property Tax Law §520 (assessment and taxation of exempt property upon transfer of title) or pursuant to Real Property Tax Law §551 (entry by assessor of omitted real property on current assessment roll) should be included in the total levy for the upcoming fiscal year as there is no exclusion in the tax cap legislation for the taxes attributable to the prior fiscal year.

27. How are omitted taxes accounted for in the calculation of the levy limit?

The total amount of taxes levied on the tax rolls, including omitted taxes, should equal the levy adopted in the budget. In other words, the property taxes to be levied for the upcoming fiscal year plus omitted taxes (even though levied at prior year tax rate) should be the value used in the calculation of the tax levy limit. Omitted taxes levied should be included in the "prior year levy" field as well as in the "proposed levy" fields in the tax cap form.
For example: a municipality passes a budget requiring a total tax levy of $1,000,000, which includes $900,000 in property tax for the upcoming year, and $100,000 of omitted taxes. The tax roll should show $900,000 in tax levy for the upcoming year, and $100,000 in omitted taxes. Municipalities should ensure that the total of $1,000,000 is within the calculated tax levy limit and report this as the tax levy for the upcoming fiscal year.

28. How do charge-back arrangements affect the calculation of the levy limit for the county and/or municipality?

When counties provide certain services to municipalities, they can recover costs in one of two ways: the county can either elect to bill a municipality directly or add the amount to the county levy specific to a municipality. For purposes of calculating the levy limit, the charge-back amount should be reflected in the tax levy limit of whichever government levies the tax. Therefore:

- When the county **bills** the municipality, the charge becomes part of the *municipality's tax levy limit* because that municipality will raise taxes to pay the bill.
- When the county **levies** the charge under the county's own taxing authority, the charge becomes part of the *county's tax levy limit*

A county can switch between billing and using its own levy to recover its charge back costs. It is the responsibility of the county and the municipalities involved to properly report charge-back amounts with respect to their levy limit calculations. Failure to properly report chargeback amounts in levy limit calculations may lead to an entity exceeding its levy limit and having to place the excess in a Reserve for Excess Tax Levy.

In cases where a county adjusts the municipal tax levy by adding the charge-back to the municipal levy, the amount of the charge back should be included in the *county tax levy* for purposes of calculating the county's levy limit. Once the county places a tax, under its own taxing authority, on the tax bill it is considered a county tax.

29. The county pays for tax certiorari refunds and then bills the town for the town's share. The town then includes an amount in its budget for the following fiscal year to cover the amount charged back by the county. Is the amount charged back to the town subject to the town's tax levy limit?

Yes. RPTL 726(1) (a) generally requires a county to pay the entire amount of a certiorari refund and to charge back to towns, etc. their shares of the refund. Under RPTL 726(4), unless a town bonds its share of a tax certiorari refund, the town is required to raise the money to reimburse the county in its next annual budget. Therefore, the amount charged back to the town is subject to the town's levy limit for the following year.

30. My library serves a school district and a portion of a municipality. We obtain voter approval for the school district portion but have a contract with the municipality for the portion of the library that serves the area outside the school district. What is my levy and do I need to report separately for the municipal portion?

Your levy is only the amount that was approved by voters within the school district. To the extent that the municipality levies taxes to support the expenditure made pursuant to its contract with your library, it is part of the municipality's levy limit.

31. **We are a library that holds a vote when we want to raise the levy. In years when there is no vote, the town is only required to levy the amount needed for the funding passed by voters on the most recent ballot. Sometimes the town chooses to contribute more, at our request. Do we report a levy limit calculation every year, regardless of whether we hold a vote on the levy, and if so, what constitutes our "levy" in the intervening years?**

    Since the library board is, in effect, requiring a levy through the ballot process, you are, indeed, subject to the levy limit every year. However, only the amount approved by the voters is subject to the library's levy limit. Any amount that the municipality provides above that amount voluntarily is part of the municipality's levy limit.

32. **My library had a levy vote through the process in Education Law § 259(1)(b) (a so-called "414" proposition) for the first time for the fiscal year beginning in 2026. I understand that I must calculate my own levy limit and report separately, but what do I use as my "prior year levy". Also, what if the levy driven by the voters exceeds the calculated limit?**

    In this case, you would enter a "0" as your prior year levy. As a result, it is likely that the voter approved levy will exceed the calculated limit. Therefore, the library governing board must enact a resolution to override the tax levy limit.

33. **Some of the towns in my county have elected to use their sales tax allocation to offset the county tax levy. When calculating the levy limit for my county, how should I account for this?**

    When a town decides to use their sales tax allocation to offset the county portion of real property taxes levied to taxpayers in that town, for tax cap purposes, where all or a portion of a town's sales tax allocation is applied to reduce county taxes, such an amount must be subtracted from the county's tax levy.

34. When a local government dissolves, how does the successor government that will be assuming the debts, liabilities and obligations of the dissolved entity go about adjusting its allowable levy limit under the tax cap?

Under such circumstances, the allowable levy limit before adjustments & exclusions for the successor government will be determined by OSC and pre-populated in the online form. The successor government is required to complete the remainder of the online tax cap form and submit it to OSC.

Limited Exclusions

35. How can a local government account for the cost of unfunded mandates (e.g., costs associated with health and safety or environmental compliance) in the tax cap calculation?

The legislation does not provide for a general exclusion of "mandated costs". The tax cap allows for only a limited number of exclusions to the tax levy limit for local governments, which are (i) costs resulting from court orders or judgments against the local government arising out of tort actions that exceed five percent of the total prior year's tax levy, and (ii) pension costs associated with the annual growth in the "system average actuarial contribution rate" (for ERS and PFRS) and the "normal contribution rate" (for TRS) above two percentage points (view "Property Tax Cap: Guidelines for Implementation" [pdf] pages 6-8, for a more detailed explanation).

36. The voters in my Fire District approved a bond referendum. Is this additional voter approved expense exempt from the tax levy limit?

No. There is no statutory exclusion from the tax levy limit applicable to local governments for debt service on bonds or notes, even if the issuance of debt is voter approved. If the additional debt service expense, together with the district's other non-excludable expenses, would cause the tax levy to exceed the levy limit, the governing board of the Fire District must pass a resolution by at least a 60% vote to override the limit.

37. Are exclusions available for extraordinary expenditures such as those related to the payment of tax certioraris, capital projects, debt service (including on bond issuances approved by the voters), payouts on large liabilities such as accumulated unused sick and vacation time to retirees; and projects required by DEC or another State agency?

No. The law (Chapter 97 of the Laws of 2011 [pdf]) only provides for limited exclusions as follows:

- Pension contributions due to increases in the statewide system average actuarial contribution rate (ERS or PFRS) or normal contribution rate (TRS) over 2 percentage points for major retirement systems.
- Expenditures resulting from court orders or judgments arising out of tort actions that exceed 5 percent of the total tax levied in the prior fiscal year.
- **For School Districts Only:** The tax levy to support capital local expenditures.

Any other expenses must be accommodated within the allowable levy limit, unless the governing body successfully overrides the levy limit.

38. My municipality amortized our pension contribution in a prior year. How does this affect our ability to qualify for the pension contribution exclusion when calculating our levy limit for the coming fiscal year? Is it only applicable on the non-amortized portion of our bill?

Those local governments utilizing amortization may not levy for the pension exclusion pursuant to The Property Tax Cap: Guidelines for Implementation [pdf]. You may utilize the pension exclusion for any pension system for which you DO NOT amortize or plan to amortize any portion of the bill for that year. However, if you take the pension exclusion, you are not allowed to later amortize any portion of your pension bill for that fiscal year. If you levy an additional amount for the pension exclusion and you amortize a portion of your contribution related to that retirement system, you will have to place the levy raised due to the pension exclusion calculation into a reserve to reduce your next year's tax levy.

39. If we amortized our pension contributions payable to one retirement system (ERS) and not another (PFRS), are we barred from utilizing the pension exclusion for both systems?

The calculation is separate for each pension system, so if you choose to amortize the payments for one pension system, you may still utilize the pension exclusion for the system for which the payments are not amortized.

40. I did not receive a User ID or PIN to access the Local Retirement System's salary base amounts. Who do I contact for that?

Please contact the Local Retirement System Employer Billing Unit at 866-805-0990 or NYSLRS_Billing@osc.ny.gov.

41. Where do I get my salary base number? Which one do I use?

For the ERS and PFRS exclusions, you must use the salary base provided by the Local Retirement System. Your form has been pre-populated with the salary base provided by the Local Retirement System. For calendar-year local governments that opt to pay their bill in February, the salary base from the estimated invoice is utilized for calculating the exclusion amount. For all other local governments, the salary base from the projected invoice is utilized for calculating the exclusion amount.

If this salary base needs to be allocated to another local government, you may override the pre-populated salary base by entering in a different number. For example, you may change the salary base amounts to account for differences in salaries due to shared services if two local governments share police. Although the salary base amount will automatically appear in one municipality's base, this amount may be decreased and adjusted so that the other municipality can increase their base. This is the only instance in which a change should be made.

For the TRS system, you will have to estimate the salary base for your budget year. However, since the TRS system bills based on actual final salary figures for the school year just ended, this is less complex than for the ERS/PFRS system.

42. What if I don't have / don't agree with the salary base provided by the Employee or Police and Fire Retirement Systems? Can I use my own projection? With whom can I discuss the discrepancy?

For the ERS and PFRS exclusion, you must use the salary base provided by the Local Retirement System (see above). If you have any questions about these numbers, please contact the Local Retirement System Employer Billing Unit at 866-805-0990 or NYSLRS_Billing@osc.ny.gov.

43. What if my salary base projection changes between the time I use it for calculating the pension exclusion and the time it is used to calculate my bill one year later? Can those affect my cap retroactively?

No. Your cap will not be affected retroactively.

44. My town has several special districts that are separately subject to the cap, but which are included within our pension bill. We allocate a portion of the pension costs to the districts. Would we include the whole salary base within our own pension exclusion, or will we have to calculate the share that pertains to us only? If so, on what basis would we do that?

The pension exclusion is meant to offset the tax levy necessary to pay for an extraordinary increase in pension costs. If that increase is passed along to an "independent" special district, the portion of the exclusion should be passed along as well. This is accomplished by allocating the salary base or total exclusion according to the method used to allocate the bill.

45. Our special district library must, by State law, enact its budget before our pension exclusion information is available, but after the inflation factor is calculated. The guidance issued by the Department of Taxation and Finance and the Department of State indicates that we may not estimate our pension exclusion. However, it may take some time until we can change our fiscal year, since our special act must be amended to do so. If we calculate our limit and file our limit information without the exclusion and either stay within that or pass a resolution to override, as necessary, are we in compliance with the law?

Yes. The pension exclusion is not a required part of the levy limit calculation; it can increase the amount that can be raised by taxes without an override. However, we would encourage you to work toward changing your fiscal year or budget process in order to be able to have as much flexibility as possible under the levy limit in future years.

46. Our county's retirement salary base includes county, community college and dependent special districts. In order to utilize the salary base for purposes of the retirement exclusion, are we expected to subtract out these salaries before we compute our county's pension exclusion?

No. To the extent that your county's salary base includes bases of special districts that are not subject to their own levy limits and a community college, they would be part of a single exclusion calculation.

47. It appears that OSC is calculating the pension exclusion on a cash basis only and not the actual expenses, even though local governments need to budget for it and record it according to GAAP rules. Can you please explain?

There seems to be some confusion regarding the standards for financial reporting and budgeting. Financial reporting standards state the financial statements of a local government should be presented in accordance with GAAP. Budgetary practices, however, are outside the scope of financial reporting standards, and as such, budgets are often prepared on a non-GAAP basis. The budget is simply the financial plan that contains estimates of expected inflows and outflows of spendable cash resources for the coming fiscal year. The amount actually paid to each retirement system (ERS, PFRS and TRS) each year represents the amount due on the annual bill. Each local government should budget for an appropriation of this total during the fiscal year in which their retirement system bill will be paid and include in its tax levy the budgeted total of appropriations. Thus, the tax levy exclusion is based upon the fiscal year in which the tax would have to be levied in order to pay the full amount of the anticipated pension bill.

Filing the Levy Limit Calculation

48. The local government budget process often results in many changes to the initially proposed budget. If the amendments made prior to final adoption of the budget change the estimated tax, which tax levy is to be reported to OSC or are multiple submissions required?

The law requires each local government, prior to adopting a budget, to submit to OSC the information necessary for calculating the tax levy limit, not the actual tax levy, for the coming fiscal year. The calculation of the tax levy limit does not change based on discretionary budgetary decisions. The tax levy limit is calculated based on factors that are generally known, including the prior year's tax levy, the tax base growth factor, PILOTS receivable in the prior fiscal year and the coming fiscal year, the exclusion pertaining to excess expenditures related to tort actions for the prior fiscal year, the allowable levy growth factor and available carryover, if any. These factors would not change during the budget process. Only one submission of this information is required but amended submissions will be accepted.

The report form that we have developed, in addition to requiring information necessary for calculating the levy limit, also provides for submission of information relating to the local government's proposed tax levy and whether the governing body plans to override the levy limit. This information should be based on the proposed budget at the time the submission is made to OSC. The later in the budget process the information is submitted to us, as long as it is submitted prior to budget adoption, the more useful it will be.

49. Does a local government have to complete and submit the form even if it plans to override the tax levy limit?

Yes. Every local government, regardless of whether it intends to override, must submit to OSC on the required form the information necessary for calculating their tax levy limit.

50. If a local government has not levied a property tax in the prior fiscal year, does it need to calculate (and report) a tax levy limit for the coming fiscal year?

Yes. The law requires that all local governments (unless it is a newly created local government) subject to the tax cap calculate their tax levy limit for the coming fiscal year and, prior to adoption of their budgets, file the information necessary for that calculation with OSC.

51. Will OSC confirm my tax cap (i.e., tax levy limit) calculation?

No. Local governments are responsible for calculating their own levy limit. For informational purposes, the form that we have developed will run the mathematical computation for you after you have input all of the required data elements as outlined in the law. After you have submitted your form, our system will also generate a confirmation of your submission. However, this *confirmation does not attest to the accuracy of the data elements input by each reporting entity*.

If, upon entering the required elements, you do not agree with the tax levy limit that results from the application of the mathematical formula, you may contact OSC's Division of Local Government and School Accountability at (866) 321-8503 option 3.

52. How do coterminous town/villages report to OSC?

In this case, the town and village are separate local governmental entities and must report their tax levy limits to OSC separately, even if one of the governments does not levy a tax.

53. Who in my local government should have access to the reporting system? How do they gain access to the forms?

The Chief Fiscal Officer (CFO) of each local government should be enrolled with a primary authorizer account which allows the CFO to create and modify user accounts for their local government. An enrollment guide with instructions is emailed to new CFOs. Changes in CFO

or changes in contact information can be sent to our Help Desk mailbox: LocalGov@osc.ny.gov.

54. How can I find out about other training on this topic? Can we arrange a training session?

Please visit our Property Tax Cap website at Local Government Training Unit website Real Property Tax Information or call (866) 321-8503 option 5.

55. Does a local government or independent special district need to file with OSC if it does not plan to levy taxes in the coming fiscal year?

Yes. Any local government that is subject to the levy limit must file, even if it does not levy a tax in that year.

56. Our budget was approved by our governing body on August 31st. The NYS OSC form wasn't available to input the information. Will we be penalized for filing late?

No. Local governments who passed their budgets before the online form became available this year will not be penalized for reporting late. Please make sure you submit your form as soon as practicable.

57. Our association library has a calendar year fiscal year, but its service area coincides with the school district. So, when we need voter approval for a levy increase, we do so on the school district's ballot. However, in order to continue this in the future, we would have to adopt our budget before we will have information on the inflation factor. Can we continue to do this if we plan to pass an override resolution each year?

According to the new law, you must file your levy limit information with OSC before you adopt your budget. Since you cannot calculate that limit without the inflation factor, you cannot file the information until five months prior to the start of your fiscal year. Therefore, you will either have to change your fiscal year to coincide with the school year or, if feasible, hold your vote at a different time of the year.

Reserve for Erroneous Levies

58. If I have to set up a reserve because of an error in the implementation of the property tax cap, what kind of reserve should I be setting up?

When an excess tax levy has been identified, a series of accounting entries will be required. These entries assume that the local government or school district has already recorded the real property taxes levied for the current fiscal year's budget. The local government or school district will need to defer the recognition of revenues associated with the excess tax levy until the following fiscal year as required by the tax cap legislation. This deferral of revenue serves as the accounting mechanism for placing excess tax levy in reserve as required by the legislation. The amount of revenue deferred for excess tax levies should be placed in a separate interest-bearing bank account. The accounting entries can be found in our accounting bulletin "Reserve for Excess Tax Levy" [pdf].

Overrides of the Tax Levy Limit

59. If a local government or a special district (not newly formed) governed by a separate independently elected board did not levy or cause the levy of any "taxes" in the prior fiscal year (including special assessments and special ad valorem levies), but will do so in the upcoming fiscal year, will the local government need to override the tax levy limit in order to levy taxes for the upcoming fiscal year?

Yes. The law provides that all local governments subject to the cap must calculate the tax levy limit for the coming fiscal year in accordance with the statutory formula. If the amount of taxes to be levied in the coming fiscal year exceeds the applicable tax levy limit and the allowable exclusions, then the local government must override the tax levy limit.

60. What special wording is required on the budget resolution for voters to vote upon? Must it specify the actual monetary amount of the override and/or the specific districts for which the override is being passed? Will OSC provide suggested language?

For local governments, the law does not specify particular language for the budget resolution, although it should be clear that it is for the purpose of overriding the tax levy limit for the coming fiscal year only. Specific language is required for school districts seeking voter approval on a budget that relies on a tax levy that exceeds the levy limit (Chapter 97 of the Laws of 2011 [pdf]). Please consult your attorney or speak with your local government association for more guidance on model local laws/language.

61. A governing board of a local government has adopted a budget, or has a default budget (i.e. a budget by operation of law because the final budget was not adopted

prior to statutory deadline), which includes a tax levy in excess of the allowable tax levy limit, without complying with the override requirements. What happens now?

As per guidance issued by the Department of Taxation and Finance, a local government may not impose or cause the imposition of taxes in excess of their levy limit without first complying with the statutory override requirement. In an instance where a local government has an adopted or default budget that provides for a levy in excess of the allowable levy limit, and there is no proper override in place, the local government must take steps to reduce the amount of the tax levy to be within the allowable limit.

In general, the governing board should pass a resolution that reduces the amount of the tax levy to an amount that complies with the allowable levy limit. Since a local government generally cannot change its budget after the budget deadline has passed, it is recommended that a deficit reduction plan be adopted and the budget revisited after the beginning of their fiscal year.