Office of the New York State Comptroller

Thomas P. DiNapoli • State Comptroller

Property Tax Cap

Property Tax Cap Instructions

The State Legislature and the Governor enacted legislation that establishes a "property tax cap" which limits growth in the property tax levy. Under this law, the total amount to be raised through property taxes charged on the municipality's taxable assessed value of property is capped at 2 percent or the rate of inflation, whichever is less, with some exceptions. Local communities have the ability to override the cap.

For more information on the background of the property tax cap legislation, guidelines, FAQ's or additional guidance visit our tax cap website at

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

Official guidelines for calculating the cap can be found at

http://www.tax.ny.gov/pdf/publications/orpts/capguidelines.pdf

These guidelines are supplemented by FAQs developed by the Office of the State Comptroller:

http://www.osc.state.ny.us/localgov/realprop/pdf/faqs.pdf

Please ensure these documents are read in conjunction with one another and check back frequently as the FAQs are continuously updated.

To comply with the law, local governments are required to report their tax cap calculation to the OSC via an online reporting form. To access the form, click

https://onlineservices.osc.state.ny.us/Enrollment/login?0

This online form is designed to capture the information needed from local governments to meet their property tax levy limit filing requirements. Once the necessary information has been entered, the form will compute the tax levy limit and provide the user with a summary and a receipt confirming that the report has been submitted.

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Tax Levy Limit Elements

Total Prior Year Real Property Tax Levy

The Total Prior Year Real Property Tax Levy is the first element of the tax cap calculation. The amount that the local government levied for the prior fiscal year should be calculated starting with what was actually levied according to the tax rolls.

Below is a brief description of what should be included in the levy. Click on any highlighted phrase for additional guidance concerning that item.

*The **county** tax levy should include:*

- Tax levy for all funds
- Omitted Taxes
- Charge-backs that are added to the town levy or to the county levy by the county that are specific to a municipality
- Reduction for sales tax allocations used by towns to reduce the county levy
- All dependent Special Districts
- Special assessments

*The **town/city** tax levy should include:*

- Tax levy for all funds
- Omitted Taxes
- Charge-backs that are billed by the county for which the town/city raises taxes to pay the bill
- All dependent Special Districts
- Special assessments

*The **village** tax levy should include:*

- Tax levy for all funds
- Omitted Taxes
- All dependent Special Districts
- Special assessments

*The **fire district** tax levy should include:*

- Tax levy

*The **library** tax levy should include:*

- Only the tax levy/levies that it can require a municipality or school district to levy on its behalf (e.g. a tax levy approved by voters)

*Any other **independent special district** (that must file separately) levy should include:*

- Tax levy imposed by the independent special district board

Tax Cap Reserve Offset used to reduce the prior year levy

The Reserve Offset is the amount that was used to reduce the prior year's levy as a result of exceeding the tax cap. This line is used to add back that reduction from the prior year to bring the local government back to its base prior year levy. The 2014 fiscal year is the first year the Reserve Offset takes effect. See example below.

Tax Levy Limit - Calculations and Total					
		2012	2013	2014	
Tax Levy Limit (Cap) Before Adjustments and Exclusions					
	Tax levy PY	50,000	51,000	49,000	PY tax levy should be what was actually levied
+	Reserve used to reduce PY levy	-	-	1,000	PY offset should be added back to PY tax levy to make LG whole
-	Total Reserve Amount (including interest earned)		1,000	-	PY levy is reduced to prevent the LG from getting a benefit from overlevying without a proper override
x	Tax base growth factor	1.0000	1.0000	1.0000	
+	PILOTS receivable FYE 2012				
x	Allowable levy growth factor	1.0000	1.0000	1.0000	
-	PILOTS receivable FYE 2013	-	-	-	
+	Available Carryover	-	-	-	
+	Net adjustmens and exclusions	-	-	-	
Tax Levy Limit with Adjustments and Exclusions		**50,000**	**50,000**	**50,000**	
Total Tax Cap Reserve Amount including interest - used to reduce levy		**-**	**1,000**	**-**	
Proposed Levy		**51,000**	**49,000**	**50,000**	Amount levied on tax roll
Difference Between Tax Levy Limit + Exclusions and Proposed Levy		**(1,000)**	**-**	**-**	
If over - DOB listing or obtained Local law (Y/N)					
Note: For ease of demonstration, the tax base growth factor and allowable levy growth factor have been set to 1.00					

Tax Cap Reserve for exceeding the cap in the prior year

The Tax Cap Reserve consists of the amount that the local government placed in reserve (including accrued interest) for exceeding the tax cap in the prior year. **Note: For detailed instructions as to the actual accounting treatment and required journal entries associated with placing excess levy into reserve, please consult OSC's accounting bulletin on the topic.** See above for the effect the reserve has on each year's calculation.

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:

- **The Form:** OSC's online report form includes this dedicated field that captures the total amount the unit had to place in reserve. Once the user enters that figure, it will automatically be subtracted from the amount in the "Prior Fiscal Year Tax Levy" field—before the tax base growth factor is applied.

- **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 must then be used to offset the property taxes that will be levied for the coming fiscal year. That means that the entity would only have to levy the difference remaining.

Tax Base Growth Factor

The tax base growth factor is provided by the Department of Taxation and Finance (Office of Real Property Tax Services) and has been pre-populated on the form. Questions related to calculation of the quantity change factor (upon which the tax base growth factor is based) should be directed to the Department of Taxation and Finance: 518-474-5666.

PILOTS Receivable for the prior year

PILOTS Receivable for the prior year has been pre-populated with the coming year's PILOTS receivable entered on the Prior Year's tax cap form. It can be changed to correct errors, but generally, this number should not change. This figure is added to the property tax levy limit. This is not the amount you actually collected but rather what is expected to be collected and should be based on the local government's PILOT agreements/schedule.

Tort Exclusion claimed in the prior year

The Tort Exclusion claimed in the prior year is subtracted from the property tax levy limit. This amount will be pre-populated from the amount that was entered on the tax cap form from the prior year.

Allowable Levy Growth Factor

The Allowable Levy Growth Factor is calculated and pre-populated by OSC. This amount is the smaller of 2 percent or the inflationary change using the Consumer Price Index. OSC has calculated the allowable levy growth factor and has provided it in the form. The calculation is based on the monthly average consumer price index for all urban consumers (CPI-U).

PILOTS Receivable for the coming year

PILOTS receivable for the coming year is the amount of PILOTS expected to be collected for the coming year's budget. This figure will be subtracted from the property tax levy limit. Again, this is the receivable amount you are expecting based on your PILOT agreements/schedule.

Available Carryover from the prior year

If the total property taxes levied was less than the tax levy limit in the prior year, a local government is permitted to carryover the lesser of 1.5 percent of the prior year levy limit or the difference between what was actually levied and the 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.

Carryover Calculation			
To Calculate the Unused		To Calculate the Maximum	
Tax Levy Limit 2012 (prior to exclusions)	$1,020,000	Tax Levy Limit 2012 (prior to exclusions)	$1,020,000
- Total RPT 12/31/2012	$900,000	* Percentage	1.5%
Unused Levy 2012	$120,000	Maximum Carryover for 2013	$15,300

While the local government did not use $120,000 of the available levy in 2012, it can only carry over up to $15,300. The carryover amount for this municipality would be $15,300.

Transfer of Government Function(s) as determined by OSC.

If the responsibilities of your local government have changed due to a transfer of function, OSC will enter the accompanying costs/savings to be displayed in the form. These savings and costs are provided and entered by OSC, and are not computed by the localities themselves. If you think your local government has had a transfer of function, please click here to obtain the contact information for your local regional office. If you have already received a letter from our office and do not see your calculations here, please call (866) 321-8503 for assistance.

Total Tax levy necessary for expenditures from court orders or judgments resulting from tort actions for the coming year.

The total costs (in excess of 5 percent of the prior year's levy) arising from court orders or judgments against your municipality resulting out of tort actions to be paid in the coming fiscal year are an exclusion to the property tax levy limit. Note that this exclusion is applicable only if the annual debt service associated with the bonds or notes issued or the total payment budgeted in the coming fiscal year for the judgment exceeds 5 percent of the prior year's levy. The exclusion will not carry-forward to the calculation page if the amount does not exceed 5 percent of the prior year's levy. **Note:** These exclusions are very rare and should not include tax certiorari, contract claims, administrative consent orders, etc.

Tax levy necessary for pension contribution expenditures caused by growth in the system average actuarial contribution rate (ERS, PFRS) or normal contribution rate (TRS) in excess of 2 percentage points.

Pension costs resulting from growth in any pension system's average actuarial or normal contribution rate that exceed two percentage points may be excluded from the property tax levy limit. To see if TRS, ERS, and PFRS exclusions are permissible for the upcoming fiscal year, please consult OSC's Retirement Exclusions for Local Governments bulletin which is updated annually.

ERS and PFRS Exclusion: For local governments with fiscal years on a calendar year, the timing of the payment will affect the exclusion amount. When the local government selects the month they plan to pay (February or December), the corresponding salary base will pre-populate in the amount column and the form will calculate the exclusion amount. If the local government does not end up paying in the month selected, the difference in exclusions may result in the local government exceeding the cap. Also, If a local government plans to amortize its ERS or PFRS bill for the upcoming fiscal year, it is not entitled to an exclusion.

Tax Levy Limit, Adjusted for Transfers, Plus Exclusions

This is the maximum that a local government may raise in taxes without passing an override.

Tax Cap Reserve Offset, used to reduce the coming year levy

This amount is the same amount as the Total Reserve, noted above, which consists of the amount that the local government placed in reserve (including accrued interest) for exceeding the tax cap in the prior year. Once the total level of property taxes needed to support the budget for the coming year is set, the amount in reserve must then be used to offset the property taxes that will be levied for the coming year.

Proposed Levy for the coming year, net of reserve

The Proposed Levy for the coming year should be the amount the local government is proposing for the coming year considering all the same elements for the prior year as stated above, net of the reserve.

Difference between Tax Levy Limit Plus Exclusions and Proposed Levy.

This calculation computes the difference between the proposed levy (net of reserve) and the tax levy limit. A negative result (shaded red) means the local government has exceeded the maximum and an override is required.

Please note that local governments are responsible for determining their own tax levy limit. Although the form assists you with the calculation, it is incumbent upon you to submit accurate information. OSC will not certify the data that you submit nor correct inaccurate data. If changes/corrections are necessary, we encourage you to resubmit your form as soon as possible in order to ensure your information is accurate.

Detailed Instructions to Determine Levy

- **Special Districts**
    - Special Districts should either be reported as part of the municipality or file on their own. 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.

  Examples of Special Districts;

    - **Independent Special Districts** - In order to exclude your special district (not including Fire Districts and Library Districts) a determination by OSC that the district is independent must be made. To determine if the special district in your municipality is excludable from your calculation contact our office at *(866) 321-8503.*
    - A **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).
    - **Fire protection 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.
    - **Business Improvement Districts** do not have separate, independent elected or appointed boards which have the authority to either levy a tax or require a tax to be levied on their behalf. Therefore, levies for BIDs must be incorporated into the municipality's levy limit.
    - **Blended Fire Districts** – Generally Fire Districts are governed by separate elected or appointed governing boards that can levy or require the levy of taxes on behalf of the district. However, these blended fire districts have the same governing board as the Town and, therefore, their levies should be included in the Town's tax levy calculation.

- **Special Assessments**
    - Services such as water, sewer and refuse collection may be funded through:
        - Benefit assessments: based on benefit to property and subject to the levy limit.

        - Special ad valorem levies: Bases on value of property and subject to the levy limit.
        - User fees (contractual charges): generally based on consumption and not subject to the levy limit
    - If you are uncertain whether a certain charge is subject to the tax limit, you should consult your attorney. Our legal staff is also available at (518) 474-5586 for assistance.

- **Omitted taxes**
    - There is no exclusion in the tax cap legislation for omitted taxes. Therefore, the total levy for the coming fiscal year, including any omitted taxes, is subject to the tax levy limit. If handled properly, however, the omitted taxes do not affect the amount of the total tax levy. In other words, the total amount of the tax levy, including omitted taxes, should equal the total tax levy required by the budget.

- **Charge-backs**
    - A "charge-back" generally refers to a cost incurred by a county which the county is authorized to recover from a local government within the county. There are two ways that charge-backs come into play with respect to the tax levy limit: the starting figure in calculating the tax levy limit, i.e., the total amount of taxes levied for the prior fiscal year (entered in the "prior year levy" field on the tax cap form), and the total amount of taxes to be levied in the coming fiscal year which are subject to the tax levy limit (entered in the "proposed levy" field on the tax cap form). Consistent with our understanding of guidance issued by the NYS Department of Taxation and Finance, in order to determine whether a charge-back must be included in either amount, you need to consider the method used to implement the charge-back.
        - When a county **bills** a local government to recover the amount of the charge-back and the local government raises real property taxes to pay the bill, the charge-back amount is included in the *local government's* tax levy. If this method was used to recover a charge-back amount in the *prior fiscal year*, then the amount of the charge-back must be included in the starting figure used in calculating the *local government's* tax levy limit for the coming fiscal year, i.e., the total amount of taxes levied for the prior fiscal year. If this method is used to recover a charge-back amount in the *coming fiscal year*, then the amount of the charge-back must be included in the *local government's* taxes to be levied in the coming fiscal year and is subject to the *local government's* tax levy limit.

- When a county **levies** a tax under its own taxing authority to recover the amount of a charge-back, the charge-back amount is included within the *county's* tax levy. If this method was used to recover a charge-back amount in the *prior fiscal year*, then the amount of the charge-back must be included in the starting figure used in calculating the *county's* tax levy limit for the coming fiscal year, i.e., the total amount of taxes levied for the prior fiscal year. If this method is used to recover a charge-back amount in the *coming fiscal year*, then the amount of the charge-back must be included in the *county's* taxes to be levied in the coming fiscal year and is subject to the *county's* tax levy limit. In cases where a county adjusts a local government's tax levy by adding the charge-back amount to the local government's tax levy, the charge-back should still be included in the *county's* tax levy (since the county is causing the tax to be levied) and is subject to the *county's* tax levy limit.

- **Sales Tax Offset**
  - When all or a portion of a town's sales tax allocation is applied as a credit against the county real property tax levied in the town, the amount of the county's total property tax levy is reduced by a corresponding amount. This may occur one of two ways. Either the county budgets the sales tax monies used by towns to offset county property taxes as a non-property tax revenue, or the county subtracts the amount of the sales tax allocation applied to reduce county taxes from the total property tax levy required by the budget.