

# 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 system average actuarial rate minus two percentage points) for all employers

**Amortization.** Local governments utilizing amortization may not levy for the pension exclusion.

### Excess Pension Contributions

School districts are responsible for making pension payments to both the New York State and Local Employees' Retirement System (ERS) and the New York State Teachers' Retirement System (TRS). In accordance with the employer contribution rates promulgated by the Office of the State Comptroller, the pension exemption will be triggered for ERS in school districts' 2012-13 school year budgets. The ERS average contribution rate is increasing by 2.6 percentage points; therefore the ERS exemption is 0.6 percentage points ( $2.6 - 2 = 0.6$ ). This exemption is calculated by subtracting two percentage points from the year-to-

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 the school district pays for its ERS pension plans. For example, if the ERS average contribution rate is increasing by 2.6 percent, and a school district's actual ERS plan contribution rate increased by only 2 percent, that school district would still be eligible to exclude 0.6 percent of its ERS salary base of \$1 million (or \$6,000). On the other hand, in years where the ERS average contribution rate increased by 3 percent and a school district's actual contribution rate increased by 3.5 percent, that school district can only exempt an amount equal to 1 percent of its \$1 million ERS salary base (or \$10,000). This will not be an issue if the TRS pension exemption applies, as TRS bills pension costs with a single, blended rate applicable to all employers.

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.

### **Calculation of Prior Year Capital Local Expenditures**

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

For purposes of the tax cap law, Capital Local Expenditures, which are excluded from the tax levy limit for the coming school year (after the subtraction of prior school year Capital Local Expenditures in Step Five above), shall be calculated by first determining the amount of all payments to be made for Capital Expenditures by the school district during the coming school year, and then subtracting from the total amount of those payments (i) any of those Capital Expenditures that are to be paid for from a reserve fund or fund balance during the coming 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 to be received by the school district during the coming school year, excluding deferred building aid to be received in the coming school year that is attributable to school years before the coming school year, and (iii) deferred building aid attributable to the coming school year that is expected to be received after the coming school year. See question 6 in the Frequently Asked Questions for specific account codes and aids to include in the calculation.

### **Budget Requirements**

Districts will submit their tax levy limit calculation to the Office of the State Comptroller, the State Education Department and the Office of Taxation and Finance by March 1.

### **Property Tax Report Card**

Districts shall include the following elements from the tax levy limit calculation in their annual submission to the Department of their Property Tax Report Card before the Statewide Voting Day: (i) the tax levy limit (without including the levy for permissible exclusions from the tax levy limit), (ii) the permissible exclusions from the tax levy limit, (iii) the proposed tax levy (not including the levy for permissible exclusions from the tax levy limit), and (iv) the total proposed tax levy (including any proposed levy above the tax levy limit and the levy for permissible exclusions from the tax levy limit).

Any reserves required to comply with the law must also be reflected in the existing fund balance categories. The amount reported on the Property Tax Report Card may be greater than the levy limit, if the district plans to override the cap, or lower than the levy limit, if it does not plan to use the total amount allowed under the limit.

### 2012-13 Property Tax Report Card

**000000 - DISTRICT NAME**

School District Contact Person: \_\_\_\_\_

School District Telephone Number: \_\_\_\_\_

	Budgeted 2011-12 (A)	Budgeted 2012-13 (B)	Percent Change (C)
Total Spending			
School Tax Levy Limit			
Permissible Exclusions to the School Tax Levy Limit			
Proposed School Year Tax Levy (not including Permissible Exclusions to the School Tax Levy Limit)			
Proposed School Year Tax Levy (including Permissible Exclusions to the School Tax Levy Limit) *			
Public School Enrollment			
Consumer Price Index			

\* If this Percent Change exceeds the Tax Levy Limit With Exclusions, approval of 60% or more of qualified voters present and voting is required.

	Actual 2011-12 (D)	Estimated 2012-13 (E)
Adjusted Restricted Fund Balance		
Assigned Appropriated Fund Balance		
Adjusted Unrestricted Fund Balance		
Adjusted Unrestricted Fund Balance as a Percent of the Total Budget		

### Six-Day Budget Notice

Beginning with the budget notice for the 2012-13 proposed budget, districts will include in the notice (i) the school tax levy limit (without including the levy for permissible exclusions from the school tax levy limit) , (ii) the total proposed school tax levy (without the levy for permissible exclusions from the school tax levy limit), (iii) the total school tax levy for permissible exclusions to the school tax levy limit, and (iv) the total proposed school tax levy (including the levy for permissible exclusions from the school tax levy limit) . NYSED will revise the template for the notice that is available on its website to reflect such changes.

## 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 \_\_\_\_\_<sup>1</sup> which exceeds the statutory tax levy increase limit of \_\_\_\_\_<sup>2</sup> 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."

<sup>1</sup> The first blank should be the percent by which the total proposed tax levy for the upcoming school year (which includes the tax levy for permissible exclusions from the tax levy limit) exceeds the total tax levy for the prior school year (which includes the tax levy for permissible exclusions from the tax levy limit).

<sup>2</sup> The second blank should be the percent by which:

(i) The sum of

(a) the amount resulting from the calculation set forth in the Section entitled "Steps to calculate the tax levy limit,"

**plus**

(b) the sum of permissible exclusions (see the section above entitled "Limited Exclusions"),

**exceeds**

(ii) The total tax levy for the prior school year (which includes the tax levy for permissible exclusions from the tax levy limit).

## Frequently Asked Questions

1. *Will districts have to determine costs that would have been excluded if a tax cap had been in place in 2011-12 in order to calculate the 2012-13 tax levy limit?*

**Answer:** Yes, but only a 2011-12 exclusion amount for Capital Local Expenditures. This 2011–12 exclusion amount (which is subtracted from the 2011-12 total tax levy) is necessary to calculate the 2012-13 tax levy limit.

2. *How are School Tax Relief (STAR) funds treated for calculation of the tax levy limit? Are they State Aid or local levy?*

**Answer:** STAR funds are part of the tax levy. No adjustments are to be made to the tax levy limit calculation due to STAR.

3. *Do Capital Local Expenditures include transfers from the General Fund to the capital fund for capital projects?*

**Answer:** The calculation of coming school year Capital Local Expenditures is set forth above. Transfers from one fund to another fund are not expenditures for the purposes of the tax cap law and not relevant to this calculation.

4. *How will expenses and aid relating to EXCEL capital projects be handled?*

**Answer:** The same as projects supported by Building Aid. See Calculation of Capital Expenses and Capital Local Expenses above.

5. *If the school district owns the building the public library is in and has expenditures, such as debt service, for the building (and the library pays the district rent), can the school district exclude this debt from the tax cap?*

**Answer:** For purposes of tax cap calculations, any taxes levied by a school district on behalf of a school district public library are subject to the library's tax cap and not subject to the school district's tax cap. Accordingly, taxes levied by a school district for debt service and expenses for a facility used to house a school district public library (i) are levied on behalf of the library, (ii) are subject to the library's tax cap and not subject to the school district's tax cap, and (iii) should not be construed as part of the school district's tax levy for purposes of tax cap calculations.

6. *What data may districts use to calculate the capital tax levy exclusion?*

**Answer:** School districts may use the following data to assist in determining total capital expenditures provided the inclusion of that data complies with the definition of Capital Expenditures set forth above.

### ST-3 Account Codes - Including Actual Expenditures in the General, Capital and Debt Service Funds

Selected .2 object codes in the General Fund (Equipment)<sup>1</sup>

A1620.4/A1621.4 - Any capital lease expenses  
A5510.4/A5530.4 - Any school bus lease expenses

A5510.21 - Purchase of Buses

A9701.6 - Principal: Term Bonds - School Construction	A9701.7 - Interest: Term Bonds - School Construction
A9702.6 - Principal: Term Bonds - Bus Purchases	A9702.7 - Interest: Term Bonds - Bus Purchases
A9700.6 - Principal: Term Bonds - Other (Specify) <sup>2</sup>	A9700.7 - Interest: Term Bonds - Other (Specify)
A9711.6 - Principal: Serial Bonds - School Construction	A9711.7 - Interest: Serial Bonds - School Construction
A9712.6 - Principal: Serial Bonds - Bus Purchases	A9712.7 - Interest: Serial Bonds - Bus Purchases
A9710.6 - Principal: Serial Bonds - Other (Specify)	A9710.7 - Interest: Serial Bonds - Other (Specify)
A9721.6 - Principal: Statutory Bonds - School Construction	A9721.7 - Interest: Statutory Bonds - School Construction
A9722.6 - Principal: Statutory Bonds - Bus Purchases	A9722.7 - Interest: Statutory Bonds - Bus Purchases
A9720.6 - Principal: Statutory Bonds - Other (Specify)	A9720.7 - Interest: Statutory Bonds - Other (Specify)
A9731.6 - Principal: Bond Anticipation Notes - School Construction	A9731.7 - Interest: Bond Anticipation Notes - School Construction
A9732.6 - Principal: Bond Anticipation Notes - Bus Purchases	A9732.7 - Interest: Bond Anticipation Notes - Bus Purchases
A9730.6 - Principal: Bond Anticipation Notes - Other (Specify)	A9730.7 - Interest: Bond Anticipation Notes - Other (Specify)
A9741.6 - Principal: Capital Notes - School Construction	A9741.7 - Interest: Capital Notes - School Construction
A9742.6 - Principal: Capital Notes - Bus Purchases	A9742.7 - Interest: Capital Notes - Bus Purchases
A9740.6 - Principal: Capital Notes - Other (Specify)	A9740.7 - Interest: Capital Notes - Other (Specify)
A9787.6 - Principal: Installment Purchase Debt - Bus Purchases	A9787.7 - Interest: Installment Purchase Debt - Bus Purchases
A9785.6 - Principal: Installment Purchase Debt - Other (Specify)	A9785.7 - Interest: Installment Purchase Debt - Other (Specify)
A9789.6 - Principal: Other Debt (Specify)	A9789.7 - Interest: Other Debt (Specify)

H522 - Expenditures By Project: Current Funds

V1380.4 - Fiscal Agent Fees	
V9701.6 - Principal: Term Bonds - School Construction	V9701.7 - Interest: Term Bonds - School Construction
V9702.6 - Principal: Term Bonds - Bus Purchases	V9702.7 - Interest: Term Bonds - Bus Purchases
V9700.6 - Principal: Term Bonds - Other (Specify)	V9700.7 - Interest: Term Bonds - Other (Specify)
V9711.6 - Principal: Serial Bonds - School Construction	V9711.7 - Interest: Serial Bonds - School Construction
V9712.6 - Principal: Serial Bonds - Bus Purchases	V9712.7 - Interest: Serial Bonds - Bus Purchases
V9710.6 - Principal: Serial Bonds - Other (Specify)	V9710.7 - Interest: Serial Bonds - Other (Specify)
V9721.6 - Principal: Statutory Bonds - School Construction	V9721.7 - Interest: Statutory Bonds - School Construction
V9722.6 - Principal: Statutory Bonds - Bus Purchases	V9722.7 - Interest: Statutory Bonds - Bus Purchases
V9720.6 - Principal: Statutory Bonds - Other (Specify)	V9720.7 - Interest: Statutory Bonds - Other (Specify)
V9731.6 - Principal: Bond Anticipation Notes - School Construction	V9731.7 - Interest: Bond Anticipation Notes - School Construction
V9732.6 - Principal: Bond Anticipation Notes - Bus Purchases	V9732.7 - Interest: Bond Anticipation Notes - Bus Purchases
V9730.6 - Principal: Bond Anticipation Notes - Other (Specify)	V9730.7 - Interest: Bond Anticipation Notes - Other (Specify)
V9741.6 - Principal: Capital Notes - School Construction	V9741.7 - Interest: Capital Notes - School Construction
V9742.6 - Principal: Capital Notes - Bus Purchases	V9742.7 - Interest: Capital Notes - Bus Purchases
V9740.6 - Principal: Capital Notes - Other (Specify)	V9740.7 - Interest: Capital Notes - Other (Specify)
V9787.6 - Principal: Installment Purchase Debt - Bus Purchases	V9787.7 - Interest: Installment Purchase Debt - Bus Purchases
V9785.6 - Principal: Installment Purchase Debt - Other (Specify)	V9785.7 - Interest: Installment Purchase Debt - Other (Specify)
V9789.6 - Principal: Other Debt (Specify)	V9789.7 - Interest: Other Debt (Specify)
V9991.4 - Payment to Escrow Agent (Advanced Refunding Bonds)	

#### Notes:

<sup>1</sup> Equipment

Must be part of a capital project approved by the voters, where required by law  
Retains its original shape and appearance with use  
Is non-expendable, that is, if the article is damaged or some of its parts are lost or worn out, it is usually more feasible to repair it rather than replace it with an entirely new unit  
It represents an investment of money which makes it feasible and advisable to capitalize the item  
It does not lose its identity through incorporation into a different or more complex unit or substance

<sup>2</sup> Any principal or interest that must be specified, such as A9700.6 must be capital in nature. Amounts included in those codes for anything not considered capital may not be included in the Capital Tax Levy Amount.

## Amounts to be Deducted from Capital Expenditures When Calculating Prior Year (e.g., 2011-12) Capital Local Expenditures

This example pertains to 2011-12. Applicable Enacted Budget Computer Runs for subsequent "prior" years should be utilized when calculating amounts to be deducted from capital expenditures in subsequent "prior" years.

“2011-12 Trans Prosp Cap Aid” amount from the SA1112 enacted budget computer run  
**plus**

“2011-12 Regular Building Aid” amount from the SA1112 enacted budget computer run, excluding the amounts for "10-11 Deferred Aid (Tiers 1-4)" and "09-10 Deferred Aid (Tiers 1-4)" <sup>1</sup>

plus

“2011-12 Reorg Incent Bldg Aid” amount from the SA1112 enacted budget computer run

**plus**

Total EXCEL Aid payments to be received from the Dormitory Authority to be received in 2011-12

**plus**

Native American Building Aid pursuant to 3602 6-a to be received in 2011-12

**plus**

Any other revenue (e.g., aid, grant, subsidy, gift, incentive, etc) expected to be received in 2011-12 for all past, present, and future capital related projects

**plus**

Any "11-12 Deferred Aid (Tiers 1-4)" amount from the BT1213 executive budget computer run<sup>2</sup>

**minus**

Any adjustments in any of the above revenue sources in 2011-12 about which the district has already been notified and/or is otherwise certain will occur.

Any transfers from reserves used to make the expenditures.

### **Amounts to be Deducted from Capital Expenditures When Calculating Coming School Year (e.g., 2012-13) Capital Local Expenditures**

This example pertains to 2012-13. Applicable Executive Budget Computer Runs for subsequent "coming" years should be utilized when calculating amounts to be deducted from capital expenditures in subsequent "coming" years.

“2012-13 Trans Prosp Cap Aid” amount from the BT1213 executive budget computer run

**plus**

“2012-13 Regular Building Aid” amount from the BT1213 executive budget computer run, excluding the amounts for "11-12 Deferred Aid (Tiers 1-4)" and "10-11 Deferred Aid (Tiers 1-4)" <sup>3</sup>

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<sup>1</sup> The calculation of Prior Year Capital Local Expenditures should exclude deferred Building Aid received in the Prior School Year that is attributable to a school year before the Prior School Year.

<sup>2</sup> The calculation of the Prior Year Capital Local Expenditures should include deferred Building Aid attributable to the Prior Year that is expected to be received after the Prior Year.

<sup>3</sup> The calculation of the Coming School Year Capital Local Expenditures should exclude deferred Building Aid to be received in the Coming School Year that is attributable to school years before the Coming School Year.

**plus**

“2012-13 Reorg Incent Bldg Aid” amount from the BT1213 executive budget computer run

**plus**

Total EXCEL Aid payments to be received from the Dormitory Authority to be received in 2012-13

**plus**

Native American Building Aid pursuant to 3602 6-a to be received in 2012-13

**plus**

Any other revenue (e.g., aid, grant, subsidy, gift, incentive, etc) expected to be received in 2012-13 that will reduce the local levy for capital expenditures

**minus**

Any adjustments in any of the above revenue sources in 2012-13 about which the district has already been notified.

Where the sum of (i) those expenditures that are to be paid for from a reserve fund or fund balance during the coming school year and(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 to be received by the school district during the coming school year, excluding deferred building aid to be received in the coming school year that is attributable to school years before the coming school year exceeds Capital Expenditures for the coming school year, there will be no exclusion from the tax levy limit for Local Capital Expenditures in the coming school year, and the excess amount shall not result in a downward adjustment to the tax levy limit for the coming school year.

7. *How does one calculate Capital Local Expenditures when you don't know the interest rate before setting the budget?*

**Answer:** Districts should use the actual interest rate, if possible. If the interest rate is unknown, districts should use the statewide average rate for the upcoming year, as posted on the State Aid website:

[https://stateaid.nysed.gov/build/building\\_info.htm](https://stateaid.nysed.gov/build/building_info.htm)

8. *Are expenses for buses paid with cash included in transportation capital debt service? Are expenses for bus leases included?*

**Answer:** Yes. Expenses for cash payments for buses and leases of buses are considered to be Capital Expenditures.

9. *A school district had a bond referendum approved in December 2010 by its voters for a capital improvement project. The projects have almost all been approved by SED; bids are being awarded to contractors; and work has begun. The district*

*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?*

**Answer:** Yes. However, unused exclusions associated with capital expenses, growth in pension costs or tort judgments may not be carried forward.

15. *Are voters now voting on the tax levy increase or a spending plan?*

**Answer:** Voters will continue to vote on a budget. However, if that budget requires a levy (not including permissible exclusions) in excess of the levy limit, voters must approve that budget by a 60 percent *or greater margin*. Such a district will be held to the actual tax levy amount approved by voters, with no further adjustment.

16. *The sample statement includes a term “statutory tax levy increase limit.” What does that mean?*

**Answer:** The statutory tax levy increase limit refers to the percentage increase in the tax levy allowable under the cap from the previous year that requires approval of only a majority of votes cast in the annual school district budget vote. The statutory tax levy increase limit is calculated by adding to the amount resulting from the calculations set forth in the section above entitled “Steps to calculating the tax levy limit” permissible exclusions for (i) pension costs (see above section entitled “Excess Pension Contributions”), (ii) certain costs for expenditures resulting from court orders or judgments against the school district arising out of tort actions (see above section entitled “Torts”), and (iii) Capital Local Expenditures (see above section entitled “Capital Local Expenditures” above).

## **Budget Propositions**

17. *What does Chapter 97 say about propositions and the Tax Cap?*

**Answer:** Chapter 97 says:

*Nothing in this section shall preclude the trustee, trustees, or board of education of a school district, in their discretion, from submitting additional items of expenditures to the voters for approval as separate propositions or the voters from submitting propositions pursuant to sections two thousand eight and two thousand thirty-five of this part; provided however, except in the case of a proposition submitted for any expenditure contained within subparagraphs (i) through (iv) of paragraph i of subdivision two of this section, if any proposition, or propositions collectively that are subject to a vote on the same date, would require an expenditure of money that would require a tax levy and would result in the tax levy limit being exceeded for the corresponding school year then such*

*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 over the cap, what level of voter approval is required?*

**Answer:**

- a. Proposition for additional transportation service: a supermajority (60 percent) is required for the budget and proposition because the sum of the budget and proposition exceeds the tax levy limit.
- b. Proposition for educational programs: a supermajority (60 percent) is required for both the budget and the proposition because the sum of the budget and proposition exceeds the tax levy limit.
- c. Proposition for capital expenditure: a simple majority (50 percent plus one vote) because local capital expenditures have been excluded from the tax levy limit.
- d. Proposition for transportation capital expenditure: a simple majority (50 percent plus one vote) because local transportation capital expenditures have been excluded from the tax levy limit.

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 their best estimate for their 2012-13 payroll.

30. *Under the new tax cap legislation will school districts be able to borrow money to help pay for pension increases?*

**Answer:** No. The tax cap bill does not authorize any new borrowing options for school districts.

31. *Can the portion of the pension increase that is over the tax cap be added to the tax levy?*

**Answer:** No. The pension exemption is triggered if the annual growth in the employer contribution rate for the Employees' Retirement System or the Teachers' Retirement System exceeds two percentage points. Under the exemption, pension costs associated with the annual growth in the employer contribution rate above two percentage points are exempted from the cap. School districts can only exclude the amount that is equal to the percentage increase in the system wide employer contribution rate that exceeds 2 percentage points, times the estimated salary base.

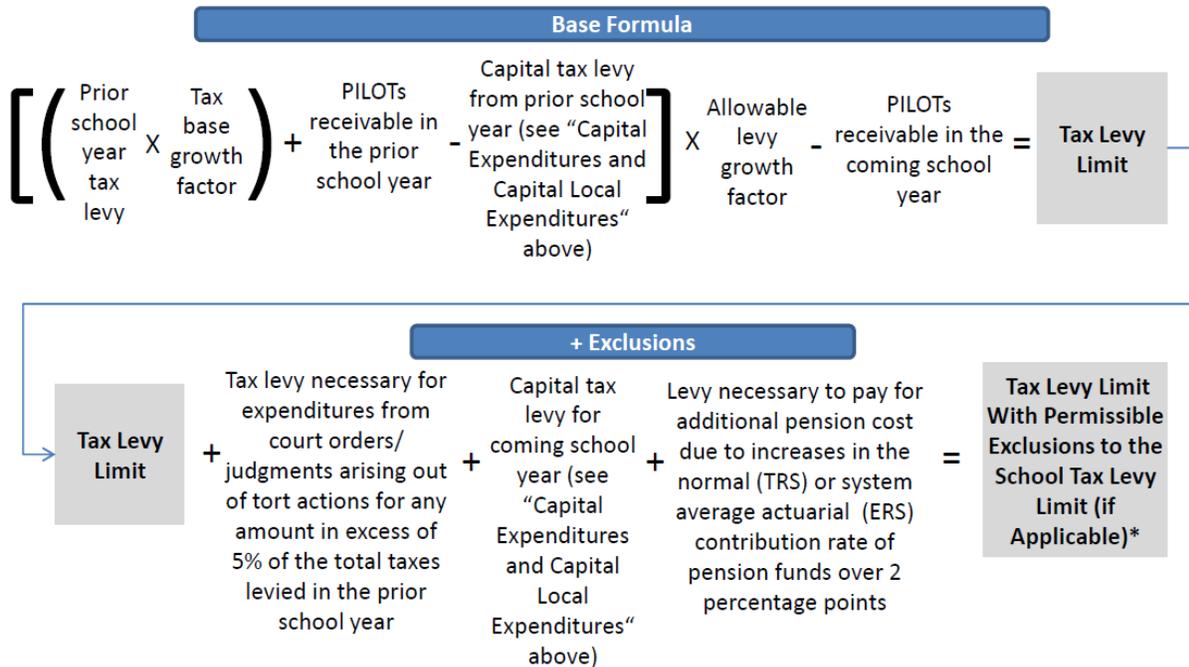
32. Will retroactive pay for contract settlements be included in salary calculations for determining exclusions related to pension expenses?

**Answer:** No

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

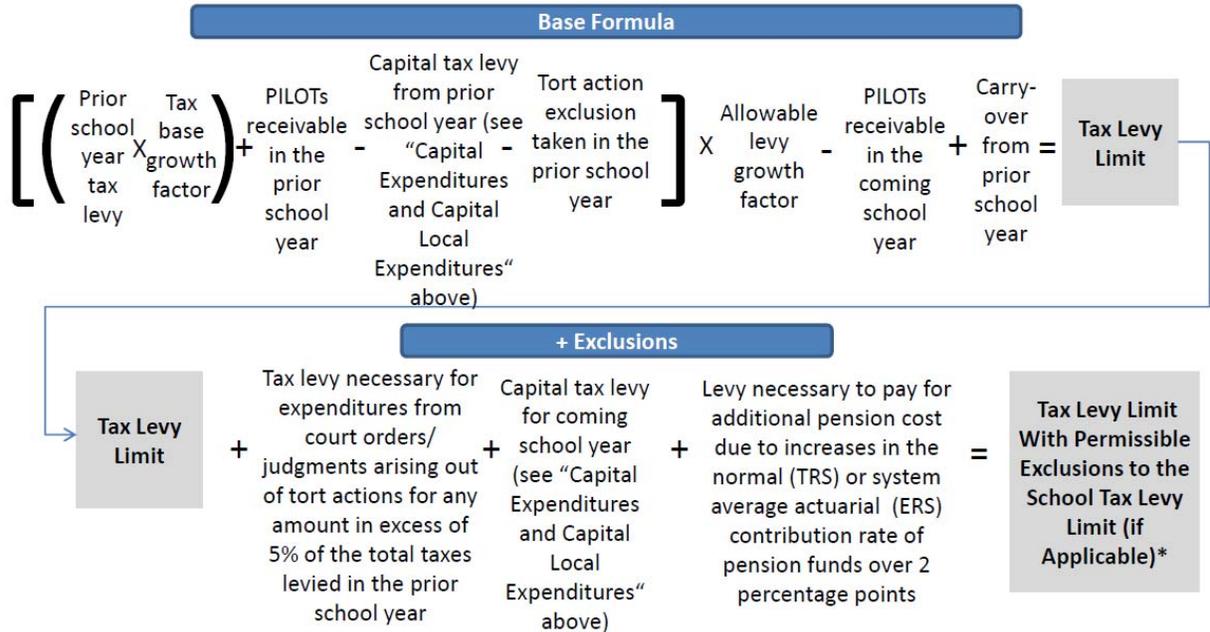
**Answer:** The following graphics illustrate the formula for calculation of the tax levy limit for the 2012-13 year and for subsequent years.

## Tax Cap Formula for SY 2012-13



\*If school districts propose to exceed this amount, they must get 60% voter approval for an override.

# Tax Cap Formula for Future Years



\* This may be offset by any prior year excess levy from amounts in the reserve for excess tax levy, if such has been identified. If school districts propose to exceed this amount, they must get 60% voter approval for an override.

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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](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.