New York State Office of the State Comptroller

Thomas P. DiNapoli • State Comptroller

Understanding the Constitutional Tax Limit

Counties

Understanding Tax Limit – Counties

Real property taxes are the single largest source of revenue for local governments in New York State. In the standard budget process, property taxes are used to cover the difference between appropriations and estimated non-property tax revenues. The New York State Constitution places a legal limit on the authority of counties, as well as cities and villages, to impose property taxes. Statutes intended to enforce these constitutional provisions require the Comptroller to withhold certain local assistance payments if taxes are levied in excess of a municipality's tax limit.

The Constitutional tax limit should not be confused with another tax levy limit that is generally referred to as the Tax Cap. The Tax Cap, which was established by the State legislature in 2011, requires a separate filing by all local governments and school districts, except New York City and the "Big Five" dependent city school districts. For information about the Tax Cap, please see **www.osc.state.ny.us/localgov/realprop/index.htm.**

In the current fiscal environment, growing municipal budgets and shrinking non-property tax revenue streams generate pressure to increase property taxes, thus exhausting a greater percentage of the Constitutional tax limit. At the same time, if property values decline overall, the tax limit will decline as well. As a result of these factors (growing expenditures, diminishing non-property tax revenues and a declining or stagnant tax base), some municipalities are rapidly approaching their tax limits. With pressure on the property tax continuing, more local governments may find themselves in this predicament.

As a county advances towards its tax limit, it loses flexibility in its revenue structure and may not be able to sustain the current level of services provided to its citizens. Even routine cost increases can pose serious budget difficulties if there is no corresponding growth in non-property tax revenues. Also, both declines in property values and changes in the amounts excluded from the tax limit will impact the calculation of the taxing capacity of the county. Thus, a county can approach or exceed its tax limit even with no change in real property tax levies from year-to-year.

The Office of the State Comptroller wants to help local governments manage compliance with their tax limits as a component of a comprehensive financial plan. This booklet provides guidance on the implications of the Constitutional tax limit, information on its calculation and instructions for filing. We hope you find it useful in understanding the issues and we encourage you to contact our office if further assistance is needed.

Taxing Capacity – How it Is Calculated

Simply stated, the Constitutional tax limit is the maximum amount of real property tax that may be levied in any fiscal year. It is computed by multiplying the value of taxable real property by a certain percentage enumerated in the Constitution. The more complex aspect of the process is determining whether the tax levy required by an annual budget stays within the limit.

Taxes levied for certain purposes are not subject to the tax limit. The Constitution and related statutes allow for taxes in the amount of certain appropriations to be excluded when determining the amount of levy that must be below the tax limit. This tax levy amount (total levy minus exclusions) is often referred to as taxes subject to the limit. In addition, certain credits or payments to reduce county levy to towns are also excluded from the computation of taxes subject to the limit.

Frequently, the tax levy is expressed as a percentage of the tax limit. For example, if a county with a $1,000,000 tax limit levied taxes of $800,000 (net of exclusions), the county would have used or exhausted 80 percent of its tax limit. A related term is the tax margin which refers to the difference between the tax levy and the tax limit. Using the example above, the county would have a tax margin of $200,000.

There are four components in the calculation of the taxing capacity: the average full valuation of taxable real property, the tax limit percent, the tax levy and exclusions from the tax limit.

Five-Year Average Full Valuation of Taxable Real Property

A key component of the tax limit calculation is the five-year average full valuation of taxable real property. This computation has several parts.

Five-Year Average: The calculation of this value ordinarily requires the use of five sets of assessment rolls – the last completed assessment roll and the four preceding rolls for each town and city within the county. In general, the last completed assessment roll of a town or city is the most current final assessment roll for which a final State equalization rate has been established. Once the five assessment rolls have been identified for each town and city, the full valuation of the taxable property on each roll must be computed. These full valuation amounts from each town's and city's roll should be added together to arrive at the county full value for each year. The five-year average for county purposes would be calculated from the total full value of the towns and cities for each year for the last five years and divided by five to establish the five-year average.

Full Valuation: The full valuation of the taxable real property on each of the assessment rolls is computed by dividing the total taxable assessed value (for county purposes) of the real property on the roll by the final State equalization rate established for that assessment roll.

Equalization Rate: State equalization rates are established by the New York State Office of Real Property Tax Services (ORPTS). An equalization rate is a measure of the percentage of full valuation at which taxable real property is assessed on an assessment roll. ORPTS establishes a separate State equalization rate for each year's assessment roll for each assessing unit. The process of establishing State equalization rates involves the determination of tentative and final equalization rates. Only final State equalization rates may be used in tax limit calculations. In a county having a department of assessment, the State equalization rates established for the cities and towns in the county must be applied to the appropriate portions of the county roll.

Tax Limit Percent

The State Constitution limits the taxing power of counties to 1.5 percent of the five-year average full valuation. A county can increase its tax limit to a maximum rate of 2 percent by a resolution of the legislative body. Such a resolution must be approved by either (a) two-thirds of its membership or (b) by a majority of the board and a mandatory referendum. Currently, 40 counties are subject to the basic 1 1/2 percent tax limit, 14 are at 2 percent and 3 are in between.

A county may also enact a local law, subject to a mandatory referendum, to establish a lower tax limit (e.g., 1 percent). However, enactment of such a local law does not affect the Constitutional tax limit and, therefore, does not reduce the threshold over which the State Comptroller is required to withhold certain local assistance payments.

Tax Levy – General County Purposes

The tax levy for purposes of determining a county's taxing capacity is the total amount of real property taxes levied for county purposes. Not every item included in a county tax levy is a tax for county purposes. Section 233-a of County Law describes the numerous items to be included or excluded in computing a county's taxing power.

Exclusions

Exclusions can have a considerable impact on a local government's taxing capacity. When determining the amount of a tax levy that is subject to the tax limit, the State Constitution allows for the exclusion of taxes in the amount of certain debt service payments and taxes in the amount of direct budgetary appropriations for most capital expenditures (see Local Finance Law section 11.00[a]). The amount of the taxes for these purposes is subtracted from the tax levy resulting in a lower tax levy subject to tax limit and a higher tax margin.

Importance of the Tax Limit in the Budget Process

There is no absolute standard or target for a tax levy as a percent of the constitutional limit; however, based on our experience, counties that have exhausted over 80 percent of their tax limit are in a caution zone, while those over 90 percent are in a danger zone. In instances where municipalities have exceeded their tax limits, our research shows that those municipalities had exhausted 90 percent or more of the limit in the previous year.

Exclusions should be carefully monitored from year-to-year, as any changes will have an impact on taxing capacity. It should be noted that the availability of exclusions must be evaluated on an annual basis, and that exclusions may not be available on a recurring basis. For example, as debt is retired, debt service payments may decline causing the associated exclusion to also decline.

As shown in the sample tax limit computation (Figure 1), the proposed tax levy exhausts 87.7 percent of the county tax limit. For counties such as this that are nearing their tax limits, their ability to increase property taxes is severely limited, and their ability to maintain existing tax levels may be at risk, because even small variations in exclusions or real property valuation could cause the county to exceed its tax limit. Local governments must therefore be vigilant in managing their tax margin, particularly if they approach the caution zone (80 percent of their tax limit).

Figure 1

SAMPLE TAX LIMIT CALCULATION

Five-Year Total Full Valuation	$ 8,604,639,769
Five-Year Average Full Valuation (1/5 of full valuation)	$ 1,720,927,953
Constitutional Tax Limit (1.5% of 5-year average)	**$ 25,813,919**
Tax Levy – General County Purposes	$ 24,638,993
Less Total Exclusions	$ 1,998,099
Tax Levy Subject to Tax Limit	**$ 22,640,894**
Percentage of Tax Limit Exhausted	87.7%
Constitutional Tax Margin ($25,813,919 - $22,640,894)	**$ 3,173,025**

Instructions for Completing a County Constitutional Tax Limit Form

Filing Overview

Counties are required to annually file a Constitutional Tax Limit form with the State Comptroller **10 or more days before final budget adoption**, and to file a copy of the adopted budget **within 30 days of its adoption.**

Online Constitutional Tax Limit forms may be accessed by selecting the following link:
https://portal.osc.state.ny.us/Enrollment/login

The online form has two components: the pre-budget adoption part of the form that is due 10 or more days before final budget adoption, and the post-budget submission and certification that is due within 30 days of budget adoption.

Screen by screen instructions for navigating the online system can be accessed on the Constitutional Tax Limit webpage.

For the part of the online form that is for post-budget submission and certification, a county indicates the manner in which it is submitting its adopted budget, and it certifies its adopted budget. Adopted budgets may be submitted:

- Online with the online form (either by attachment or by providing a link), after submission of the CTL form
- By email attachment to **LGSAMonitoring@osc.state.ny.us** or
- By mail to our office at:

  Office of the State Comptroller
  Local Government and School Accountability
  Monitoring & Analysis Unit 12-8-C
  110 State Street
  Albany, NY 12236-0001

In the past, counties were required to file a budget certification document with the adopted budget. This is no longer necessary, because the budget certification is included in the online form.

If you need assistance in completing the Constitutional Tax Limit filing, please contact the Monitoring and Analysis unit at (518) 408-4934 or toll free 1-866-321-8503 or email: **LGSAMonitoring@osc.state.ny.us**

If you need assistance with accessing the form (password or login issues), please select option 1 from the automated telephone menu or email: **LOCALGOV@osc.state.ny.us**

Tax Limit Form – Filing Instructions

After logging in on the OSC Online Services webpage, select the Local Government Constitutional Tax Limit Filing System from “My Apps” on the right side of the screen. Select the open report. On the Verification page, complete and save the Budget Adoption Date. Once the Verification information has been saved, the other pages of the form can be accessed by clicking on the links on the left side of the screen: Tax Limit Form, Schedules, etc.

Tax Limit Form – Full Value: Enter the total full valuation of the taxable real property (for county purposes) determined from the last completed assessment roll for each city and town within the county. To determine the full valuation for each assessment roll, divide the Taxable Assessed Valuation on each assessment roll by the final equalization rate established for that roll. The full values for all towns and cities within the county are then totaled to arrive at the full value for county purposes. It is important to remember that an equalization rate can be applied only to the assessment roll for which it has been established. Note: Taxable Full Valuation data for county purposes is reported annually to the Office of the State Comptroller on the *Schedule of Real Property Taxes Levied by the County Board of Supervisors (Form MA-144).*

Tax Limit Form – Total County-wide Ad Valorem Tax Levy: Enter the total county-wide ad valorem tax levy. This amount should agree with totals to be reported on form MA-144 (Schedule of Real Property Taxes Levied by the County Board of Supervisors), line 4P001 for all towns and cities.

Tax Limit Form – Credits (Prior Year Surplus Sales Tax, Sales Tax Credits, Town Payments Reducing County Levy): County Law section 233-a provides for certain amounts to be excluded from computation of the amount of taxes to be raised within the county tax limit. These amounts include prior year surplus sales tax, sales tax applied to reduce county taxes levied on real property in cities and towns and surplus moneys paid by a town to reduce tax levies upon the town. Enter all such credits on the lines provided and then select Save.

Tax Limit Form – Tax Levy Calculation

This section of the form is computed automatically from database valuation information and from entries made in other parts of the form and its schedules. The five-year average full valuation is the cornerstone for determining the Constitutional taxing power of a local government. For counties, the full value for each roll year is the total of the taxable full value (for county purposes) of each town and city within the county. Your county’s online form includes prior year Constitutional tax limit data for your county that is currently in our database. Please review this data before completing your current form. Adjustments may have been made to the data that you originally submitted.

This section of the form also includes summary data relating to levy adjustments and exclusions that are detailed in other parts of the form.

Exclusions from the County Constitutional Tax Limit

Debt Exclusions Schedule: Enter and save separate types of excludable debt service using the entry portion of the Debt Exclusions schedule of the form. Once you save an entry, you should see it listed in the correct category below the entry portion of the schedule.

With certain exceptions, the State Constitution generally provides that taxes in the amount required to pay principal and interest on a county's indebtedness are not subject to the tax limit.

Types of Excludable Debt

Revenue Producing Improvement Bonds and Notes: Enter amounts required to pay principal and interest on bonds and notes for revenue-producing public improvements or services other than water bonds and notes, such as electric utilities, sewer systems and parking facilities. Revenue from such public improvements and amounts required for operations, maintenance and repairs should be entered on Schedule A. (See Schedule A section below.)

Water Bonds and Notes: Amounts required to pay principal and interest on bonds and notes issued for public improvements constructed to provide a supply of water, joint sewer projects and joint drainage projects are excludable. Enter such amounts even if the debt service on the bonds or notes will be paid from a source other than property taxes (e.g., rents or other user fees).

Capital Notes, Bond Anticipation Notes and Other Bonds: Enter the amounts required to pay principal and interest on capital notes, bond anticipation notes and bonds issued for purposes other than revenue-producing improvements, water supply improvements, joint sewage projects or joint drainage projects. Include principal and interest on bond anticipation notes **only if the notes are to be paid from a source other than bond proceeds.** Do not include principal and interest on tax anticipation notes, revenue anticipation notes or budget notes, unless the notes have been outstanding for more than five years after their original date of issue.

Types of Non-Excludable Debt

Debt service payments that **cannot** be excluded from a county's tax limit (that is, they **cannot** be CTL exclusions), generally include amounts required to pay principal and interest on:

- Bonds or notes issued for purposes other than financing capital improvements and contracted to be redeemed in one of the two fiscal years following the year of issue,
- Tax anticipation notes,
- Revenue anticipation notes,
- Certain pension bonds,
- Installment purchase contract debt, and
- Bonds or notes issued for revenue-producing public improvements or services to the extent that revenues from the improvement, after payment of the costs of operation, maintenance and repair, are available to pay debt service.

Schedule A – Revenues Designated For Debt Service

To complete Schedule A, make entries for each type of revenue-producing public improvement or service owned or operated by the county. Select the debt type (that is, excluded from constitutional debt limit by LFL section 123 or section 124.10, or not excluded from debt limit). For each type of public improvement or service, enter:

- The Nature of the Improvement.
- The Total Estimated Revenue. This is the revenue expected to be derived from the public improvement or service from sources other than taxes, assessments and subsidies by the county, such as fees, rates or other charges for use of the improvement or service.
- The Amount Required for Operation Maintenance & Repair. This is the total amount appropriated for operation, maintenance and repairs for each type of public improvement or service (excluding depreciation and debt service).

Once you save an entry, you should see it listed in the correct category below the entry portion of the schedule.

Schedule B – Other Revenues Pledged By Law or Contractual Obligations To Apply Against Debt Service (e.g., Unexpended Bond Proceeds)

Make entries for other non-property tax revenues that are designated by law or by contractual obligation to be applied against debt service and for revenues other than real property taxes that are to be applied to the payment of any debt shown in the Debt Service Schedule. Do not duplicate revenues reported in Schedule A. Funds applied to debt service solely at the option of the municipality should not be included in this schedule. For each entry, provide the Page Number or Budget Code for the revenue, a description of the revenue (the authority, statute or charter provisions requiring that these revenues be applied to such debt service) and the amount.

Schedule C – Budgetary Appropriations for Objects or Purposes for Which a Period of Probable Usefulness Is Provided by Section 11.00 of the Local Finance Law

Whenever a county provides a direct budgetary appropriation for the payment of the cost of an object or purpose for which a period of probable usefulness has been determined by law, the taxes required for such appropriation can be excluded from the tax limitation. Local Finance Law section 11.00 provides specific periods of probable usefulness for numerous objects and purposes. Each entry made on Schedule C must include selecting the appropriate paragraph of Local Finance Law Section 11 from the list provided from the “Select Section 11” link. This will identify the purpose for which the appropriation is made and the authority for the exclusion. Do not include appropriations that are to be funded by specific aid such as CHIPS aid, and do not include appropriations that are to be financed by bonds or notes at a later date.

Other Exclusions Schedule (e.g., Down Payments on Bonds To Be Issued)

Under certain circumstances a municipality is required to provide a down payment of at least five percent of the estimated cost of capital improvement or equipment purchase (Local Finance Law, section 107.00). If this share is provided by the tax levy, make an entry in this schedule for the amount of money raised for this purpose.

Entries in this section must include a full description for each exclusion.

Schedule D – Part-County Tax Levies and Chargebacks Subject To County Tax

Provide entries in Schedule D for real estate taxes (not assessments) and chargebacks levied on an area smaller than the county which are subject to the county tax limit. Chargebacks for expenditures by the county in the prior year are described in County Law section 233-a. Some of them are as follows:

Purpose	Citation of Section 233-a
Assessment roll and tax roll copying	1-h
Community College	1-m
Delinquent property taxes:	
Preparation of tax sale conveyances	1-dd
Published notifications of redemptions	1-ff
Taxes returned as unpaid	1-cc
Election expenses	1-n
Health district, county or part county	1-u
Health services, county having no general health district	1-d
Laboratory district, county or part county	1-v
Library district, county or rural traveling	1-j
Police district, County of Nassau	1-jj
Prisoner maintenance under contract	1-c
Refunds on tax collections erroneously assessed	1-f
Supervisors proceedings, printing and distribution	1-g
Veterans' service agency	1-o
Vocational education and extension board	1-k
Weights and measures administration	1-a
Welfare-authorized agencies:	1-e
Institutional and hospital care, foster home care	1-x
Institutional care provided by another county	1-w
Option III city	1-z
Public home	1-aa
Under county commissioners	1-y

Review and Submission of Pre-Budget Part of the Form

Review your schedule entries and the pre-budget part of the Constitutional Tax Limit Form for accuracy. Failure to supply sufficient budget references and related information for debt or other exclusions as appropriated in the adopted budget may result in disqualification of such exclusions, which could adversely affect your municipality's tax margin.

When satisfied that entries are correct, submit the pre-budget part of the form, which is due 10 or more days before final budget adoption.

Submission of Certified Adopted Budget

Please refer to the **Filing Overview** section above. This part of the form is due within 30 days of final budget adoption.

Need Assistance?

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