Overview of the Real Property Tax Levy Limit (“Tax Cap”) Law

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Goals for Today’s Session

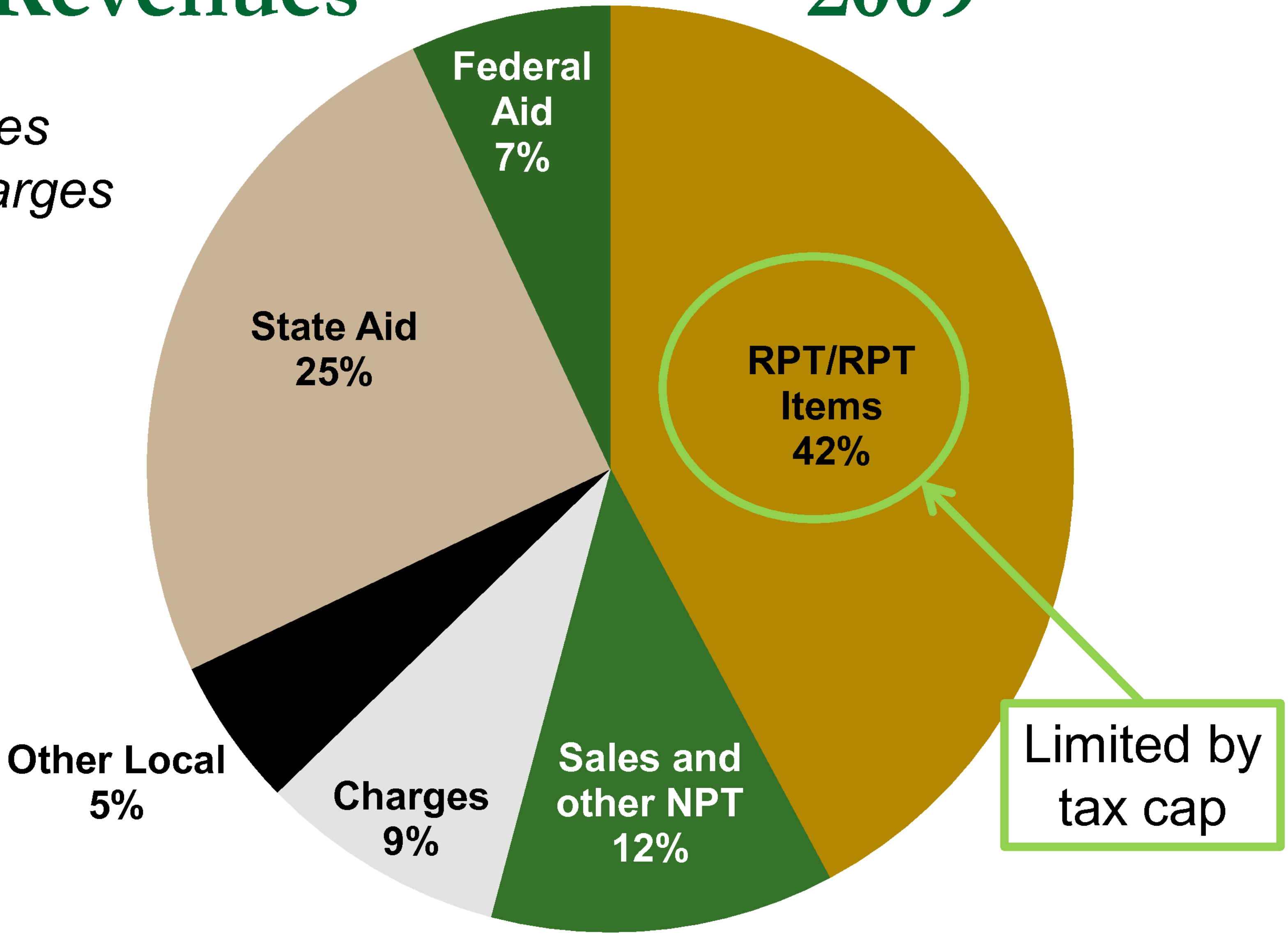
The Tax Cap

Chapter 97 of the Laws of 2011

- Enacted June 24, 2011
  - Program bill originated with Governor
  - Bill amended and passed as part of omnibus bill
- Establishes a Tax Levy Limit on all local governments and most school districts (excl. NYC)
- Starts with fiscal years beginning in 2012.
- Expires June 15, 2016 unless rent control extended

LG Revenues 2009

*User fees and charges are **not** limited.*



Summary

- Tax cap limits **total levy** set by local governments, **not** assessed value or tax rate.
- Local governments may not adopt a budget that requires a tax levy that exceeds the prior year's levy by more than 2 percent, or the rate of inflation, whichever is less, unless the governing board first adopts a local law (or resolution) to override the tax levy limitation.

Which Local Governments are Covered by the Cap?

- Counties, Cities (except NYC), Towns, Villages, Fire Districts and School Districts (except Big 5)
- Covers all special districts, such as:
  - Town or county water, sewage, drainage, refuse districts
  - Library districts
  - Special districts with separately elected boards of commissioners

Nuances – Rate of Inflation

- Law defines the "inflation factor" as: change in "the average of the national consumer price indexes determined by the United States department of labor for the twelve-month period ending six months prior to the start of the coming fiscal year"
  - CPI-U (all urban consumers)
  - OSC will calculate for LGs as BLS releases numbers
- The inflation factor is never a reduction, even if there is deflation.

Override

- The law allows local governments and school districts to override the annual levy cap.
- An override is good for that fiscal year only; cannot "opt out" of the tax cap permanently.

Override – Local Governments Other Than School Districts

- Must first enact a local law or resolution to override before adopting a budget that requires a tax levy above the limit
  - Counties, cities, towns and villages: local law
  - Special districts and fire districts: resolution
- Governing board must approve by at least 60% of voting power (i.e., 3 out of 5)
- Override requires weighted vote where applicable

Override – School Districts

- School districts must put the override to their budget voters
- Requires budget to pass by 60%
- Budget that does not exceed cap must pass with simple majority (>50%)
- If no budget approved, contingency budget may not include a levy higher than prior year's levy

Treatment of Special Districts and Fire Districts

- Fire districts have their own levy limit and are **not** part of their municipality’s cap

- Some special districts have their own levy cap, some are included in the town, county, city or village’s cap.

Special Districts: When Are They Part of the Municipal Limit?

- Capped separately:
  - Independently elected or separate independent appointed board
  - Has authority to levy a property tax or to require a municipality to levy a tax on their behalf
  - Independent commissioner-run districts, some library districts.
- Included in the municipality's levy cap calculation:
  - Special districts for which the tax levy is determined by the municipal governing board (e.g., town special districts governed by the town board)
  - Most water, sewer or lighting districts, fire protection districts

Adjustments to the Levy Limit

- Tax base growth factor: adjusts for “brick and mortar” development that increases a municipality’s full taxable property
  - Determined by Tax and Finance
  - Based on already-defined quantity change factor
  - Never a reduction
- Costs and/or savings from the transfer of function(s) from one local government to another (determined by OSC)
  - More on that later

Carryover

- "Available Carryover"
  - If a local government levies less than the levy limit, up to 1.5 percent of that year's tax levy limit may be added to the levy limit for the next fiscal year.

- There is no "available carryover" in the first fiscal year under the tax cap.

Reserve

- If actual levy exceeds the levy limit, the excess must be placed in a reserve.
- Excess amount, plus any interest, must be used to offset levy in next fiscal year.

Exclusions

- The law allows local governments to exclude levy necessary to support the following:
  - Pension contributions due to increases in the statewide contribution rate over 2 percentage points
  - Expenditures resulting from court orders or judgments arising out of *tort* actions that exceed 5% of the total tax levied in the prior fiscal year
  - The local portion of capital expenditures *(**school districts only**)*

Exclusions – Tort Actions

- Only for amounts **greater than 5%** of total tax levied in prior year; not for entire amount

- Costs arising out of non-tort actions (including tax certiorari) are not excluded from the levy cap

Exclusions – Pension Contributions

- Excludes tax levy necessary for pension contribution expenditures caused by growth in each retirement system's statewide average contribution rate in excess of 2 percentage points
- Contribution rate=
  - "System average actuarial contribution rate" for ERS and PFRS
  - "Normal contribution rate" for TRS

Pension Exclusion: What It's Not

- Not based on your specific contribution rate but rather the published statewide average actuarial contribution rate (ERS/PFRS) or the normal contribution rate (TRS)

- Not based on the actual growth in your pension contribution from one year to the next

4 Step Pension Calculation: ERS

Step 1

18.9% (SFY 12-13) Sys. average – 16.3% (SFY 11-12) Sys. average = 2.6 Percentage **points** difference

Step 2

2.6 % point diff. – 2.0 Local responsibility not excludable = 0.6 % Excludable portion

4 Step Pension Calculation (cont.)

Step 3

0.6% Excludable portion X Salary Base = Excludable amount

Step 4

Add excludable amount to the base levy limit.

(Note: Exclusions increase the amount of taxes you are allowed to levy)

System Average Actuarial/Normal Contribution Rates for 2012

- Comptroller announced August 24, 2011
- TRS determined official rates July 2011

Retirement System	2011 Bill	2012 Bill	Difference	Excludable Portion
ERS (Dec)	16.3%	18.9%	2.6%	0.6%
PFRS (Dec)	21.6%	25.8%	4.2%	2.2%
TRS (Fall)	8.62%	11.11%	2.49%	0.49%

Pension Example – Town A

- **Assumptions**:
  - Fiscal Year Ending 12/31/2012
  - Pre-pays ERS bill in December
  - Statewide system average actuarial contribution rate for ERS is
    - 16.3% of Dec 2011 bill salary base (SFY 2011-12)
    - 18.9% of Dec 2012 bill salary base (SFY 2012-13)
  - Salary base of Town A is $100,000 for both 2011-12 and 2012-13 (no change)
  - Levy limit of Town A before pension exclusion = $200,000

Pension Example – Town A (cont.)

- Multiply .6% excludable by 2012-13 salary base:
  ($100,000 x 0.6%) = **$600 is excludable**

- Add exclusion to levy limit before pension exclusion:

	$200,000	= 2012 levy limit before exclusion
+	600	= 2012 pension exclusion
	$200,600	= 2012 levy limit after exclusion is factored in

Pension Example – Town A (cont.)

- Although the ERS system average rate increased 2.6 percentage points, the Town of A's actual ERS pension costs increased by 16% ($2,600)

From $16,300 to $18,900

*Remember, only $600 is excludable

Not Excluded – Mandates

- Chapter 97 of the Laws of 2011 did address some mandate issues.
- The cost of mandates, however, are NOT excluded from the tax cap, except for the pension and tort exclusions, mentioned above:
  - Health care costs
  - Environmental mandates
  - Local portion of State health/social service programs

Basic Calculation for 2012 (2012-2013)

- Determine the total amount of taxes levied for 2011 (2011-12 for LGs on a non-calendar FY);
- Multiply the result by the tax base growth factor, if any (from Tax and Finance);
- Add any payments in lieu of taxes (PILOTs) that were receivable in 2011 (2011-12);
- Multiply the result by the allowable levy growth factor;
- Subtract any PILOTs receivable in 2012 (2012-2013);
- Add or subtract any adjustments for costs/savings due to transfer of function (from OSC); and
- Add any retirement or tort exclusion amounts

Formula Presentation

Base Formula

[(Prior fiscal year tax levy X Tax base growth factor*) + PILOTs receivable in the prior fiscal year] X Allowable levy growth factor (1.00 to 1.02)** - PILOTs receivable in coming fiscal year = **Tax Levy Limit**

+ Transfer of Function

Tax Levy Limit + Net of Transfer of Government Function (as determined by OSC) = **Tax Levy Limit, Adjusted for Transfer of Function**

+ Exclusions

Tax Levy Limit, Adjusted for Transfer of Function + Tax levy necessary for expenditures from court orders/judgments arising from tort actions for any amount in excess of 5% of the total taxes levied in the prior fiscal year **AND** Levy necessary to pay for additional pension cost due to increases in the average actuarial/normal contribution rate of pension funds over 2 percentage points **AND** *School districts ONLY*: capital tax levy = **Tax Levy Limit, Adjusted for Transfers, Plus Exclusions**

The Comptroller's Role – Reporting

- Local governments and school districts must submit info necessary to calculate tax cap.
  - LGs – before adopting budget
  - Schools – March 1st (also to SED, Tax & Finance)
- OSC has developed an on-line form
- OSC will NOT certify
- OSC will NOT correct inaccurate data

Report Form

- Form will:
  - Have proper inflation factor
  - Perform calculations
  - Confirm receipt
  - Allow you to save/print your work
- We will send you the link and your PIN.
- Links to resources that you will need for your calculation are available on our web site (www.osc.state.ny.us/localgov/realprop/index.htm)

Report Form – Data Elements Page

Tax Levy Limit Elements	Amount
Total real property tax levy for fiscal year ending (FYE) 2011	1,000,000
Tax base growth factor	1.0310
PILOTS receivable in FYE 2011	30,000
PILOTS receivable in FYE 2012	30,000
Tax levy necessary for expenditures resulting from court orders or judgments arising out of tort actions FYE 2012	60,000
Tax levy necessary for pension contribution expenditures caused by growth in the system average actuarial or normal contribution rate in excess of 2 percentage points:	
State and local employees' retirement system (ERS)	3,000
Police and fire retirement system (PFRS)	2,000
Teachers' retirement system (TRS)	-
Transfer of local government function(s) (as determined by OSC):	
Costs	1,000
Savings	3,000

Report Form – Calculation Page

Tax Levy Limit (Cap) Before Adjustments and Exclusions				
		Tax levy FYE 2011	1,000,000	
	x	Tax base growth factor	1.0310	
	+	PILOTS receivable FYE 2011	30,000	
	x	Allowable levy growth factor	1.02	
	-	PILOTS receivable FYE 2012	30,000	
	Total Levy Limit Before Adjustments/Exclusions			**1,052,220**
Adjustments for Transfer of Local Government Functions				
	+	Costs incurred from transfer of local government functions	1,000	
	-	Savings realized from transfer of local government functions	3,000	
	Total Adjustments			**(2,000)**
Tax Levy Limit, Adjusted for Transfer of Local Government Functions				**1,050,220**
Exclusions				
		Tax levy necessary for expenditures arising out of tort orders/judgments over 5% FYE 2011 tax levy	10,000	
	+	Tax levy necessary for pension contribution expenditures caused by growth in the system average actuarial or normal contribution rate in excess of 2 percentage points:		
		ERS	3,000	
		PFRS	2,000	
		TRS	-	
	Total Exclusions			**15,000**
Tax Levy Limit, Adjusted for Transfers, Plus Exclusions				**1,065,220**

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Data – Timing

- Most of the data necessary to fill out the form will be available in August or early September each year, at the latest, including:
  - Tax Base Growth Factor (Tax and Finance released town/city/county rates in early September 2011)
  - System Average Actuarial Contribution Rates for ERS/PFRS (released August 24, 2011)
  - Normal Contribution Rate for TRS (final released August 2011; estimate available from February 2011)
  - Projected Salary Base for ERS and PFRS (available from OSC retirement system over secure server; LGs sent logon information early September 2011)

Data – Timing of Other Elements

LG Fiscal or School Year Ending	Allowable Levy Growth Factor	Submission Date (approximate)*
01/01/12 – 12/31/12	July 2011	Sept 2011
03/01/12 – 02/28/13	Sept 2011	Nov 2011
04/01/12 – 03/31/13	Oct 2011	Dec 2011
06/01/12 – 05/31/13	Dec 2011	Feb 2012
07/01/12 – 06/30/13	Jan 2012	Mar 2012
08/01/12 – 07/31/13	Feb 2012	Apr 2012

** School districts must submit report by March 1, 2012.*

The Comptroller's Role – Reserve

- If local government enacts a levy in excess of the tax cap, the excess must be placed in a reserve.
  - Clerical or technical error
  - Post-audit
- Please see our FAQs for additional guidance.

The Comptroller's Role – Post Audit Authority

- OSC has the authority to audit local governments and school districts for compliance with the tax cap.
- This is not the same as checking every report:
  - After the fact (sometimes years)
  - Not all entities every year; only those audited
- Local government over-levy discovered on audit must be placed in reserve.

The Comptroller's Role – Adjustments to Levy Limit

- If government functions are transferred between local governments:
  - OSC determines costs and savings
  - Local governments adjust the tax cap accordingly
- Notify OSC if you may need such an adjustment

The Comptroller's Role – New Tax Cap in Special Situations

- If local governments consolidate, then OSC determines the tax cap for the consolidated government.
- If a local government dissolves, then OSC determines the tax cap for the local government that assumes the obligations of the dissolved local government.

Special Situations (Exceptions)

- No tax cap applies in the first year after a local government is newly established through a process other than consolidation or dissolution.
- State Ed, *not* OSC, is responsible for computing a tax cap when school districts reorganize.

Multiyear Financial Planning

- OSC has created tools to help local governments and school districts develop multiyear financial plans
- The Package is on OSC's web site and includes:
  - Self Assessment Quiz
  - Online Tutorial
  - Sample Templates
- Hands-On Training is also available
- Visit www.osc.state.ny.us/localgov/myfp/index.htm

Resources and Contact Information

- OSC Property Tax Website:
  www.osc.state.ny.us/localgov/realprop/index.htm

- OSC Property Tax Hotline:
  (518) 473-0006
  Email: LGSAMonitoring@osc.state.ny.us

- Retirement System (Salary Projection Data)
  Email: RTEmpSer@osc.state.ny.us

- Department of Taxation and Finance
  www.tax.ny.gov/research/property/cap.htm

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Thank You

Division of Local Government and School Accountability

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