

Constitutional Tax Limit Instructions for Cities

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Understanding Tax Limits

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 cities, as well as counties 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.

In the current fiscal environment, tax limits are taking on an increasing importance on the ability of local governments to use real property taxes to balance their budgets. Growing municipal budgets and shrinking non-property tax revenue streams generate pressure to increase property taxes, thus exhausting a greater percentage of the 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 city 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 amounts excluded from the tax limit will impact the calculation of the taxing capacity of the city. Thus, a city can approach or exceed its tax limit even with no change in real property tax levies from year-to-year. As of fiscal year ending 2011, two cities had exhausted more than 90% and three cities had exceeded more than 80%.

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 as well as reporting instructions. We hope you find it useful in understanding the issues and 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.

Frequently, the tax levy is expressed as a percentage of the tax limit. For example, if a city with a \$1,000,000 tax limit levied taxes of \$800,000 (net of exclusions), the city 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 city 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. In general, the last completed assessment roll is the most current final assessment roll for which a final State equalization rate has been established. The full valuation for each of these assessments should be added together and divided by five to establish the five year average full valuation.

Five year averages for Big Five cities of New York, Buffalo, Rochester, Syracuse and Yonkers, and only these cities, are calculated using special equalization ratios, which are established to calculate a tax limit for a specific fiscal year only.

Full Valuation: The full valuation of the taxable real property on each of the assessment rolls used in the calculation of the average full valuation is computed by dividing the total taxable assessed valuation of the real property on the roll by the final State equalization rate (or special equalization ratio) established for that assessment roll.

Equalization Rate: State equalization rates, and special equalization ratios for the Big Five, are established by the New York State Office of Real Property Services (ORPS). An equalization rate is a measure of the percentage of full valuation at which taxable real property is assessed on an assessment roll. ORPS establishes a separate State equalization rate or special equalization ratio for each year's assessment roll. The process of establishing State equalization rates involves the determination of tentative

and final equalization rates. Only final State equalization rates and ratios may be used in tax limit calculations.

Tax Limit Percent

The State Constitution limits the taxing power of cities to 2 percent of the five-year average full valuation. For New York City, a tax limit of 2 ½ percent applies. A city may also enact a local law, subject to a mandatory referendum, to establish a lower tax limit (e.g., 1½ 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 City Purposes

The tax levy for purposes of determining a city’s taxing capacity is the total amount of real property taxes levied for all funds in the city’s annual budget.

The Big Five cities have school districts that are fiscally dependent on their respective city, and education in these cities must be funded within the constitutional tax limit of the big cities.

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 §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

As a city 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. Since tax limits are computed based on the full valuation of real property, cities that are experiencing stagnation or a decline in property values are generally at a higher risk of approaching or exceeding their tax limit. Also, changes in exclusions from the tax limit will impact the calculation of the taxing capacity. Thus, a city can approach or exceed its tax limit, even with no change in property tax levies from year to year.

There is no absolute standard or target for a tax levy as a percent of the constitutional limit; however, based on our experience, cities 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 89 percent of the city tax limit. For cities 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 city 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 (2% of 5-year average)	<u>\$ 34,418,559</u>
Tax Levy – General City Purposes	\$ 32,638,993
less Total Exclusions	<u>1,998,099</u>
Tax Levy Subject to Tax Limit	<u>\$ 30,640,894</u>
Percentage of Tax Limit Exhausted	89.0%
Constitutional Tax Margin (\$34,418,559 - \$30,640,894)	<u>\$ 3,777,665</u>

**Instructions for Completing
City Constitutional Tax Limit Form**

GENERAL INSTRUCTIONS

- Please do not put information in shaded areas of the report form. These areas, including EDP codes, are for OSC use only.
- The prior year Constitutional tax limit data for your city is included in your form on page 1. This is the information that is currently on our database. Please refer to this data before completing your current form. We may have made adjustments to the data that you originally submitted.
- Please note that the chief fiscal officer must file with this office a certified copy of the 2012 budget within 30 days of its adoption. The certification should be attached to the budget. The following statement is an example of a budget certification:

I certify that this is a true copy of the budget of the City of _____ for the fiscal year ending December 31, 2012 as it was adopted by the City on _____.

I also certify that the date of the most recent assessment roll is and the taxable assessed valuation on which taxes are levied for the fiscal year ending December 31, 2012 is \$.

Signed _____

Title _____

Whether you choose the paper or electronic format, you are required to file the Constitutional Tax Limit Form with the State Comptroller **10 or more days before budget adoption.**

Electronic forms may be accessed by clicking on the following link:
<https://nysosc11.osc.state.ny.us/product/efsdex.nsf>

If you choose to file a paper form, please return the completed form to our office at:

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

If you require additional forms or assistance in completing these forms, please contact Deb DePuccio at (518) 486-3143 or email: ddepuccio@osc.state.ny.us

Instructions for Filing an Electronic Budget

- To file an electronic budget, a city must include a signed certification that contains the city's name, the file name of the electronic budget that is attached to the email, and the fiscal year end. After the certification is signed, it can be scanned and sent as an attachment to the email. The budget may be in a PDF, Microsoft Word, or Microsoft Excel file. A sample of a certification is provided below:

Example:

I certify that the document transmitted to the Office of the State Comptroller as an attachment to the email [specify file name as shown on e-mail] is a true and correct copy of the budget of the City of _____ for the fiscal year ending December 31, 2012 as it was adopted by the City on _____.

I also certify that the date of the most recent assessment roll is and the taxable assessed valuation on which taxes are levied for the fiscal year ending December 31, 2012 is \$.

Signed _____

Title _____

Please note that the chief fiscal officer must file with this office, a certified copy of the 2012 budget within 30 days of its adoption.

Electronic budgets may be filed by using the following link:
<https://nysosc11.osc.state.ny.us/product/efsdex.nsf>

Instructions for Completing
City Constitutional Tax Limit Form

DETAILED INSTRUCTIONS

General Information

Contact Information: Please provide the name, title, phone number and e-mail address (if available) for the chief fiscal officer. For forms filed electronically, the email used to submit the form will serve as the signature.

Date of Most Recent Assessment Roll: This is the date that the most current final assessment roll was completed, signed and verified, after hearing of grievances. This assessment roll may or may not be the last completed assessment roll used in the tax limit calculation.

Tax Limit Calculation (Page 1)

The five-year average full valuation is the cornerstone for determining the Constitutional taxing power of a local government. Information regarding assessed values and State equalization rates and ratios is needed to calculate the five-year average full valuation. This section also includes data relating to exclusions that are summarized on page 2 of the form.

Assessment Roll Date: For the last completed assessment roll, indicate the date the assessment roll was completed. The last completed assessment roll is determined as of the date on which the city budget is adopted. It is the most current final assessment roll (i.e., an assessment roll that has been signed and verified, after hearing of grievances) for which: (1) a final State equalization rate or ratio has been established; and (2) if applicable, railroad ceilings or estimated railroad ceilings have been established according to Real Property Tax Law. State equalization rates and railroad ceilings are established by the State Board of Real Property Services (ORPS). Information on State equalization rates and railroad ceilings is available from ORPS as described below under the heading “State Equalization.”

Tax Levy Year: Tax levy year refers to the fiscal year for which taxes either are to be levied, or have already been levied, on the assessment roll. Tax levy year does not refer to the assessment roll date, that is, the year in which the assessment roll was completed.

Taxable Assessed Valuation: For the most recent assessment roll used in the tax limit calculation, enter the total taxable assessed valuation of the taxable real property assessed on the roll. The four previous years’ data is already included on your form. This information was obtained from our database. Please refer to this data before completing your current form. We may have made adjustments to the data that you originally submitted. Total taxable assessed valuation is the aggregate assessed value subject to taxation as shown on the assessment roll. Taxable assessed valuation includes special franchise assessments, but excludes properties that receive pension and aged exemptions.

State Equalization: For each of the assessment rolls used in the tax limit calculation, enter the final State equalization rate established for that assessment roll (Big Five cities enter the applicable special equalization ratios). For the last completed assessment roll also enter the date on which the final equalization rate or special equalization ratio for that roll was established. State equalization

rates and special equalization ratios are established by ORPS. ORPS establishes a separate equalization rate or ratio for each year's assessment roll. Information on equalization rates can also be found on the ORPS website at <http://www.orps.state.ny.us>. Any questions regarding equalization rates or special equalization ratios should be directed to ORPS at (518) 474-5665.

Many of the categories below require calculations. For those cities using the electronic forms, the amounts are calculated automatically.

Full Valuation of Taxable Real Property: The full valuation of the taxable real property on each of the assessment rolls used in the calculation of the average full valuation is computed by dividing the total taxable assessed valuation of the real property on the roll by the final State equalization rate (or special equalization ratio) established for that assessment roll. It is important to remember that an equalization rate can be applied *only* to the assessment role for which it has been established.

Five-Year Total Full Valuation: Enter on line 5P10TFV, the sum of the full valuations for each of the appropriate five assessment rolls years.

Five-Year Average Full Valuation: Divide the five-year total full valuation by five and enter the result on line 5P11AFV.

Constitutional Tax Limit: Multiply the five-year average full valuation by two percent (.02). This is the maximum amount of property taxes subject to the limit that may be raised during the fiscal year. Enter the amount on line 5P12CTL.

Tax Levy – General City Purposes: Enter on line 5P150 (5P150C for Big Five cities) the total tax levy for general city purposes. This includes levies for all funds in the city's annual budget.

Tax Levy – School Purposes (Big Five cities only): Enter on 5P150S the total tax levy for school purposes.

Total Tax Levy (Big Five cities only): Add Tax Levy – General City Purposes and Tax Levy – School Purposes and enter the result on line 5P150.

Total Exclusions: Enter on line 5P13EXC the Total Exclusions from the Exclusions section of the form (page 2) – see instructions below.

Tax Levy Subject to Tax Limit: Subtract the Total Exclusions amount from the Total Tax Levy amount and enter the result on line 5P14CHG.

Percentage of Tax Limit Exhausted: Divide the Tax Levy Subject to Tax Limit by the Constitutional Tax Limit, and enter the result on line 5P15EXH.

Constitutional Tax Margin: Subtract the Tax Levy Subject to Tax Limit amount from the Constitutional Tax Limit, and enter the result on line 5P16MRG. This amount is the unused taxing power of the city.

Tax Rate – General City Purposes: Enter the tax rate per \$1,000 assessed valuation for city purposes on line 5P3AVTR.

Tax Rate – School Purposes (Big Five cities only): Enter the tax rate per \$1,000 assessed valuation for school purposes on line 5P3AVTS.

Exclusions from the City Constitutional Tax Limit

Exclusions are taxes in the amount of budgetary appropriations that are not subject to the tax limit.

Debt Service: The State Constitution provides that taxes raised for certain debt service are not subject to the tax limit. Generally, this includes debt service for most types of general-purpose serial bonds, bond anticipation notes and capital notes. The exceptions to the rule -- that is, amounts for debt service that are *not* excluded from a city's tax limit, generally include:

- bond 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
- 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.

School Bonds and Notes (Big Five cities only): Debt service on most types of bonds, bond anticipation notes and capital notes issued by a Big Five city for school purposes may be excluded from the tax limit. These amounts are to be entered on lines 5P235 and 5P238 of the Exclusions page.

Water Bonds and Notes: Enter on lines 5P170 and 5P180 the 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. 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).

Revenue Producing Improvement Bonds and Notes: Enter on lines 5P190 and 5P200, the amounts required to pay principal and interest on bonds and notes for revenue-producing public improvements or services (i.e., electric utilities, sewer systems, parking facilities, etc.). Enter on line 5P210 the total amount of revenue from such public improvements available for payment of principal and interest from Schedule A.

Please note that Schedules A, B and C (see below) must be completed before the corresponding amounts will appear (by formula) on lines 5P210, 5P293 and 5P337 of the Exclusions section (page 2).

To complete Schedule A, in the Nature of Improvement column, list each type of revenue-producing public improvement or service owned or operated by the city. For each type of public improvement or service, under Total Estimated Revenue enter the total estimated revenue expected to be derived from sources other than taxes, assessments and subsidies by the city. Such revenues typically include fees, rates or other charges for use of the improvement or service. In the column Less Amount Appropriated for Operation, Maintenance & Repair, enter the total amount appropriated for

operation, maintenance and repairs for each type of public improvement or service. In the column Amount Available for Payment of Principal and Interest, enter the difference between the total estimated revenue and the amount required for operation, maintenance and repairs. Enter the sum of these amounts at the bottom of the column and also on the Exclusion schedule (page 2) line 5P210. If you file electronically, calculations will be performed automatically and transferred to line 5P210 of the Exclusions schedule on page 2.

To determine the amount to be entered on line 5P220, add together the principal and interest entered on line 5P190 and 5P200, and subtract from that amount the total amount of revenue available for the payment of the debt service entered on line 5P210 from Schedule A; if the difference is less than zero, enter zero. If you file electronically, this amount will automatically be calculated.

Other Bonds, Capital Notes and Bond Anticipation Notes: Enter on lines 5P230 through 5P280 the amounts required to pay principal and interest on bonds, bond anticipation notes and capital notes issued for purposes other than water supply improvements, joint sewage projects or joint drainage projects. Include on lines 5P270 and 5P280, respectively, 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 bond anticipation notes entered on lines 5P170, 5P180, 5P190 or 5P200. 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.

Contributions to Sinking Funds (Big Five cities only): Enter contributions to sinking funds on line 5P285.

Total Exclusions for Debt Service: Enter on line 5P290, the sum of the amounts on lines 5P170, 5P180, 5P220 and 5P230 through 5P280. For Big Five cities, also include lines 5P235, 5P238, and 5P285 in the previous calculation. For Cities filing electronically, this amount will be calculated automatically.

Contributions from Sinking Funds (Big Five cities only): Report revenue contributions from sinking funds on line 5P291.

Debt Service on Pension Fund Bonds (Big Five cities only): On line 5P292, enter debt service on serial bonds issued to place the city's own pension fund on an actuarial reserve basis only if this amount has also been included on lines 5P230 and 5P240. This amount should be entered in both places.

Other Revenues Designated by Law for Debt Service: For line 5P293, report non-property tax revenues designated by law or by contractual obligation to apply against debt service, and revenues other than real property taxes to be applied to the payment of any assessment debt shown on lines 5P230 and 5P240. Funds applied to debt service solely at the option of the municipality should not be shown. Using Schedule B (page 3), calculate the total and describe the authority, statute or charter provisions requiring that these revenues be applied to such debt service. Revenues applicable to bonds for which an exclusion from the debt limit has been granted by the State Comptroller pursuant to §123.00 or §124.10 of the Local Finance Law should be shown here only if the debt service for such bonds has been included in the amounts entered on lines 5P230 and 5P240. Again, for Cities filing electronically, this amount will automatically appear (by formula) on the exclusion page line 5P293 when Schedule B has been completed.

5P300 will automatically appear as the sum of lines 5P291, 5P292 and 5P293.

Net Exclusions for Debt Service: Subtract line 5P300 from line 5P290 and enter the difference on line 5P310. For Cities filing electronically, this amount will be calculated automatically.

Other Exclusions:

Down Payment 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 (Local Finance Law §107.00). If this share is provided by the tax levy, the amount of money raised for this purpose may be excluded from the tax limit. Enter this amount on line 5P320 of the exclusion page.

Object or Purpose with a Period of Probable Usefulness: Whenever a city (other than New York City) 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 shall be excluded from the tax limit. Local Finance Law §11.00 provides specific periods of probable usefulness for numerous objects and purposes. Use Schedule C (page 3) to identify the purpose for which the appropriation is made and the authority for the exclusion. For electronic filers, the amount from Schedule C will automatically appear on the exclusion page on line 5P330 (line 5P337 for Big Five cities) when Schedule C has been completed.

Other: Please specify other exclusions and amount on line 5P340.

Failure to supply sufficient documentation of 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.

**OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT SERVICES
AND ECONOMIC DEVELOPMENT**

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