UNDERSTANDING THE PROPERTY TAX CAP

While the tax cap legislation also applies to school districts, many of the provisions are different for schools. The information contained in this memo pertains strictly to towns, counties, cities, villages and special districts.

On June 24, 2011, the New York State Legislature passed the "Real Property Tax Levy Limit" as Chapter 97 of the Laws of 2011, adding a new section 3-C to the General Municipal Law. The "Tax Cap" establishes a tax levy limit on all local governments and most school districts excluding New York City, and begins with tax levies adopted for fiscal years beginning on or after January 1, 2012.

In Jefferson County, that means that the budgets adopted by the County, all Towns, both Cities, all Fire Districts and Special Districts (water, sewer, drainage, etc) for fiscal years beginning January 1, 2012 to December 31, 2012 are subject to the provisions of the Tax Cap legislation.

The Tax Cap places a limit on the tax LEVY. When budgets are developed, the amount of money it costs to provide services is determined. Next the amount of revenues expected to be collected is estimated. Revenues may include fees, state and federal aid, and sales tax revenues. The tax levy is determined simply by subtracting the estimated revenues from the costs. Whatever is left over is the amount to be raised by tax LEVY. The Tax Cap does NOT apply to tax rates, assessments or individual tax bills.

The Tax Cap legislation provides a formula to calculate the tax levy limit, and the State Comptroller and the Commissioner of Taxation and Finance have roles in the interpretation of the tax cap legislation, as well as determining certain pieces of information to be used in the formula. In addition, the State Comptroller has audit and enforcement authority.

The Tax Cap can be overridden by the County, Towns, Cities and Villages by passing a local law. The county, and many of the towns in Jefferson County have passed such a local law even though their tax levies do not exceed the legislated limit. You may have read in the newspaper that such an action is being taken to protect the local governments and their taxpayers from penalties that may result from future interpretations that are inconsistent with interpretations that have currently been provided.

The Tax Cap formula, (as interpreted by the State Comptroller, and different than the letter of the law) is outlined below, along with a short definition and an explanation of issues that concern local governments and have prompted the Tax Cap Override local laws.

STEP 1: DETERMINE THE TOTAL AMOUNT OF TAXES LEVIED FOR THE YEAR

The Tax Cap defines "local government" as a county, city, town, village, fire district or special district. One could interpret the definition to mean that each local government's tax levy limit would be calculated individually, i.e. the water district tax levy would be calculated separately from the town's tax levy. However, the State Comptroller has determined that only a special district that has its own independently elected or separate independent appointed board would be capped separately. In Jefferson County, this means that only a few fire districts will have a tax levy capped separately from the town. All fire protection district levies, water district levies, sewer district levies, drainage district levies, etc, will be lumped together with the town's levy for purposes of calculating the tax levy limit.

STEP 2: MULTIPLY THE RESULT BY THE TAX BASE GROWTH FACTOR, IF ANY

The tax base growth factor is an indicator of how much a local government's tax base (value of taxable properties located within its boundaries) has physically grown. This calculation does not include increases in value due to market changes, but rather new construction; value added that did not physically exist or was tax exempt in the prior year. The Department of Taxation & Finance determines a similar number each year as part of the Equalization Rate process. However, the uses for these factors are very different, and certain factors excluded for the Equalization Rate process are not appropriate for exclusion in the Tax Cap calculation process, and vice versa. For example, the value of utility property located in the public right of way (known as special franchise property) is excluded from the equalization rate process, but arguably should be included (if new utility property is installed) in the Tax Cap calculation. The Commissioner has determined that new special franchise property will be excluded from the tax cap calculation, but properties that change taxable status (were formerly taxable and become wholly exempt, or vice versa) and are or were subject to payments in lieu of taxes, will not be included in the calculation of the tax base growth factor. Interestingly, that information is not currently reported to the Department of Taxation & Finance. Additionally, the factor is calculated based on the comparison of assessment information between the prior year assessment roll and the assessment roll two years prior. For example, the factors calculated for the 2012 tax cap will compare the 2009 assessment roll to the 2010 assessment roll.

STEP 3: ADD ANY PAYMENTS IN LIEU OF TAXES THAT WERE RECEIVABLE IN THAT YEAR

Payments in Lieu of Taxes, or PILOTs, are allowed by the provisions of several sections of law. In Ontario County, most of the PILOTs are negotiated through the Industrial Development Agency. A few are negotiated by the local government with low-income housing projects. For purposes of the tax cap formula, the amount actually billed is used, regardless of whether the PILOTs have been paid.

STEP 4: MULTIPLY THE RESULT BY THE ALLOWABLE LEVY GROWTH FACTOR

The allowable levy growth factor is defined in the legislation as the lesser of either: 1 plus 2% (a two percent increase) or 1 plus the inflation factor (an increase of something less than 2%). The inflation factor is then defined as the quotient of the average national consumer price indexes determined by the US Department of Labor for the twelve month period ending six months prior to the start of the upcoming fiscal year minus the average of the CPI determined by the US Department of Labor for the twelve-month period ending six months prior to the start of the prior fiscal year, divided by the average CPI for the twelve month period ending six months prior to the start of the current fiscal year. The inflation factor will never be a negative number, even if there is deflation. In short, this year the levy growth factor is 2%. However, there are many Consumer Price Indexes determined by the US Department of Labor, which one should be used? The State Comptroller has determined that the CPI-U (all urban consumers: US city average) is the appropriate index to use for the entire state.

STEP 5: SUBTRACT ANY PAYMENTS IN LIEU OF TAXES RECEIVABLE IN THE FOLLOWING YEAR

PILOT agreements often include complex formulas to calculate payments, which may be difficult to estimate. In addition, the tax cap calculation must be filed with the Comptroller prior to adoption of the budget, which means prior to the calculation of the tax rate. This will truly be an estimate, and interestingly, the Comptrollers reporting form clearly states "No Adjustment Allowed".

STEP 6: ADD OR SUBTRACT ANY ADJUSTMENTS FOR COSTS/SAVINGS DUE TO TRANSFER OF FUNCTION

When two or more governments consolidate, the State Comptroller will determine the tax levy limit for the first year after the consolidation. If a local government dissolves, the State Comptroller will determine the tax levy limit for the local government that assumes the debts, liabilities and obligations of the dissolved government. There are no consolidations in Jefferson County this year.

STEP 7: ADD ANY RETIREMENT OR TORT EXCLUSION AMOUNTS

There are exclusions in the tax cap formula meant to allow local governments to collect taxes for some rising costs beyond their control. Although there are many rising costs beyond the local governments' control (including many state mandates), only two are excluded from the tax levy limit. Tort actions are personal injury lawsuits (doesn't necessarily have to include bodily harm). If a local government has expenditures resulting from court orders or judgments arising from a tort action, any amount that exceeds 5% of the total prior year's tax levy, can be excluded from the tax levy limit. No other legal costs can be excluded. Likewise, pension contributions due to increases in the statewide contribution rate over two percentage points are excluded. The pension exclusion is not based on the actual growth in the local government's pension contribution from one year to the next, but rather the change in the state wide average payroll percentage in excess of two percentage points.

STEP 8: ADD THE AVAILABLE CARRYOVER, IF ANY

If a local government levies less than the levy limit, up to 1.5% 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 year of the tax cap.

ENFORCEMENT AND PENALTIES:

The tax cap legislation provides that, in the event a local government's actual tax levy for a given fiscal year exceeds the tax levy limit due to clerical or technical errors, the local government shall place the excess amount of the levy in reserve, and shall use such funds and any interest earned thereon to offset the tax levy for the ensuing fiscal year. If, upon examination (audit), the State Comptroller finds that a local government levied taxes in excess of the applicable tax levy limit, the local government, as soon as practicable, shall place an amount equal to the excess amount of the levy, with interest, in such reserve.

If it takes the State Comptroller's Office several years to audit the tax levies of the state's local governments, and it is found that the tax levy limit was exceeded in the first year due to a clerical or technical error, the error will compound itself in each year. By the end of the fourth or fifth year, a small town may find itself borrowing money to cover the tax levy excess plus interest, to place in a reserve to reduce the next tax levy.

MORE INFORMATION:

The actual text of the Tax Cap legislation can be found on-line at http://public.leginfo.state.ny.us/menuf.cgi

click on Laws of New York

click on GMU – General Municipal Law

click on Article 2 - (3 - 24) GENERAL MUNICIPAL FINANCES

click on 3-C - Limit upon real property tax levies by local governments

Information regarding the tax cap can also be found at

http://www.tax.ny.gov/research/property/cap.htm

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