FACT SHEET

Enacted Local Tax Cap Bill

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On June 24, 2011, the Governor signed Chapter 97 of the Laws of 2011 which enacted a local tax cap on school districts and other municipal governments.

Description

Chapter 97 enacts a tax cap for both municipalities and school districts beginning in 2012. There is no tax cap imposed on New York City. The Big 4 City school districts do not levy a tax directly, and as such, would be covered by the municipal tax cap on their respective cities. Also, this legislation limits all taxes that "may be levied by or on behalf of any school district". This bill limits the overall levy on property taxes, and may limit utility taxes (which may be levied by small cities) and any sales tax revenues which are shared by counties with school districts. The intent of Chapter 97 is clearly to limit growth in property tax levies and may also cover utility tax and sales tax revenues depending on the interpretation of the statute.

Zero Percent Cap

Chapter 97 enacts a 0% tax cap similar to that of the Governor's original legislation. Therefore, without voter approval the school district may not increase the tax levy above the previous year's levy.
In order to increase the tax levy by the lesser of the Consumer Price Index (CPI) increase or 2%, then 50% of voters must approve. However, if the district wishes to raise the levy by greater than that amount, then 60%, of the voters must approve. If this tax cap were in effect for the 2011-12 school year, the tax limit would have been 1.6%.

Exemptions/Adjustment in the Cap Calculation

There are three exemptions from the tax cap and one adjustment that can be made to the cap.

First, tax levy associated with capital projects is fully exempt from the capped levy amount.

Second, tax levy associated with court orders or judgments that arise out of tort actions for any amount that exceeds 5% of the total levy. Since this exemption is limited to tort actions, it would not cover tax certiorari actions -- which are not torts.

Third, tax levy associated with increases in pension costs (in both ERS and TRS) only if the employer contribution rate increases by more than two percentage points. Once that threshold is met, then only the amount of tax levy associated with costs above the two percentage point increase is exempt from the cap. For example, the TRS employer rate for 2010-11 salaries is 8.62% of salaries. TRS has indicated that they expect the rate for 2011-12 salaries (which will be paid in the fall of 2012) to be 11.11%. This represents a 2.49 percentage point increase in the contribution rate, but only the levy associated with 0.49 of a percentage point will be exempt from the cap. Of course, an increase in the contribution rate described above is a 29% increase and almost all of it will be counted against the cap.

The tax levy is also adjusted for physical or quantity changes in property in the school district. This accounts for new construction that occurs in a school district. Chapter 97 adjusts the allowable tax levy by the percentage increase in full value attributable to physical changes – so called "new ratables" – in the district each year.

Carryover

School districts are authorized to carryover unused tax levy from the prior year. The maximum carryover is 1.5% of the previous year's maximum allowable levy. Since the carryover levy is counted as part of the allowable levy calculation, a district which uses carryover levy does not need 60% voter approval to increase their tax levy above the lesser of CPI or 2%.

Voter Approval

Voters will continue to vote on the school budget. This is a difference from the Governor's original bill which had voters vote directly on the tax levy only. The existing statutory timelines for budget votes, revotes, and budget development (property tax report card filings, budget hearings etc.) all stay in place as they are currently configured.

However, if the school board is presenting a budget which includes a tax levy that exceeds the allowable levy in the school district (the adjusted lesser of 2% or CPI), then the ballot must include language to notify voters that the proposed budget contains a tax levy which exceeds the allowable levy. This notice also must include the proposed tax levy increase as compared to the maximum allowable increase. 60% of voters must approve of the budget which contains a tax levy that exceeds the maximum allowable levy increase.

The current authority to have separate propositions is also continued, but any proposition which increases the tax levy beyond the maximum allowable tax levy must obtain 60% voter approval.

Contingency Budget

A district is required to go to a contingency budget if the school budget is defeated twice, or if the school board chooses to go directly to contingency after one budget defeat. However, this contingency budget is constructed differently than the current contingency structure. Under Chapter 97, the contingency budget does not place a limit on spending levels as is the current statutory construct. Instead, the new contingency budget statute provides that the tax levy may not exceed the prior year's levy, instead of limiting spending growth.

Therefore, under a contingency budget the district loses any adjustments made to the current year levy for pension increases, capital expenses, new ratables etc. As a result, a school district on contingency which has a 5% increase in new property ratables from the prior year must lower its tax rate so that it does not levy any additional dollars. Also, it appears that the school district permanently loses the benefit of the new ratable adjustments to the tax levy for any year that the district is on a contingency budget since the change in ratables is done annually for physical changes in property that occurred in the previous twelve months. If a district is on contingency for even one year then the physical growth in property would occur outside of the 12 month window used to calculate the value of new construction.

Municipal Cap

The municipal cap is constructed in a similar manner to the school district cap with some notable exceptions. There is no exemption from the cap for capital tax levy in the municipal cap. Also, a municipality may exceed the lesser of 2% or CPI by a 60% vote of its governing body. Any increase below that amount is approved by a simple majority of the governing board.

Effective Date

The tax cap would take effect for 2012-13 school and municipal budgets and remain in place at least until June 15, 2016. However, the tax cap would sunset after that point only if the provisions of State law that relate to rent regulation expire. Therefore assuming that rent regulation will not expire at some point in the future, the tax cap will remain in effect.

Analysis
Chapter 97 will limit the ability of school districts to provide a quality education and will impair the ability of districts to close the student achievement gap in New York.

In addition to the property tax cap, the 2011-12 State Budget limited future school aid growth to no greater than the growth in personal income in New York. For 2012-13 this means that school aid may not grow faster than 4%. In bad economic times the State Aid cap will force a freeze or a cut in school aid. The combination of this tax cap and the hard cap on State aid growth will have a detrimental effect on public schools in this State (particularly in high need, low wealth communities).

To get a sense of what these two caps will mean for a typical district, assume a 4% growth in State Aid for a district and the maximum 2% increase in tax levy without a 60% voter supermajority. This district will see its total revenue stream increase by about 2.5%. This increase in revenue would need to accommodate increased health and pension costs, the cost of increased enrollment and new charter school payments. Furthermore, this will be a best case scenario for most school districts. In many school districts their overall revenue growth will be less than 2% in typical years depending on how state aid is allocated by the Legislature.

This tax cap bill is a 0% cap not a 2% cap. School districts cannot increase the levy without voter approval.

Districts need 60% voter approval to increase the levy above inflation or 2%. This will negatively impact low wealth communities greater. In 2011, over 68% of the districts that failed to get a 60% budget approval rate are below average wealth communities.

In addition to the obvious negative impact that a tax cap would have on low wealth communities – it does not reflect the reality of how we finance our school districts. Under the bill, districts can't increase the levy to maintain spending levels when enrollment grows, and only has limited exemptions for court judgments and extraordinary increases in pension costs.

Schools with growing enrollment would be at a significant disadvantage under this bill since the school may not add tax levy to hire additional teachers, add bus routes, etc., as enrollment rises. While enrollment does not normally spike in one year, it is not uncommon for districts to add 1%-2% enrollment per year over a period of many years.

The contingency budget construct is particularly problematic. Since a district can't increase the levy above the prior year levy, a district on contingency loses the exemptions for capital tax levy etc., and the adjustments for new construction. Therefore, a district making new debt service payments would have to cut the tax levy that supports its operating budget in order to keep the overall levy flat from the prior year when the district wasn't on contingency and the capital levy was excluded from the limited levy. The permanent loss of the new ratables when a district is under a contingency is not defensible and places a permanent burden on the school district for the loss of a budget vote.

School districts understand that these are tough times and have taken significant actions to close budget gaps. In the Property Tax Report Card data for the 2011-12 proposed budgets, schools on average kept spending increases to less than 1%, with tax levies increasing by 3.3%. Voters responded by approving 94% of these proposed budgets. The higher tax levy increase was driven by the $1.3 billion reduction in School Aid that was enacted in April.

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