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Local Finance Notice

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2010 Levy Cap Law Guidance and CY 2011 Budgets

This Local Finance Notice is the first of three Notices that provide direction and guidance to all covered local units on the recently enacted 2010 levy cap law (2010 Cap), preparation of CY 2011 budgets, and CY 2011 levy cap referendum procedures. Local unit fiscal and policy officials should review all the Notices to ensure their budget procedures are consistent with the law.

This Notice covers the application of the property tax levy cap, N.J.S.A. 40A:4-45.44 et seq. P.L. 2010, c. 44 amended N.J.S.A. 40A:4-45.45 and 45.46. For the purposes of the levy cap, a local unit includes municipalities, counties, fire districts and existing solid waste collection districts with a tax rate of more than \$.10 (ten cents). Provisions of the 2010 Cap also apply to SFY 2012 municipalities and fire district CY 2011 budgets.

The 2010 Cap was enacted by the Legislature's support of Governor Christie's Conditional Veto of Senate Bill S-29 and enacted on July 13, 2010. A copy of the full, current 2010 Levy Cap law with the new text highlighted is included with this Notice.

To eliminate confusion about cap laws currently in effect, the following terms will be used to reference cap legislation:

- ▶ **1977 Cap:** The original municipal appropriation and county levy cap, as amended since it took effect in 1977, remains in effect. The most recent amendments in 2003 imposed a 2.5% limit on increases on municipal appropriations and county levies, using the formulas and provisions of N.J.S.A. 40A:4-45.1 through 4-45.43a, and amended in 2009 regarding pension deferrals.
- ▶ **2007 Cap** – the four percent levy cap on all local units was superseded by the 2010 Cap law.
- ▶ **2010 Cap** – amended the 2007 Cap to a two percent cap and modified exclusions.

Municipalities are subject to both the 1977 Cap and 2010 Cap while counties are subject to the lower of the two caps. While Chapter 44 changed the 2007 Cap, it did not change the 1977 Cap.

The CY 2010 Cap exclusion information generally applies to Fire Districts, though their budget process is different and well underway.

In addition to changing the four percent levy cap to two percent, the 2010 Cap eliminated the following cap provisions:

- Levy cap waivers approved by Local Finance Board; thus starting with CY 2011 budgets there will be no Local Finance Board cap relief actions for any reason.
- Automatic add-on to the levy cap base of state aid losses
- Add-on for increases in the reserve for uncollected taxes
- Cap levy reduction due to debt service reductions (“claw-back”)

Remaining unchanged and in effect are those waivers for certain individual municipalities previously approved by the Local Finance Board...

2010 Cap Exclusions

The 2010 Cap law significantly changed the cap exclusion calculation. However, while planning implementation of the law, the Division observed the law requires interpretation [pursuant to N.J.S.A. 40A:4-45.47(a)] to ensure the policy goals and legislative intent of the law are met. The following provides necessary direction and guidance in applying the 2010 Cap exclusions.

General Exclusions: There are several general exclusions: increases in debt service and capital expenditures; weather and other “declared” emergencies; pension contributions in excess of two percent, and health benefit cost increases in excess of 2 percent and limited by the increase in State Health Benefit rate increases (16.7 percent for CY 2011).

While some levy cap exclusions are treated as permanent add-ons, others will only be exclusions for the life of the specific appropriation. Table 1 following this Notice lists each exclusion, its explanation, and treatment.

General Exclusions and Shared Services: The Division has determined that recipients of shared services may exclude from their levy cap calculation increases passed on by the provider for the general exclusions described above. In these cases, the provider must certify to their recipients the specific increases in service charges in their budget, the amount passed along to their recipients, who must budget the increases. Certifications of shared service exclusions will be part of the recipient’s budget submission and reflected in the levy cap calculation workbook. The Division will issue forms for this purpose. The use of this exception is optional; providers and recipients are not obligated to account for the exceptions if they choose not to do so.

Local Authority Service Agreements: The 2010 Cap does not permit increases in costs billed to local units from local authorities through service agreements (i.e., for solid waste or related services) or user fees (i.e., solid waste tipping fees) to be excluded from the levy cap. The only exception to this will be payments required under a guarantee ordinance or deficiency agreement that is invoked by an authority, and in these cases, most likely through an emergency appropriation for debt service by the local unit. The 1977 cap exclusion of service agreement costs remains unchanged.

Levy Cap Referendums

With the elimination of levy cap waivers approved by the Local Finance Board, local units may ask their voters to increase their levy above their cap limit. The 2010 Cap law requires a 50 percent

plus 1 vote for approval. When needed by a municipality, levy cap referendum questions shall be combined with 1977 cap referendum questions in a single question.

To provide a consistent and cost effective statewide referendum process, municipal and county levy cap referendums will be held concurrently with school budget referendums on Wednesday, April 27, the date of school budget referenda for FY 2011-12 school budgets.

The Division is working with the Division of Elections and the Department of Education to develop coordinated procedures and policies to ensure a sound election process that encompasses voting for school budgets and a municipal and/or county levy cap vote at the same time (fire district referendums are governed by separate laws). Detailed guidance on the referendum process will be issued soon. The guidance will also address questions concerning the form of questions.

In the meantime, if a municipality or county is considering a referendum, the following elements should be considered:

- a. The referendum date will be Wednesday, April 27, the same day as school budget referenda. A resolution will serve to trigger the referendum, not an ordinance.
- b. Release of formula State aid allocations can be anticipated with the Governor's budget address on February 22, 2011.
- c. If a referendum is being considered, an introduced budget must include an estimated amount for the planned referendum, and there will be a single question for 1977 and 2010 levy caps
- d. Budgets with a planned referendum and an estimated amount of excess levy must be introduced by April 8, with a final amount of the referendum amount to be set or a decision made to opt-out of the referendum by April 8.

At the same time a local unit proposes a budget with a referendum question, it should also consider and be prepared with budget solutions that can be implemented immediately if the referendum fails. These plans may include layoffs, service reductions, or other actions to ensure levy cap compliance. This planning should keep in mind that Transitional Aid requests must be made prior to budget introduction and there will be no additional discretionary aid programs available to municipalities for additional financial assistance if the referendum fails.

It is expected that Transitional Aid Application will be made available in the near future, but only municipalities facing extreme distress (an inability to otherwise fund critical payroll or make debt service payments) will be eligible for funds and aid a condition of receiving aid will be to give up significant elements of self governance. An example of the [Memorandum of Understanding](#) that is required of recipients is online.

Other Budget Issues

Service Transfers: A service transfer occurs when one local unit transfers the responsibility and the cost of funding a service to another local unit or to a subordinate agency of the local unit, such as a utility or authority. In these cases, the transferring local unit no longer has the responsibility of funding the cost of the service.

In these cases, there will be a levy cap base adjustment for both government entities, pro-rated as necessary for the period of time the transfer is in effect. For the transferring local unit, the adjustment will be based on the prior year's expenditure less offsetting revenues. For the providing local unit, the adjustment will be the current year appropriation, less offsetting revenues the

provider will receive. Shared services are not considered transferred services and will not result in levy cap base adjustments.

Service transfers and the impact on the levy cap must also be described in the local unit's budget message.

Levy Cap Banking Established: The 2010 Levy Cap law also created provisions for levy cap banking (N.J.S.A. 40A:4-45.45). This will permit a local unit to reserve or "bank" any unused levy cap balance for up to three years, and use it as a permanent exclusion in any of those subsequent years. The levy cap worksheet has been amended to calculate the levy cap bank.

Recycling Tax: An amendment to the 2007 Cap created an exception for amounts raised to pay the recycling tax of \$3.00 per ton assessed pursuant to NJSA 13:1E-96.5. The levy cap workbook provides an add-on for the amount budgeted each year for this purpose.

Unforeseen Circumstances: The Director is authorized to act as necessary to make levy cap interpretations on matters that were unseen when the law was adopted. This authority will be used as necessary to ensure consistency with the statute.

Levy Cap Workbook: The Division is finalizing the Excel-based levy cap workbook. Its availability will be announced through GovConnect and the DLGS News List-serve shortly.

1977 Cap Matters: The 1977 Cap Cost of Living Adjustment (COLA) rate for FY 2011 is two percent (2%), subject to the adoption of an ordinance (municipalities) or resolution (counties) for increase to 3.5% and banking. See Local Finance Notice 2010-20 for specific details.

In addition all pension costs are subject to the 1977 cap, subject to the following adjustments:

- For CY 2011, if the local unit did not defer a portion of its 2009 pension obligations the amounts budgeted for such obligations outside the cap in the prior year will be added to the Cap Base, prior to the application of the 2% limitation.
- If the local unit deferred a portion of its 2009 payment, the increase in the CY 2010 pension obligations amount that is in excess of 3.5% of the CY 2009 100% pension obligations will be added to the CY 2011 cap base, prior to the application of the 2% limitation.

The Division is aware of and appreciates the challenges faced by local unit elected, management, and finance officials as they prepare their CY 2011 budgets. Information will continue to be forthcoming as soon as it is available and local units are asked to exercise patience as guidance is released over the next few weeks. In the meantime, questions concerning unique circumstances can be emailed to the Division at dlgs@dca.state.nj.us.

Thomas H. Neff, Director

TABLE 1 – 2010 LEVY CAP EXCLUSIONS

Statutory Exclusion	Application and Interpretation Notes
Capital expenditure increases	<ul style="list-style-type: none"> • Improvements financed under Local Bond Law provisions meeting the definition in the law – non-operating expenses with useful life of more than 5 years • All appropriations in the capital improvement section of the budget, including, but not limited to: <ul style="list-style-type: none"> ○ Capital leases, regardless of when entered into. ○ Capital cash appropriation in budget but excluding any appropriations that are offset with grant revenues ○ Deferred charges to future taxation unfunded (where an improvement is authorized and funding is provided from a budget appropriation in lieu of issuing debt service) • Increases in capital expenditure costs that are part of a shared service agreement; pursuant to certifications by service provider. • Capital expenditure exclusions will be treated as permanent exclusions
Debt service increases	<ul style="list-style-type: none"> • All appropriations in the debt service section of the budget, including, but not limited to: <ul style="list-style-type: none"> ○ General Obligation, full faith and credit debt ○ Refunding bonds, regardless of purpose ○ Bond Anticipation Notes ○ Interest on Tax Anticipation Notes • Local Budget Law protected notes (N.J.S.A. 40A:4-75) <ul style="list-style-type: none"> ○ Emergency Notes as authorized under the Local Budget Law ○ Special Emergency Notes • Debt service emergencies and down-payment emergencies • Increases in debt service that is part of a shared service agreement; pursuant to certifications by service provider. • Increases in debt service are treated as permanent exclusions (no reduction of base when debt is reduced, i.e., claw-back). • Local Budget Law protected notes will only be excluded for the time the emergency is funded.

Statutory Exclusion	Application and Interpretation Notes
Emergencies – weather and “declared” emergencies	<ul style="list-style-type: none"> • Regulations are expected to be proposed shortly to define emergencies eligible for cap relief and will likely provide for the following: <ul style="list-style-type: none"> ○ Extraordinary costs related to an emergency formally declared by the Governor of New Jersey. <ul style="list-style-type: none"> ▪ Examples are weather related (i.e., hurricanes, snow storms) and civil disturbances pursuant to N.J.S.A. 40A:4-46, 40A:4-53, 54, 55, et seq. ○ Costs of emergencies that are funded through shared service agreements. ○ An emergency will only be excluded for the time the emergency is funded.
Pensions and Health Benefits	<ul style="list-style-type: none"> • All increases in PERS, PFRS, local system pension contributions, accrued liability, early retirement, prepayment of deferred pension obligations, and LOSAP appropriations over 2% are treated as permanent exclusions. Payments of deferred pension obligations are exclusions only for the life of the repayment; all other increases are permanent exclusions. • All increases in health insurance coverage over 2% and below the SHB average increase (16.7% for CY 2011) are exclusions. • Increases in costs of health insurance waivers are not treated as exclusions. Beginning with CY 2011, costs related to health insurance waivers must be reflected as a separate line item in the budget. • Optionally, increases in pension and health benefits that are part of increased costs to a shared service agreement; pursuant to certifications by service provider.

2010 Local Unit Levy Cap Law

P.L. 2007, Chapter 62, as amended by P.L. 2008, Chapter 6

and as amended by P.L.2010, Chapter 44 (S-29 R1), *approved July 13, 2010*

(Additions from P.L. 2010, c.44 are underlined; deletions not shown)

40A:4-45.44 Definitions relative to property tax levy cap concerning local units.

For the purposes of sections 9 through 13 of P.L.2007, c.62 (C.40A:4-45.44 through C.40A:4-45.47 and C.40A:4-45.3e):

"Adjusted tax levy" means an amount not greater than the amount to be raised by taxation of the previous fiscal year, less any waivers from a prior fiscal year required to be deducted by the Local Finance Board pursuant to section 11 of P.L.2007, c.62 (C.40A:4-45.46), that result multiplied by 1.02, to which the sum of exclusions defined in subsection b. of section 10 of P.L.2007, c.62 (C.40A:4-45.45) shall be added.

"Amount to be raised by taxation" means the property tax levy set in the annual budget of a local unit.

"Local unit" means a municipality, county, fire district, or solid waste collection district, but shall not include a municipality that had a municipal purposes tax rate of \$0.10 or less per \$100 for the previous tax year.

"New ratables" means the product of the taxable value of any new construction or improvements times the tax rate of a local unit for its previous tax year.

(cf: P.L.2007, c.62, s.9)

40A:4-45.45 Cap on calculation of adjusted tax levy by local unit; exclusions.

10. a. (1) In the preparation of its budget the amount to be raised by taxation by a local unit shall not exceed, except as provided in paragraph (2) of this subsection, the sum of new ratables, the adjusted tax levy, and the total of waivers approved pursuant to section 11 of P.L.2007, c.62 (C.40A:4-45.46); provided, however, that in the case of a county, the amount to be raised by taxation shall not exceed the amount permitted by section 4 of P.L.1976, c.68 (C.40A:4-45.4).

(2) A local unit that has not been granted approval for a waiver pursuant to section 11 of P.L.2007, c.62 (C.40A:4-45.46), may add to its adjusted tax levy in any one of the next three succeeding years, the amount of the difference between the maximum allowable amount to be raised by taxation or county purposes tax, as applicable, for the current local budget year pursuant to paragraph (1) of this subsection and the actual amount to be raised by taxation or county purposes tax, as applicable, for the current local budget year.

b. The following exclusions shall be added to the calculation of the adjusted tax levy:

increases in amounts required to be raised by taxation for capital expenditures, including debt service as defined by law;

increases in pension contributions and accrued liability for pension contributions in excess of 2.0%;

increases in health care costs equal to that portion of the actual increase in total health care costs for the budget year that is in excess of 2.0% of the total health care costs in the prior year, but is not in excess of the product of the total health care costs in the prior year and the average percentage increase of the State Health Benefits Program, P.L.1961, c.49 (C.52:14-17.25 et seq.), as annually determined by the Division of Pensions and Benefits in the Department of the Treasury; and

extraordinary costs incurred by a local unit directly related to a declared emergency, as defined by regulation promulgated by the Commissioner of the Department of Community Affairs, in consultation with the Commissioner of Education, as appropriate.

If there are no exclusions, then the amount of the difference shall reduce the adjusted tax levy by that amount. Any cancelled or unexpended appropriation for any exclusion pursuant to this subsection or waiver pursuant to section 11 of P.L.2007, c.62 (C.40A:4-45.46), also shall be deducted from the sum of the exclusions listed in paragraphs (1) through (6) or directly reduce the adjusted tax levy if there are no exclusions.

(cf: P.L.2009, c.19, s.4)

40A:4-45.45a Amounts raised to pay recycling tax treated as exclusion for calculation of adjusted tax levy.

4. Notwithstanding the provisions of section 10 of P.L.2007, c.62 (C.40A:4-45.45) to the contrary, amounts required to be raised to pay the recycling tax imposed by section 4 of P.L.2007, c.311 (C.13:1E-96.5) shall be treated as an exclusion that shall be added to the calculation of the adjusted tax levy.

L.2008, c.6, s.4.

40A:4-45.46 Public question submitted for approval to raise taxes above the limitation allowable.

11. a. (Deleted by amendment, P.L.2009, c.44)

b. (1) The governing body of a local unit may request approval, through a public question submitted to the legal voters residing in its territory to increase the amount to be raised by taxation by more than the allowable adjusted tax levy. Approval shall be by an affirmative vote of in excess of 50 percent of the people voting on the question at the election. The local unit budget proposing the increase shall be introduced and approved in the manner otherwise provided for budgets of that local unit at least 20 days prior to the date on which the referendum is to be held, and shall be published in the manner otherwise provided for budgets of the local unit at least 12 days prior to the referendum date, unless otherwise directed by the Director of the Division of Local Government Services in the Department of Community Affairs.

(2) The public question to be submitted to the voters at the referendum shall state only the amount by which the adjusted tax levy shall be increased by more than the otherwise allowable adjusted tax levy, and the percentage rate of increase which that amount represents over the allowable adjusted tax levy. The public question shall include an accompanying explanatory statement that identifies the changes in appropriations or revenues that warranted the governing body's decision to ask the public question; or, in the alternative and subject to the approval of the Director of the Division of Local Government Services in the Department of Community Affairs, a clear and concise narrative explanation of the circumstances for the increased adjusted tax levy being proposed.

(3) Unless otherwise provided pursuant to section 1 of P.L.1989, c.31 (C.40A:4-5.1), a referendum conducted pursuant to this subsection shall be held:

(a) for calendar year budgets only on the fourth Tuesday in January and the second Tuesday in March other than in a year when a presidential primary election occurs, in which case no such election on that date may be called; and

(b) for fiscal year budgets, only the last Tuesday in September, or the second Tuesday in December; provided, however, that no referendum shall be held on the same day as a referendum to exceed the school district levy cap.

(4) Any decision of the voters rejecting an increase to the tax levy cap under this subsection shall be final and conclusive, and no appeal or review shall be taken therefrom and no waiver application shall be made to the Local Finance Board.

(5) The director is authorized to act as necessary in order to consolidate ballot questions and procedures when a governing body elects to hold a referendum under both this section and section 9 of P.L.1983, c.49 (C.40A:4-45.16).¹

c. (Deleted by amendment, P.L.2010, c.44)

d. The adjusted tax levy shall be increased or decreased accordingly whenever the responsibility and associated cost of an activity performed by a local unit is transferred to or from a local unit, other government entity, or other service provider.

(cf: P.L.2007, c.62, s.11)

40A:4-45.47 Actions taken by director to implement provisions concerning cap on the property tax levy; rules, regulations.

12. a. The Director of the Division of Local Government Services in the Department of Community Affairs shall take such action as is deemed necessary and consistent with the intent of sections 9 through 11 of P.L.2007, c.62 (C.40A:4-45.44 through C.40A:4-45.46) to implement its provisions.

b. The director, in consultation with the Commissioner of Education regarding referendum dates, shall promulgate rules and regulations to effectuate the purposes of subsection b. of section 11 of P.L.2007, c.62 (C.40A:4-45.46).

L.2007, c.62, s.12.

13. This act shall take effect immediately and shall be applicable to the next local budget year following enactment.
