

Property Tax Cap Guidance

January 2020 (Revised)

New for 2020-21: Pursuant to a December 27, 2019 update to 20 NYCRR (Regulations of the Commissioner of Tax and Finance), Capital Expenditures for BOCES paid for through its component school districts will now be included in the calculation of each school district's Capital Local Expenditures excluded under the Property Tax Levy Cap. The term "Capital Local Expenditures" will now include any allowable share of BOCES Capital Expenditures. [20 NYCRR (Regulations of the Commissioner of Tax and Finance)] Please note the related changes in this Revised Guidance. A detailed description of the changes arising from this new regulation are attached as Appendix A.

General Information

Who must comply

All New York State school districts (common, union free, central and city) except the Big Five city school districts of New York, Buffalo, Syracuse, Rochester and Yonkers which are fiscally dependent on their municipalities for their budget. The cities of Buffalo, Syracuse, Rochester and Yonkers are subject to the tax cap on municipalities while New York City is not.

Steps to calculating the tax levy limit

At the onset, it should be noted that under the tax cap law, "prior school year" or "previous year" means the school year immediately preceding the coming school year. Accordingly, for purposes of tax cap calculations, the references herein to "prior school year" or "previous year" mean the current school year.

To comply with the law, school districts are required to report their tax cap calculation to the OSC via an online reporting [form](#). To complete this form school districts will need the total of taxes levied in the prior year, not including taxes levied on behalf of a school district library, the tax base growth factor as reported by the Commissioner of Tax and Finance, the amount of PILOTS receivable in the prior school year and the coming school year based on the PILOT agreement/schedule, the amount of tax levy necessary to support Capital Local Expenditures in the prior and coming school years,¹ the tax levy necessary to support tort actions in the prior and coming school years that exceed 5 percent of the school district tax levy. Each school district, subject to the cap, shall calculate the tax levy limit for the coming school year as follows:

First, determine the total amount of taxes levied, whether or not collected, in the previous year. The total levy includes STAR funds received from the State, but excludes taxes levied by a school district on behalf of a school district public library.

If an excess tax levy was identified for a previous year(s) subtract it, including any interest earned from the prior year tax levy.

Second, if a "tax base growth factor" has been reported to the district by the Commissioner of Tax and Finance, the total amount of taxes levied in the prior year, less any excess tax levy plus interest earned, will be multiplied by the growth factor.

¹ As 2020-21 is the first year for the BOCES Capital Exclusion, a district's share of BOCES capital expenditures in 2019-20 must be added to the calculation of the Prior Year capital local expenditures .

Third, add any PILOTs that were receivable in the prior school year. This is not the amount that the school district collected, but the amount that should have been received based on the PILOT agreement/schedule.

Fourth, subtract the tax levy necessary to support Capital Local Expenditures in the prior school year².

Fifth, subtract the tax levy necessary to support expenditures for tort actions in the prior fiscal year, for any amount that exceeds 5 percent of the school district's tax levy in the prior school year.

Sixth, multiply the result by the allowable levy growth factor calculated by the Office of the State Comptroller.

Seventh, subtract any PILOTs receivable in the coming school year. The total amount of PILOTs receivable according to the agreements/schedules is to be included in the calculation of the tax levy limit.

Eighth, add any available carryover from the prior school year. Available carryover means the amount by which the tax levy for the prior school year was below the applicable tax levy limit (not including permissible exclusions) for such school year, if any, but no more than an amount that equals one and one-half percent of the tax levy limit (not including permissible exclusions) for such school year. Unused exclusions associated with capital, growth in pension costs or tort judgments, may not be carried forward.

Limited Exclusions

The tax cap law allows for a limited number of exclusions to the tax levy limit.

These exclusions are:

Torts. School districts can increase their property tax levy above the tax levy limit (see the calculation set forth above) for certain costs resulting from court orders or judgments against the district arising out of tort actions to be paid in the coming school year. Such an increase in the tax levy above the tax levy limit is only permitted for costs of those court orders or judgments to the extent they exceed 5 percent of the total prior year's tax levy. Tax certioraris and breach of contract actions are among the types of actions that **are not** tort actions.

Pensions. The pension exclusion is triggered if the annual growth in the average actuarial contribution rate for the Employees' Retirement System (ERS) or the normal contribution rate for Teachers' Retirement System (TRS) exceeds two percentage points. Under the exclusion, pension costs associated with the annual growth in the employer contribution rate above two percentage points are exempted from the cap.

² As 2020-21 is the first year for the BOCES Capital Exclusion, the tax levy associated with the district's share of BOCES capital expenditures in 2019-20 must be added to the calculation of the Prior Year capital local expenditures.

Variance in Plans. In years in which the pension exclusion is triggered, the ERS pension exemption rate is the same percentage of salary (growth in the system average actuarial rate minus two percentage points) for all employers.

Amortization. Local governments utilizing amortization may not levy for the pension exclusion.

Excess Pension Contributions

School districts are responsible for making pension payments to both the New York State and Local Employees' Retirement System (ERS) and the New York State Teachers' Retirement System (TRS). To determine in any year whether the Excess Pension Contribution will result in an exemption, you must refer to the employer contribution rates promulgated by the Office of the State Comptroller. If the ERS average contribution rate is increasing by less than two percentage points; there is no ERS exemption. In years when there is a pension exemption, the exemption is calculated by subtracting two percentage points from the year-to-year increase in the ERS average contribution rate and multiplying the result by the salary base.

Once the TRS has issued its Administrative Bulletin with a more precise estimate of the Employer Contribution Rate for the upcoming school year districts should use this estimate to calculate the Tax Levy Limit and for their upcoming school year budget.

The Office of the State Comptroller has issued guidance for calculating the pension exclusion. Please see their pension exclusion guidance for more information:

<https://www.osc.state.ny.us/localgov/realprop/pdf/retire-exclusions-schools.pdf>

In years with an ERS pension exemption, the system average contribution rate is to be used in calculating the amount of the exemption, even when the system average contribution rate is different than the actual contribution rate that the school district pays for its ERS pension plans.

Capital Local Expenditures

School Districts can increase their property tax levy above the levy limit (see the calculation set forth above) for certain costs resulting from Capital Local Expenditures, including the allowable share of BOCES capital expenditures.

Capital Local Expenditures are defined as those expenditures, including a school district's share of BOCES capital expenditures, resulting from the financing, refinancing, acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for school district/BOCES capital facilities, school district/BOCES capital equipment, including debt service and lease expenditures, and transportation capital debt service, subject to the approval of the qualified voters where required by law. The requirements for voter approval of a BOCES capital project are laid out within Education Law §1950. While voter approval is required for the acquisition or construction of real property, other capital projects, such as renovation of existing BOCES-owned facilities, do not require voter approval. The costs of these projects are eligible for treatment as Capital Local Expenditures under the new regulation promulgated by NYS Department of Tax and Finance. These Capital Local

Expenditures must be for projects with a period of probable usefulness as defined in local finance law. Capital Local Expenditures do not include expenditures for maintenance or operations.

Capital Local Expenditures means the taxes associated with the budgeted Capital Expenditures, including beginning in the 2020-21 school year, a school district's share of BOCES capital expenditures.

Calculation of Prior Year Capital Local Expenditures

For purposes of the tax cap law, Capital Local Expenditures, which are subtracted from the total tax levy in the prior school year, shall be calculated by first determining the amount of payments made or that will be made for Capital Local Expenditures by the school district during the prior school year, and then subtracting from the total amount of those payments (i) any Capital Local Expenditures that were paid for or will be paid for from a reserve fund or fund balance during the prior school year, (ii) the total amount of State and federal aid and any other outside funding (including gifts) for all past, present and future capital-related projects that was received or will be received by the school district during the prior school year, excluding deferred building aid received in the prior school year that is attributable to a school year before the prior school year, and (iii) deferred building aid attributable to the prior school year that is expected to be received after the prior school year. See question 6 in the Frequently Asked Questions for specific account codes and aids to include in the calculation.

Calculation of Coming School Year Capital Local Expenditures

For purposes of the tax cap law, Capital Local Expenditures, which are excluded from the tax levy limit for the coming school year (after the subtraction of prior school year Capital Local Expenditures in Step Four above), shall be calculated by first determining the amount of all payments to be made for Capital Local Expenditures by the school district during the coming school year, and then subtracting from the total amount of those payments (i) any of those Capital Local Expenditures that are to be paid for from a reserve fund or fund balance during the coming school year, (ii) the total amount of State and federal aid and any other outside funding (including gifts) for all past, present and future capital-related projects to be received by the school district, (including component school district distributions of BOCES State Aid for capital projects,) during the coming school year, excluding deferred building aid to be received in the coming school year that is attributable to school years before the coming school year, and (iii) deferred building aid attributable to the coming school year that is expected to be received after the coming school year. See question 6 in the Frequently Asked Questions for specific account codes and aids to include in the calculation.

Budget Requirements

Districts will submit their tax levy limit calculation to the Office of the State Comptroller, the State Education Department and the Office of Tax and Finance by March 1 each year.

Property Tax Report Card

Districts are required to include the following elements from the tax levy limit calculation in their annual submission to the Department of their Property Tax Report Card before the Statewide Voting Day: (i) the tax levy limit (without including the levy for permissible exclusions from the tax levy limit), (ii) the permissible exclusions from the tax levy limit, (iii) the proposed tax levy (not including the levy for permissible exclusions from the tax levy limit), and (iv) the total proposed tax levy (including any proposed levy above the tax levy limit and permissible exclusions from the tax levy limit).

Any reserves required to comply with the law must also be reflected in the existing fund balance categories. The amount reported on the Property Tax Report Card may be greater than the levy limit, if the district plans to override the cap, or lower than the levy limit, if it does not plan to use the total amount allowed under the limit.

Six-Day Budget Notice

Districts will include in the budget notice (i) the school tax levy limit (without including the levy for permissible exclusions from the school tax levy limit), (ii) the total proposed school tax levy (without the levy for permissible exclusions from the school tax levy limit), (iii) the total school tax levy for permissible exclusions to the school tax levy limit, and (iv) the total proposed school tax levy (including the levy for permissible exclusions from the school tax levy limit).

Ballot Statement

If a district proposes to raise the levy (not including permissible exclusions) in an amount equal to or LESS than the tax levy limit, approval by more than 50 percent of those that vote on the budget is required. If a district proposes to raise the levy (not including permissible exclusions) by MORE than the tax levy limit, approval by 60 percent or more of those that vote on the budget must be obtained.

Only districts that propose to raise their levy (not including permissible exclusions) above the tax levy limit will need to include in their ballot statement the total percentage change in the total tax levy (including the tax levy for those permissible exclusions from the tax levy limit) from the previous year, as well as the statutory tax levy increase limit.

Districts must use a statement substantially similar to the following statement set forth in the Tax Cap law, which provides:

"Adoption of this budget requires a tax levy increase of _____¹ which exceeds the statutory tax levy increase limit of _____² for this school fiscal year and therefore exceeds the state tax cap and must be approved by sixty percent of the qualified voters present and voting."

¹ The first blank should be the percent by which the total proposed tax levy for the upcoming school year (which includes the tax levy for permissible exclusions from the tax levy limit) exceeds the total tax levy for the prior school year (which includes the tax levy for permissible exclusions from the tax levy limit).

² The second blank should be the percent by which:

- (i) The sum of

(a) the amount resulting from the calculation set forth in the Section entitled “Steps to calculate the tax levy limit,”

plus

(b) the sum of permissible exclusions (see the section above entitled “Limited Exclusions”),

exceeds

(ii) The total tax levy for the prior school year (which includes the tax levy for permissible exclusions from the tax levy limit).

Frequently Asked Questions

1. *How are School Tax Relief (STAR) funds treated for calculation of the tax levy limit? Are they State Aid or local levy?*

Answer: STAR funds are part of the tax levy. No adjustments are to be made to the tax levy limit calculation due to STAR.

2. *Do Capital Local Expenditures include transfers from the General Fund to the capital fund for capital projects?*

Answer: The calculation of coming school year Capital Local Expenditures is set forth above. Transfers from one fund to another fund are not expenditures for the purposes of the tax cap law and not relevant to this calculation.

3. *How will expenses and aid relating to EXCEL capital projects be handled?*

Answer: The same as projects supported by Building Aid. See Calculation of Capital Local Expenses above.

4. *If the school district owns the building the public library is in and has expenditures, such as debt service, for the building (and the library pays the district rent), can the school district exclude this debt from the tax cap?*

Answer: For purposes of tax cap calculations, any taxes levied by a school district on behalf of a school district public library are subject to the library's tax cap and not subject to the school district's tax cap. Accordingly, taxes levied by a school district for debt service and expenses for a facility used to house a school district public library (i) are levied on behalf of the library, (ii) are subject to the library's tax cap and not subject to the school district's tax cap, and (iii) should not be construed as part of the school district's tax levy for purposes of tax cap calculations.

5. *What data may districts use to calculate the capital tax levy exclusion?*

Answer: School districts may use the following data to assist in determining total Capital Local Expenditures provided the inclusion of that data complies with the definition of Capital Local Expenditures set forth above.

ST-3 Account Codes - Including Actual Expenditures in the General, Capital and Debt Service Funds

Selected .2 object codes in the General Fund (Equipment)¹

A1620.4/A1621.4 - Any capital lease expenses
A5510.4/A5530.4 - Any school bus lease expenses

A5510.21 - Purchase of Buses

A9701.6 - Principal: Term Bonds - School Construction	A9701.7 - Interest: Term Bonds - School Construction
A9702.6 - Principal: Term Bonds - Bus Purchases	A9702.7 - Interest: Term Bonds - Bus Purchases
A9700.6 - Principal: Term Bonds - Other (Specify) ²	A9700.7 - Interest: Term Bonds - Other (Specify)
A9711.6 - Principal: Serial Bonds - School Construction	A9711.7 - Interest: Serial Bonds - School Construction
A9712.6 - Principal: Serial Bonds - Bus Purchases	A9712.7 - Interest: Serial Bonds - Bus Purchases
A9710.6 - Principal: Serial Bonds - Other (Specify)	A9710.7 - Interest: Serial Bonds - Other (Specify)
A9721.6 - Principal: Statutory Bonds - School Construction	A9721.7 - Interest: Statutory Bonds - School Construction
A9722.6 - Principal: Statutory Bonds - Bus Purchases	A9722.7 - Interest: Statutory Bonds - Bus Purchases
A9720.6 - Principal: Statutory Bonds - Other (Specify)	A9720.7 - Interest: Statutory Bonds - Other (Specify)
A9731.6 - Principal: Bond Anticipation Notes - School Construction	A9731.7 - Interest: Bond Anticipation Notes - School Construction
A9732.6 - Principal: Bond Anticipation Notes - Bus Purchases	A9732.7 - Interest: Bond Anticipation Notes - Bus Purchases
A9730.6 - Principal: Bond Anticipation Notes - Other (Specify)	A9730.7 - Interest: Bond Anticipation Notes - Other (Specify)
A9741.6 - Principal: Capital Notes - School Construction	A9741.7 - Interest: Capital Notes - School Construction
A9742.6 - Principal: Capital Notes - Bus Purchases	A9742.7 - Interest: Capital Notes - Bus Purchases
A9740.6 - Principal: Capital Notes - Other (Specify)	A9740.7 - Interest: Capital Notes - Other (Specify)
A9787.6 - Principal: Installment Purchase Debt - Bus Purchases	A9787.7 - Interest: Installment Purchase Debt - Bus Purchases
A9785.6 - Principal: Installment Purchase Debt - Other (Specify)	A9785.7 - Interest: Installment Purchase Debt - Other (Specify)
A9789.6 - Principal: Other Debt (Specify)	A9789.7 - Interest: Other Debt (Specify)

H522 - Expenditures by Project: Current Funds

V1380.4 - Fiscal Agent Fees	
V9701.6 - Principal: Term Bonds - School Construction	V9701.7 - Interest: Term Bonds - School Construction
V9702.6 - Principal: Term Bonds - Bus Purchases	V9702.7 - Interest: Term Bonds - Bus Purchases
V9700.6 - Principal: Term Bonds - Other (Specify)	V9700.7 - Interest: Term Bonds - Other (Specify)
V9711.6 - Principal: Serial Bonds - School Construction	V9711.7 - Interest: Serial Bonds - School Construction
V9712.6 - Principal: Serial Bonds - Bus Purchases	V9712.7 - Interest: Serial Bonds - Bus Purchases
V9710.6 - Principal: Serial Bonds - Other (Specify)	V9710.7 - Interest: Serial Bonds - Other (Specify)
V9721.6 - Principal: Statutory Bonds - School Construction	V9721.7 - Interest: Statutory Bonds - School Construction
V9722.6 - Principal: Statutory Bonds - Bus Purchases	V9722.7 - Interest: Statutory Bonds - Bus Purchases
V9720.6 - Principal: Statutory Bonds - Other (Specify)	V9720.7 - Interest: Statutory Bonds - Other (Specify)
V9731.6 - Principal: Bond Anticipation Notes - School Construction	V9731.7 - Interest: Bond Anticipation Notes - School Construction
V9732.6 - Principal: Bond Anticipation Notes - Bus Purchases	V9732.7 - Interest: Bond Anticipation Notes - Bus Purchases
V9730.6 - Principal: Bond Anticipation Notes - Other (Specify)	V9730.7 - Interest: Bond Anticipation Notes - Other (Specify)
V9741.6 - Principal: Capital Notes - School Construction	V9741.7 - Interest: Capital Notes - School Construction
V9742.6 - Principal: Capital Notes - Bus Purchases	V9742.7 - Interest: Capital Notes - Bus Purchases
V9740.6 - Principal: Capital Notes - Other (Specify)	V9740.7 - Interest: Capital Notes - Other (Specify)
V9787.6 - Principal: Installment Purchase Debt - Bus Purchases	V9787.7 - Interest: Installment Purchase Debt - Bus Purchases
V9785.6 - Principal: Installment Purchase Debt - Other (Specify)	V9785.7 - Interest: Installment Purchase Debt - Other (Specify)
V9789.6 - Principal: Other Debt (Specify)	V9789.7 - Interest: Other Debt (Specify)
V9991.4 - Payment to Escrow Agent (Advanced Refunding Bonds)	

Notes:

¹ Equipment:

Must be part of a capital project approved by the voters, where required by law

Retains its original shape and appearance with use

Is non-expendable, that is, if the article is damaged or some of its parts are lost or worn out, it is usually more feasible to repair it rather than replace it with an entirely new unit

It represents an investment of money which makes it feasible and advisable to capitalize the item

It does not lose its identity through incorporation into a different or more complex unit or substance.

² Any principal or interest that must be specified, such as A9700.6 must be capital in nature. Amounts included in those codes for anything not considered capital may not be included in the Capital Tax Levy Amount.

Additional ST-3 Account Codes for BOCES Capital Expenditures

A1983.49 – BOCES Capital Expenses (including Buses)

A9703.6 - Principal: Term Bonds - BOCES Construction

A9713.6 - Principal: Serial Bonds - BOCES Construction

A9723.6 - Principal: Statutory Bonds - BOCES Construction

A9733.6 - Principal: Bond Anticipation Notes - BOCES

Construction

A9743.6 - Principal: Capital Notes - BOCES Construction

A9703.7 - Interest: Term Bonds - BOCES Construction

A9713.7 - Interest: Serial Bonds - BOCES Construction

A9723.7 - Interest: Statutory Bonds - BOCES Construction

A9733.7 - Principal: Bond Anticipation Notes - BOCES

Construction

A9743.7 - Interest: Capital Notes - BOCES Construction

V9703.6 - Principal: Term Bonds - BOCES Construction

V9713.6 - Principal: Serial Bonds - BOCES Construction

V9723.6 - Principal: Statutory Bonds - BOCES Construction

V9733.6 - Principal: Bond Anticipation Notes - BOCES

Construction

V9743.6 - Principal: Capital Notes - BOCES Construction

V9703.7 - Interest: Term Bonds - BOCES Construction

V9713.7 - Interest: Serial Bonds - BOCES Construction

V9723.7 - Interest: Statutory Bonds - BOCES Construction

V9733.7 - Principal: Bond Anticipation Notes - BOCES

Construction

V9743.7 - Interest: Capital Notes - BOCES Construction

Notes:

¹ Equipment

Must be part of a capital project approved by the voters, where required by law

Retains its original shape and appearance with use

Is non-expendable, that is, if the article is damaged or some of its parts are lost or worn out, it is usually more feasible to repair it rather than replace it with an entirely new unit

It represents an investment of money which makes it feasible and advisable to capitalize the item

It does not lose its identity through incorporation into a different or more complex unit or substance.

Amounts to be Deducted from Capital Local Expenditures When Calculating Prior Year Capital Local Expenditures

***Note: As 2020-21 is the first year for the BOCES Capital Exclusion, a district's share of BOCES capital expenditures in 2019-20 must be added to the calculation of the Prior Year capital local expenditures.**

Applicable Enacted Budget Computer Runs for subsequent "prior" years should be utilized when calculating amounts to be deducted from Capital Local Expenditures in subsequent "prior" years.

"Prior Year Trans Prosp Cap Aid" amount from the SA(Prior Year) enacted budget computer run

plus

"Prior Year Regular Building Aid" amount from the SA(Prior Year) enacted budget computer run, excluding the amounts for "PY+1 Deferred Aid (Tiers 1-4)" and "PY+2 Deferred Aid (Tiers 1-4)"³

plus

"Prior Year Reorg Incent Bldg Aid" amount from the SA(Prior Year) enacted budget computer run

plus

Total EXCEL Aid payments to be received from the Dormitory Authority to be received in Prior Year

plus

Native American Building Aid pursuant to 3602 6-a to be received in Prior Year

plus

BOCES Rent + Capital Aid" amount to be received in Prior Year

plus

Any other revenue (e.g., aid, grant, subsidy, gift, incentive, etc.) expected to be received in Prior Year for all past, present, and future capital related projects

plus

Any "Prior Year Deferred Aid (Tiers 1-4)" amount from the BT(Coming Year) executive budget computer run⁴

plus

Any transfers from reserves used to make the expenditures.

³ The calculation of Prior Year Capital Local Expenditures should exclude deferred Building Aid received in the Prior School Year that is attributable to a school year before the Prior School Year.

⁴ The calculation of the Prior Year Capital Local Expenditures should include deferred Building Aid attributable to the Prior Year that is expected to be received after the Prior Year.

minus

Any adjustments in any of the above revenue sources in the Prior Year about which the district has already been notified and/or is otherwise certain will occur.

Amounts to be Deducted from Capital Local Expenditures When Calculating Coming School Year Capital Local Expenditures

Applicable Executive Budget Computer Runs for subsequent "coming" years should be utilized when calculating amounts to be deducted from Capital Local Expenditures in subsequent "coming" years.

“Coming Year Trans Prosp Cap Aid” amount from the BT(Coming Year) executive budget computer run

plus

“Coming Year Regular Building Aid” amount from the BT(Coming Year) executive budget computer run, excluding the amounts for "Coming Year-1 Deferred Aid (Tiers 1-4)" and "Coming Year-2 Deferred Aid (Tiers 1-4)" ⁵³

plus

“Coming Year Reorg Incent Bldg Aid” amount from the BT(Coming Year) executive budget computer run

plus

Total EXCEL Aid payments to be received from the Dormitory Authority to be received in Coming Year

plus

Native American Building Aid pursuant to 3602 6-a to be received in Coming Year

plus

Coming Year BOCES Rent + Capital Aid” amount from the BT(Coming Year) executive budget computer run, to be received in Coming Year

plus

Any other revenue (e.g., aid, grant, subsidy, gift, incentive, etc.) expected to be received in Coming Year that will reduce the local levy for Capital Local Expenditures

minus

Any adjustments in any of the above revenue sources in Coming Year about which the district has already been notified.

Where the sum of (i) those expenditures that are to be paid for from a reserve fund or fund balance during the coming school year and (ii) the total amount of state and federal aid and any other outside funding (including gifts) for all past, present and future capital-related projects to be received by the school district during the coming school year, excluding deferred building aid to be received in the coming school year that is attributable to school years before the coming school year exceeds Capital Local Expenditures for

⁵ The calculation of the Coming School Year Capital Local Expenditures should exclude deferred Building Aid to be received in the Coming School Year that is attributable to school years before the Coming School Year.

the coming school year, there will be no exclusion from the tax levy limit for Capital Local Expenditures in the coming school year, and the excess amount shall not result in a downward adjustment to the tax levy limit for the coming school year.

6. *How does one calculate Capital Local Expenditures when you don't know the interest rate before setting the budget?*

Answer: Districts should use the actual interest rate, if possible. If the interest rate is unknown, districts should use the statewide average rate for the upcoming year, as posted on the State Aid website:

https://stateaid.nysed.gov/build/building_info.htm

7. *Are expenses for buses paid with cash included in transportation capital debt service? Are expenses for bus leases included?*

Answer: Yes. Expenses for cash payments for buses and leases of buses are considered to be Capital Local Expenditures.

8. *The district anticipates taking out a bond in the Coming Year to fund the projects. Will the debt service (principal and interest) payments for the bond be excluded from the tax levy cap calculation?*

Answer: Debt service payments for capital expenditures are included in the calculation of the tax cap exclusion for Capital Local Expenditures. See Calculation of Capital Expenses and Capital Local Expenditures Expenses above.

9. *Are districts still required to adopt a contingent budget under the tax cap?*

Answer: Yes. If voters do not approve the proposed budget initially or after a revote, a district must adopt a contingent budget, excluding the same non-contingent items as defined currently. The contingent budget will be subject to a cap where the school district can levy no more taxes than the amount of taxes levied in the prior school year by the district.

10. *If a school district adopts a contingent budget and State Aid is larger than expected, is the district allowed to increase its spending to spend the State Aid?*

Answer: Yes. The Tax Cap is a cap on levy, not spending.

11. *If voters do not approve a budget and a contingency budget is adopted, are exclusions irrelevant?*

Answer: Yes. In a year when a budget is defeated twice or a district chooses to go to a contingency budget after the budget is defeated the first time, the school district can levy no more taxes than it levied in the previous school year. There are no exclusions from this limit when a contingency budget is adopted.

12. *The law states: "Available carryover" means the amount by which the tax levy for the prior school year was below the applicable tax levy limit for such school year, if any, but no more than an amount that equals one and one-half percent of the tax levy limit for such school year.*

If a district's budget is defeated and ends up with a budget that includes no increase in the tax levy, does that allow them to carryover up to 1.5 percent of unused tax levy the following year?

Answer: Yes. However, unused exclusions associated with capital expenses, growth in pension costs or tort judgments may not be carried forward.

13. *Are voters now voting on the tax levy increase or a spending plan?*

Answer: Voters will continue to vote on a budget. However, if that budget requires a levy (not including permissible exclusions) in excess of the levy limit, voters must approve that budget by a 60 percent *or greater margin*. Such a district will be held to the actual tax levy amount approved by voters, with no further adjustment.

14. *The sample statement includes a term "statutory tax levy increase limit." What does that mean?*

Answer: The statutory tax levy increase limit refers to the percentage increase in the tax levy allowable under the cap from the previous year that requires approval of only a majority of votes cast in the annual school district budget vote. The statutory tax levy increase limit is calculated by adding to the amount resulting from the calculations set forth in the section above entitled "Steps to calculating the tax levy limit" permissible exclusions for (i) pension costs (see above section entitled "Excess Pension Contributions"), (ii) certain costs for expenditures resulting from court orders or judgments against the school district arising out of tort actions (see above section entitled "Torts"), and (iii) Capital Local Expenditures (see above section entitled Capital Local Expenditures).

Budget Propositions

17. *What does Chapter 97 of the Laws of 2011 say about propositions and the Tax Cap?*

Answer: Chapter 97 says:

Nothing in this section shall preclude the trustee, trustees, or board of education of a school district, in their discretion, from submitting additional items of expenditures to the voters for approval as separate propositions or the voters from submitting

propositions pursuant to sections two thousand eight and two thousand thirty-five of this part; provided however, except in the case of a proposition submitted for any expenditure contained within subparagraphs (i) through (iv) of paragraph i of subdivision two of this section, if any proposition, or propositions collectively that are subject to a vote on the same date, would require an expenditure of money that would require a tax levy and would result in the tax levy limit being exceeded for the corresponding school year then such proposition shall be approved if sixty percent of the votes cast thereon are in the affirmative.

18. *What are the different kinds of school district propositions?*

Answer:

- a. Proposition for additional transportation service
- b. Proposition for educational programs
- c. Proposition for capital local expenditure
- d. Proposition for transportation capital local expenditure

19. *How is each proposition treated under Chapter 97 of the Laws of 2011?*

Answer:

- a. Proposition for additional transportation service: expenditures for additional transportation service are subject to the Tax Levy Limit.
- b. Proposition for educational programs: expenditures for educational programs presented as propositions are subject to the Tax Levy Limit
- c. Proposition for Capital Local Expenditures: Capital Local Expenditures net of deductions as described above are not subject to the property tax cap.
- d. Proposition for transportation Capital Local Expenditures: transportation Capital Local Expenditures, net of deductions as described above, are not subject to the property tax cap.

20. *If a school district budget is presented under the cap and the addition of a proposition creates a budget over the cap, what level of voter approval is required?*

Answer:

- a. Proposition for additional transportation service: a supermajority (60 percent) is required for the budget and proposition because the sum of the budget and proposition exceeds the tax levy limit.
- b. Proposition for educational programs: a supermajority (60 percent) is required for both the budget and the proposition because the sum of the budget and proposition exceeds the tax levy limit.
- c. Proposition for Capital Local Expenditure: a simple majority (50 percent plus one vote) because local Capital Local Expenditures have been excluded from the tax levy limit.
- d. Proposition for transportation Capital Local Expenditure: a simple majority (50 percent plus one vote) because local transportation Capital Local Expenditures have been excluded from the tax levy limit.

21. *If a school district budget is presented under the cap and the addition of a proposition creates a budget over the cap, and the proposition passes and the budget fails, what is the obligation of the district?*

Answer:

- a. Proposition for additional transportation service: district must provide the additional transportation service approved by the voters within the contingency budget (zero levy increase)
- b. Proposition for educational programs: district may have the authority to provide the educational programs approved by the voters or not, within the contingency budget (zero levy increase)
- c. Proposition for capital local expenditure: district may have the authority to make the capital local expenditure approved by the voters or not, within the contingency budget (zero levy increase)
- d. Proposition for transportation capital local expenditure: district may have the authority to make the capital (transportation capital) local expenditure approved by the voters or not, within the contingency budget (zero levy increase)

22. *If a school district budget is presented under the cap and the addition of a proposition creates a budget over the cap, and the proposition fails and the budget passes what is the obligation of the district?*

Answer:

- a. Proposition for additional transportation service: there is no authority to provide the additional transportation service. The budget can be implemented only as approved
- b. Proposition for educational programs: there is no authority to make the expenditures. The budget can be implemented only as approved
- c. Proposition for capital local expenditure: there is no authority to make the Capital Local Expenditures. The budget can be implemented only as approved
- d. Proposition for Transportation Capital Local Expenditure: there is no authority to make the transportation Capital Local Expenditures. The budget can be implemented only as approved

23. *How does the requirement for a three-part budget “reconcile” with Chapter 97 language potentially permitting propositions for items that previously were part of the 3-part budget?*

Answer: Districts still must comply with section 1716(1) and (4) regarding presentation of the budget in three parts, and requirements that all estimated expenses are included in the budget presented to the voters. However, if a district puts out a separate program proposition such as a proposition for music programs, that proposition can be shown as an add-on to the presented budget. The proposition (and its impact) should also be included in any materials required to be provided to voters prior to the budget vote. If the

proposition is defeated, the budget can be implemented without the program supported by the proposition.

Payments in Lieu of Taxes

24. *Is there a floor on the tax levy limit (that is, a minimum of zero percent)? Districts with increasing or new PILOTS may have this issue.*

Answer: There is no floor to the tax levy limit. Districts with increasing or new PILOTS could have a tax levy limit that represents a change from the prior year that is less than zero. They would have to successfully seek an override from the voters to increase the levy above the limit. Decreases in Capital Local Expenditures, which includes the allowable share of BOCES Capital Expenditures, can also result in a levy limit that is less than the previous year's levy. For the calculation of the tax levy limit in circumstances not involving PILOTS or reduction in Capital Local Expenditures, the floor is zero. The tax base growth factor cannot be less than zero.

25. *What happens to the tax base growth factor when PILOTS go away? Is it growth when the PILOT goes away and the amount of taxable property increases?*

Answer: The Quantity Change Factor adjusts the tax levy limit to reflect an increase in the full value of taxable real property in a school district due to physical or quantity change – i.e., new growth or significant additions to existing properties. The Commissioner of Taxation and Finance will issue a Quantity Change Factor for all school districts that have experienced an increase in the full value of taxable real property due to a physical or quantity change.

Increases in full value due to changes in assessment only do not constitute a basis for a quantity change factor. In addition, a physical or quantity change does not result from the splitting or merging of parcels. Moreover, property returning to the tax rolls after the expiration of a PILOT does not constitute a basis for a Quantity Change Factor.

26. *What happens to the tax base growth factor if existing property goes on a PILOT and the tax base is reduced?*

Answer: If a property becomes subject to a PILOT during the year, the tax base will be reduced by the full value of the property subject to the PILOT. However, a quantity change factor cannot be less than one.

Reporting Methods

27. *Will the data the districts need to submit to calculate the tax levy limit be done so electronically or on a web-based application?*

Answer: OSC has created an online system. Districts will enter the data elements necessary to calculate their levy limit on the form. The form will actually run the calculation and display the allowable levy limit.

What's In and What's Out

28. *Do budgeted expenditures subject to the tax cap include expenditures from a reserve fund?*

Answer: The tax levy limit law applies a limit on the amount that a school district can levy – it does not apply a limit on the amount that a school district can spend. Accordingly, school district non-Capital Local Expenditures from a reserve account are not relevant to the calculation of a school district's tax levy limit. To the extent that a capital local expenditure is made from a reserve account or fund balance, the amount of that expenditure is subtracted from the total amount of Capital Local Expenditures that may be excluded from a school district's tax levy limit.

29. *Is the payroll used to determine pension growth the payroll from the budget year (e.g., Coming Year) or the base year (e.g., Prior Year)?*

Answer: The payroll to be used is for the upcoming year. School districts may use the Prior Year payroll as their best estimate for their Coming Year payroll. Districts will be provided the salary base for use in calculating the ERS exclusion in those years when there is such an exclusion.

30. *Under the new tax cap legislation will school districts be able to borrow money to help pay for pension increases?*

Answer: No. The tax cap bill does not authorize any new borrowing options for school districts.

31. *Can the portion of the pension increase that is over the tax cap be added to the tax levy?*

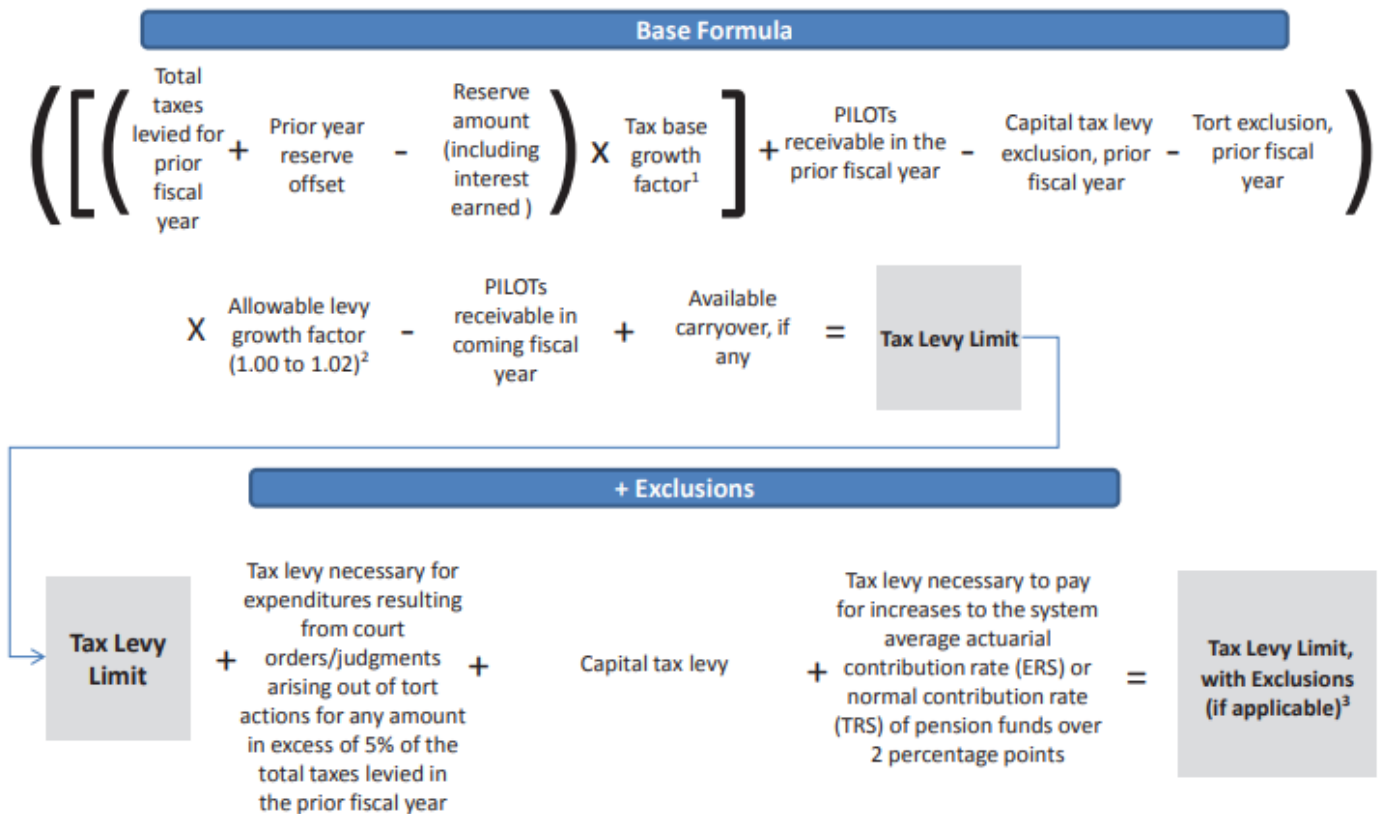
Answer: No. The pension exemption is triggered if the annual growth in the employer contribution rate for the Employees' Retirement System or the Teachers' Retirement System exceeds two percentage points. Under the exemption, pension costs associated with the annual growth in the employer contribution rate above two percentage points are exempted from the cap. School districts can only exclude the amount that is equal to the percentage increase in the system wide employer contribution rate that exceeds two percentage points, times the estimated salary base.

32. *Will retroactive pay for contract settlements be included in salary calculations for determining exclusions related to pension expenses?*

Answer: No

33. Can you provide an example of the tax levy limit calculation?

Answer: The following graphic from OSC illustrates the formula for calculation of the tax levy limit.



¹ Tax base growth factor: Based on Tax and Finance determination of "quantity change," such as new construction, newly taxable status of existing property, or measurable improvements to taxable property within the boundaries of the local government or school district.

² Allowable levy growth factor: Lesser of 1.02 or inflation factor (percent change in CPI for the 12 month period ending 6 months before the start of the coming fiscal year over the prior 12-month period), but never lower than 1.00.

³ If school districts propose to exceed this, they must get 60% voter approval for an override.

Source: <https://www.osc.state.ny.us/localgov/realprop/schools/files/formula.pdf>

34. What reserve fund will the amount of "erroneous levy" be held in until the ensuing year?

Answer: If the levy exceeds the tax levy limit due to technical or clerical errors, the excess amount shall be placed in reserve in accordance with Office of the State Comptroller requirements. OSC has posted this information on its property tax cap information page: http://www.osc.state.ny.us/localgov/pubs/releases/2011_12taxcapreserve.pdf

35. *Are incorrect calculations of salaries and pension costs considered “technical or clerical errors?”*

Answer: Yes. Mathematical errors in calculation will be treated as errors. Very slight discrepancies based on the fact that they must use an estimated salary (as in the case of TRS) may not constitute an error.

36. *What is a tort action? Does this include tax certs?*

Answer: Tort actions include actions for personal injury and property damage. Tax certioraris and breach of contract actions are among the types of actions that are not tort actions.

37. *Can a school district have an adjustment for transfer of function (such as tax certiorari responsibility that is transferred from the county to the school district)?*

Answer: No.

Consumer Price Index

38. *What CPI is to be used for the tax cap calculation?*

Answer: The growth in annual levy is limited to the lesser of 2 percent or the Consumer Price Index (CPI), subject to certain limited exceptions and adjustments. For purposes of the cap the applicable CPI will be the unadjusted “All Items Consumer Price Index for All Urban Consumers” (CPI-U). The CPI-U is released on a monthly basis, generally in the third week of the subsequent month. It will be the unadjusted monthly average CPI-U change from January to December of the base year, as published by the Bureau of Labor Statistics.

The "Transfer to Capital" line in the General Fund Budget relative to the Levy Limit Formula

39. *Must a budgetary appropriation be expensed within the same fiscal year in order to be included as part of the "Capital Levy" in the levy limit formula. For example, "Transfer to Capital", can a district appropriate money in this line but not expend it; rather put it into a reserve fund to be part of the "below the line" exclusion in the levy limit formula along with other Capital Debt?*

Answer: The [NYSED Tax Cap Guidance](#) document is the best source to explain how a capital expense is to be handled appropriately. It is pointed out in question #2 (page 6) in the document and the list of account codes (pages 7-8) help demonstrate that a Transfer to Capital amount, in and of itself, has never been allowed to be part of the capital

exclusion calculation. It has to be expenditures that districts actually expect to incur in the current year.

In summation, a Transfer to Capital is not an allowable “projected expense” so putting money in a reserve for future purposes (if it is not expected to be spent within the same fiscal year) does not become part of the capital exclusion for the given year. Also, it should be noted that once the money goes in to a capital reserve that will reduce the allowable Capital Local Expenditures in the capital exclusion calculation in the year that a district spends the money out of the reserve, so it theoretically doesn’t help for purposes of the Tax Cap.

Transportation Aid Ratios

40. The Prior Year Estimated Transportation Aid Output Report (TRA-EST) does not include the State share ratio for transportation aid for the Coming Year fiscal year. Where would this number be obtained?

Answer: Districts should use the “applicable Executive Budget computer runs” when calculating amounts to be deducted from Capital Local Expenditures in subsequent years. The transportation backup run from the Coming Year executive budget computer run contains the amount for estimated Coming Year Transportation Capital aid. This backup run, as well as the SA Coming Year computer run displaying aid based on the enacted Coming Year budget, also displays the selected Transportation Aid ratio for estimating Coming Year aid.

Capital Exclusions

41. We do not need the exclusion in order to be under the limit, so should we bother to calculate it either year? Is the capital exclusion optional or are we required to calculate it and put it in the form?

Answer: Based on the tax cap legislation, school districts must calculate the capital exclusion regardless of whether or not they will levy the amount the exclusion allows them.

NOTE: Pursuant to a December 2019 update to 20 NYCRR (Regulations of the Commissioner of Tax and Finance), Capital Expenditures for BOCES paid for through its component school districts are now included in the calculation of each school district’s Capital Local Expenditures excluded under the Property Tax Levy Cap. The term “Capital Local Expenditures” will now include any allowable share of BOCES Capital Expenditures. [20 NYCRR (Regulations of the Commissioner of Tax and Finance)]

42. If you use a capital exclusion of a lower amount than you have calculated is that unacceptable? For example, you calculate a capital exclusion of \$1,000,000 but you only record an exclusion of \$500,000 and still stay within the cap, is that okay?

Answer: School districts are required to make their best estimates for the upcoming school year. If they have done so and then circumstances materially change regarding their capital spending, it should be reflected in the next year’s tax cap calculation and the prior year’s calculation by requesting OSC put the form in resubmit so the school district may edit the form to start from the lower, actual prior year capital local expenditure in the base calculation. School districts will be required to go back and change the capital levy amount in the prior year’s calculation and should ascertain that the change will not adversely affect the prior year’s calculation. If upon making the change the school district finds that a reserve in the prior year would be necessary, it can either a.) Calculate the coming year as if the reserve had been

created or b.) Leave the form as it was prior to requesting resubmit. If auditors decide that the initial estimate was unsupported by facts or documentation at the time the tax cap calculation was made and submitted, the usual administrative and/or legal remedies should be pursued.

43. Do districts have to include the aid on the transportation equipment that is for maintenance and operations (schedule G) since they can't count that transportation equipment expense?

Answer: Districts do not include the aid on the transportation equipment, as outlined above since the expense is not included.

Building Condition Survey Aid and the Tax Cap Calculation NYSED Guidance

Note: Due to changes in the Building Condition Survey process in Education Law as a result of Chapter 59 of the Laws of 2019, beginning in 2020, Building Condition Surveys will be completed every five years on a rolling basis, with the annual groupings of required school district to be determined by SED at a future date. This guidance will be updated accordingly when those processes and regulations have been finalized and adopted.

Depending on their pre-existing schedules, school districts will do the Building Condition Survey, which is required every five years. The expenditures are reported in the general fund as is the revenue under basic formula aids at A3101 (per OSC guidance).

Question: Should the related BCS Aid be deducted from Building Aid when calculating the capital exclusions?

Treatment of Building Condition Survey Costs under the Tax Levy Limit

Yes, the districts should deduct the BCS Aid from the Building Aid when calculating the capital exclusions using the methodology set forth for other capital expenses. The following is guidance on how the aid is generated and the care needed to be taken in the event of an audit.

Regarding the Output Report locations for BCS data:

In the 2015-16 and 2016-17 aid years, there will be a separate Building Condition Survey Aid output report (BCS) and the last line of this report, line 11 will be carried over the BLD-SBA output report line 6.

Some of the BCS' output report data is pulled from the actual BCS base year (2014-15 expense for 2015-16 aid) data (square footage and expense). Districts will report in their SAMS Form FB submission in the fall of the particular year (Fall 2015 for 2015-16 output report inclusion).

In addition, the Facilities Planning office will confirm to the State Aid Office that the required BCS forms were submitted by the deadline for aid. If required BCS forms are not submitted by the data deadline, no aid will be calculated or paid to district.

This year in 2014-15 SAMS, only projected data is being collected on Form FB for next year's 1st of 2 year round for BCS aid. Some districts reported projected expenses they expected would be incurred this year (in 2014-15 base year) which would ultimately be claimed next year in 2015-16 SAMS for aid.

Of course, these are just estimated expenses for projection purposes and could change next year when actual expense figures are available for SAMS reporting and aid. Other districts will report projections next year in 2015-16 SAMS for which actual expenses will likely get aided in 2016-17 aid year.

The best way to get the actual aid data will be from the output reports once the expenses are reported in SAMS Form FB and aid is calculated for them. The projected data is estimated data which is good for estimation purposes but may be different from actual data ultimately submitted.

The BCS aid is base year aid meaning expenses claimed in the current year (base year) will be aided in next year (claim year).

BCS Aid will be paid in 2015-16 aid claim year (July 1, 2015-June 30, 2016) OR in 2016-17 aid claim year (July 1, 2016-June 30, 2017) depending on when the expenses were incurred by the district but only if the online BCS survey forms are submitted to SED by the deadline date:

- Expenses incurred 7/1/14-6/30/15 base year will be claimed on Form FB for aid in 2015-16 SAMS claim year
- Expenses incurred 7/1/15-6/30/16 base year will be claimed on Form FB for aid in 2016-17 SAMS claim year

Districts which projected BCS expenses for 2014-15 should expect to see BCS Aid projected on both the Executive (BT151-6) and Enacted Budget Computer Runs (SA151-6) for 2015-16. For initial Property Tax Cap filings with the Office of the State Comptroller (OSC), this projected aid amount is what should be deducted from the total Building Aid amount when calculating the capital tax levy exclusion for the coming school year. Districts should retain all documentation pertaining to both the projected BCS expenses and aid for OSC review.

Since the first round of districts will claim expenses for BCS aid on or after 7/1/15, OSC field audits conducted prior to 7/1/15 will need to use the projected BCS expense on Form FB Line 139. These estimates would be reported by district on 2014-15 Form FB line 139 for their next year's 2015-16 actual aid claim OR estimates reported by district on 2015-16 Form FB line 139 for their following year's 2016-17 actual aid claim.

OSC auditors can collect these reports from the district or contact the OSC Division of Local Government and School Accountability which works with NYSED to obtain the data.

Appendix A

BOCES Reporting for Capital Tax Levy Exclusion Under the Tax Levy Limit

Pursuant to a December 2019 update to 20 NYCRR (Regulations of the Commissioner of Tax and Finance), the costs for certain capital expenditures made by BOCES will be excludable from the tax levy limit calculation for their component school districts.

Calculation of 2020-21 levy limit: For the purposes of calculating the levy limit for 2020-21, a district's share of BOCES capital expenditures in 2019-20 must be added to the calculation of the Prior Year capital local expenditures.

Information Sharing with Component School Districts:

- Reporting Date: BOCES should work with their component school districts and make available to each component school district, the value of any prospective changes in planned expenditures for any eligible capital items. BOCES and their component school districts should collaborate to develop a calculation of the planned expenditures and potential deductions for State, federal aid or other funds by February 1 each year.

Information Filing with the New York State Education Department (NYSED):

- Reporting Date: Each BOCES will complete a data collection form for its component districts' data. It will be submitted via SAMS (State Aid Management System) on the NYSED Application Business Portal by the BOCES. The form should be completed and submitted at the same time as the Property Tax Report Card, which is due by close of business of the next business day after approval by trustees, but no later than 24 days before the Statewide Voting day, which is held on the third Tuesday of May each year.

BOCES Capital Expenditures: As in the case of the calculation of the capital local exclusion for school district expenditures, when BOCES calculate the amounts of BOCES capital expenditures to provide component school districts for the purpose of complying with the Tax and Finance regulation, (20 NYCRR) the term BOCES Capital Expenditures will be defined as those capital expenditures made by the BOCES resulting from the:

- financing,
- refinancing,
- acquisition,

- design,
- construction,
- reconstruction,
- rehabilitation,
- improvement,
- furnishing and equipping of or otherwise providing for capital facilities, including debt service and lease expenditures, and
- transportation capital debt service,

subject to the approval of the qualified voters where required by law.

These Capital Local Expenditures must be for projects with a period of probable usefulness as defined in local finance law. Capital Local Expenditures do not include expenditures for normal maintenance or operations.

Facilities/Space: As in the case of the exclusion calculation for school district capital local expenditures, calculation of the exclusion amount associated with BOCES capital should include all expenditures (net of aid) for leases, new construction, renovations and additions, including both cash payments and debt service

Expenditures for space (leases, renovation, addition, new construction etc.) should be allocated based on the Resident Weighted Average Daily Attendance (RWADA) as reported to NYSED in the annual BEDS report for that school year. See pages 7-8 for the list of ST-3 codes which component school districts might use to report eligible expenditures on the ST-3. There also is a list of relevant ST-3 codes for reporting of eligible BOCES capital expenditures for use in this calculation.

For Capital Local Expenditures which are already in place, any RWADA calculations that were used to allocate and 'freeze' school district payments in support of a capital project throughout the life of the project may be continued at the level agreed upon by the component school districts of a BOCES, as documented in an intermunicipal agreement or other similar instrument.

Equipment: The costs of equipment may be eligible for the capital exclusion as well. It must meet the GASB standard for capital equipment which has long been used in the definition for local districts. The equipment must:

- Must be part of a capital project approved by the voters, where required by law
- Retain its original shape and appearance with use;

- Be non-expendable, that is, if the article is damaged or some of its parts are lost or worn out, it is usually more feasible to repair it rather than replace it with an entirely new unit;
- Represent an investment of money which makes it feasible and advisable to capitalize the item; and
- Not lose its identity through incorporation into a different or more complex unit or substance.

If an equipment purchase is made as part of a renovation, addition or construction project, then associated costs should be allocated per the RWADA method used for space as defined above.

Deductions from Capital Local Expenditures: For the purposes of the calculation, school districts will be required to deduct all federal and State aid (including BOCES aid) and other funds which reimbursed, or will reimburse, a portion of the costs of eligible Capital Local Expenditures.