

Town Topics

Town Boards

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Each year during the budget season, we receive many questions about the budget adoption process. Below are some of the more common questions we field.

What is the difference between the tentative budget, the preliminary budget and the annual budget?

As the budget winds its way through the adoption process, it will take on three different names: the tentative budget, the preliminary budget and the annual budget. The tentative budget is the initial budget, prepared by the budget officer, from the estimates submitted by department heads. Once the tentative budget is reviewed, modified and adopted by the town board, it becomes the preliminary budget and must be filed with the town clerk. The annual budget is the budget that is ultimately adopted by the town board after the public hearing.

Who is the budget officer?

The “budget officer” is the supervisor or, in towns that have more than one supervisor, the presiding supervisor. The supervisor may appoint any person, including a town officer or employee, other than a member of the town board, to be budget officer.

Who prepares the tentative budget?

The budget officer is responsible for preparing the tentative budget. Budget estimates from department heads are required to be submitted to the budget officer no later than September 20 (October 20 in towns in Westchester and Monroe Counties). The budget officer reviews the estimates and may require department heads to provide additional information and answer questions relevant to his or her review. If no estimates were submitted, the budget officer is responsible for preparing one. Upon completing the review of the estimates, the budget officer prepares a tentative budget.

What must be included in the budget?

The budget must show by funds: (1) proposed appropriations and estimated revenues by classification of accounts as prescribed by the state comptroller; (2) estimated fund balances showing the breakdown of each fund balance estimated for encumbrances, amounts appropriated for the ensuing fiscal year’s budget, amounts reserved for stated purposes pursuant to law (including reserve funds) and the remaining estimated unappropriated unreserved fund balance for each fund (which is not to exceed a

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“reasonable amount”); (3) the amount of taxes to be levied; (4) salaries of elected officers and (5) other information pertinent to the above as may be prescribed by the state comptroller.

In addition, the budget may provide for general and special contingent purposes and must include any other data that the town board may, by resolution, require. Always be aware that there are limits on the amounts that can be left unappropriated or unreserved, set aside for contingent purposes and raised by tax for highway purposes.

A tax exemption impact report must also be prepared and affixed to the tentative and preliminary budgets, and it becomes part of the final budget.

What must a tax exemption impact report contain?

As applied to towns, the law requires that the report be prepared by the budget officer and annexed to the tentative and preliminary budgets. The report is to be on a form prepared by the Office of Real Property Tax Services and must show how much of the total assessed value on the final assessment roll for that budget is exempt from taxation. It must also list every type of exemption granted, by statutory authority, and show: the cumulative impact of each type of exemption expressed either as a dollar amount of assessed value or as a percentage of the total assessed value on the roll; the cumulative amount expected to be received from recipients of each type of exemption as payments in lieu of taxes or other payments for municipal services; and the cumulative impact of all exemptions granted. Exemptions that result in an impact of less than 1 percent may be aggregated as a single entry. The names of any individual receiving any tax exemption must not be included in the report.

Notice of the report must be included in any notice otherwise required by law as part of the budget preparation process. The report shall be posted on the bulletin board maintained by the town, as well as the town’s Web site (if applicable) and shall become part of the final budget.

Who schedules the public hearing on the preliminary budget?

The town board schedules the date for the public hearing and directs the town clerk to notify the public. The public hearing must be held on or before the first Thursday immediately following the general election held in November, except that in towns in Westchester and Monroe counties, such hearing shall be held on or before the 10th day of December. The town clerk must publish the notice of the hearing in the official paper or, if there is no official paper, in a paper having general circulation within the town. Notice must also be posted on the clerk’s bulletin board, and may be published in any other newspapers or posted in other places as the town board directs. The notice must be posted and published at least five days prior to the date of the hearing.

Can the town board amend or change the preliminary budget after the public hearing?

Yes. Although no changes should be made to the preliminary budget after it is filed with the town clerk but prior to the public hearing, the town law states that after the public hearing on the preliminary budget, the town board may further change, alter and revise the preliminary budget and that the preliminary budget as amended shall be finally adopted by town board resolution no later than November 20 (December 20 for towns in Westchester and Monroe counties). The board cannot change the salaries of elected town board members, elected town clerks and elected highway superintendents above the amounts published in the notice of hearing on the preliminary budget, except by a local law subject to permissive referendum.

The budget as modified or amended must still contain all of the required items discussed above in the section titled ‘**What must be included in the budget.**’

Can the town board change the fire district’s budget?

No. The fire district adopts its own budget and must provide it to the budget officer no later than November 7. Upon receipt of the fire district budget, the budget officer shall affix the fire

district budget to the annual town budget. Neither the town board nor any other officer or employee of the town may make any change to the annual budget of the fire district.

What are the public hearing requirements for fire district budgets?

Fire districts hold their own public hearings on their budgets on the third Tuesday in October. The hearing must be held with at least five days' notice of the time, place and purpose of the public hearing. A copy of the proposed budget must be filed with the fire district secretary and the town clerk and made available to the public for inspection and copying during office hours. If the fire district maintains a Web site, both the proposed budget and notice of hearing must be posted on the fire district's Web site.

A copy of the notice must be posted on the signboard of the town (or towns) not later than five days before the day designated for such hearing. The notice shall also be posted on the municipal and/or fire district Web site or Web sites, if one exists. At such hearing, any person may be heard in favor of or against the proposed budget as compiled, or for or against any item or items therein contained.

At what point during the budget process can a local law overriding the tax cap be enacted?

A local law overriding the tax cap can be adopted at any point during the budget cycle prior to the adoption of the final budget. Section 3-c of the General Municipal Law (GML) authorizes a local law override of the tax levy limit "for the coming fiscal year." Based on this language, an override local law is required to be enacted in the year immediately preceding the levy to which it will apply. It must, however, be enacted prior to the adoption of the final budget, as GML § 3-c provides that a budget exceeding the tax cap may only be adopted if the municipality "first enacts" a local law overriding the tax cap. A guidance document published by the Department of Taxation and Finance and the Department of State advises that the local law need only be adopted prior to the adoption of the final budget; it may be filed with the Department of State afterward.

Are newly created special districts subject to the tax cap?

According to the language of GML § 3-c, the tax cap "shall not apply to the first fiscal year after a local government is newly established or constituted through a process other than consolidation or dissolution." It further defines a "local government" as a "county, city, town, village, fire district, or special district including, but not limited to, a district created pursuant to article twelve or twelve-A, or governed by article thirteen of the town law ..." By this definition, the Legislature expressly intended a district established pursuant to articles 12 or 12-a (town board-administered districts) or governed by article 13 (districts governed by separately elected commissioners) of the town law to be considered an independent local government for purposes of the tax cap law. It follows that a newly established town special district is a "newly established" local government under the tax cap law, and the tax cap should not apply to the district in its first fiscal year following its creation. Note, however, that the guidance document referred to above limits the application of the tax cap to only those districts governed by article 13 of the town law (those run by separately elected commissioners). Accordingly, any town that has a newly created district should consult with its town attorney for an opinion on whether the tax cap will apply in the first fiscal year following the creation of the district.

How does the tax cap law affect "default budgets?"

Default budgets are the result of the inability of the town board to agree on a final budget. A budget is necessary in order for the town function, so the law provides that in the event that the town board cannot agree on a final budget, the preliminary budget shall become the final budget. If the preliminary budget requires a levy that exceeds the tax cap and the town board cannot agree on a final budget, the most likely solution is that the amount levied will be the amount required under the preliminary budget, and any amounts levied that exceed the tax cap will be placed in reserve and used to offset the following year's levy. Note that

at the start of the fiscal year, the town board will have to amend the budget accordingly to account for the amounts placed in reserve.

Whom may I contact if I have any other questions?

The attorneys at the Association of Towns are happy to answer any other questions that town officials may have about the budget process. Call the office at (518)465-7933 anytime Monday through Friday between 8:30 a.m. and 5 p.m.

The Town Budget Process

One of the primary responsibilities of the town board is to adopt a structurally balanced budget that accurately estimates the revenues and expenditures of the town in the coming fiscal year. The following step-by-step list outlines the budget adoption process from the initial stages through its final adoption and beyond. Please note that there are some steps the law requires be accomplished by a certain date – these statutory deadlines are listed below in bold (the deadlines for towns in Westchester and Monroe counties are different – these dates are indicated in parentheses).

Appointment of Budget Officer: The first step in preparing a town budget is the town supervisor's decision to designate a budget officer. The supervisor may appoint any person other than a member of the town board to be the budget officer. If no person is appointed as the budget officer, or if a vacancy occurs in the office, then the town supervisor is deemed to be the budget officer (Town Law, §103 (2)).

Receipt of Tax Cap Reporting Information: According to the Office of the State Comptroller (OSC), the town supervisor should receive a user identification and PIN number for accessing the online tax cap reporting form approximately five months prior to the fiscal year. The online form will be used later in the budget process to report to the OSC the information necessary to calculate the tax levy limit. Separately, the Department of Taxation and Finance will make available the relevant tax base growth factor used to adjust the town's levy limit (General Municipal Law, §3-c; www.osc.state.ny.us/localgov/realprop/).

Development and Submission of Estimates: Department heads are required to submit budget estimates to the budget officer no later than September 20 (October 20). Estimates must be submitted in such form and shall contain such information as the budget officer shall prescribe (Town Law, §104). It is recommended that the budget officer work with the various department heads to develop reasonable estimates of the revenues and expenditures for the coming fiscal year. In order to comply with the statutory deadlines, this process should be started during the summer so that the department heads have time to give thought and consideration to their estimates. If estimates are not submitted to the budget officer by the deadline noted above in this paragraph, then the budget officer is responsible for preparing the estimate. These estimates form the basis of the tentative budget (Town Law, §104).

Calculation of the Tax Levy Limit: Each town will be responsible to calculate its own tax levy limit. While there is no specific point at which this must be done in the budget process, it is recommended that this calculation for the coming fiscal year be done early. Doing so will help the budget officer develop a tentative budget that requires a tax levy within the allowed limit or give the town board time to consider and adopt a local law overriding the levy limit. Note that towns are allowed to carryover some or all, as the case may be, of the unused portion of their levy limit from the prior year (GML, §3-c; more information is available from the OSC Web site at www.osc.state.ny.us/localgov/realprop/; and the Tax and Finance Web site at www.tax.ny.gov/pdf/publications/orpts/capguidelines.pdf).

Preparation of the tentative budget: The budget officer reviews the estimates that were submitted and prepares estimates that were not submitted. After completion of the review, the budget officer develops the tentative budget and files it with the town clerk by September 30 (October 30) (Town Law §106 (2)).

Preparation of the Exemption Impact Report: The budget officer must also prepare an exemption impact report. The form for the exemption impact report is provided by the Department of Taxation and Finance. The exemption impact report is annexed to and filed along with the tentative budget by September 30 (October 30) (Real Property Tax Law § 495; more information on this report is available at the Tax and Finance Web site www.tax.ny.gov/research/property/exempt/exemptionreporting.htm).

Presentation of the Tentative Budget: The town clerk presents the tentative budget to the town board at a regular or special town board meeting to be held on or before October 5 (November 10) (Town Law, §106 (3)).

Town Board Review of the Tentative Budget: The town board reviews the tentative budget and makes any changes

that it deems necessary, consistent with law. In reviewing the tentative budget, the town board may call upon the department heads to explain their estimates (Town Law, §106 (3)). Note that the review of the tentative budget may be adjourned and continued at subsequent meetings, but take care not to string this out too long, as there are other deadlines further along in the process that must be met.

Adoption of the Preliminary Budget: Once the town board has concluded its review of the tentative budget, it needs to approve the tentative budget and any changes made thereto by resolution. Changes should be memorized in writing and approved by a majority vote of the town board by resolution in the minutes of a town board meeting (Town Law, §63). The tentative budget so adopted by the town board becomes the preliminary budget. The preliminary budget is filed with the town clerk, and the town clerk makes as many copies of the preliminary budget available for public distribution as the town board directs. From this point, no changes should be made to the preliminary budget until the town board holds a

Action	Date	Towns in Westchester & Monroe Counties	Town Law
1. Budget officer furnishes heads of administrative units (depts. and officials) with estimate forms	9/1	10/1	Recommended
2. Departmental submission of estimate by	9/20	10/20	Section 104
3. Budget officer reviews and prepares tentative budget; Files with town clerk by	9/30	10/30	Section 106(2)
4. Town clerk presents tentative budget to town board by	10/5	11/10	Section 106(3)
5. Review and revision by town board; Preparation of preliminary budget; Filed in town clerk's office	Upon completion of review and modification of tentative budget		Section 106(4)
6. Notice of public hearing	At least five days prior to hearing	At least five days prior to hearing	Section 108
7. Public hearing by	Thursday following Election Day; may be adjourned, but not beyond 11/15	12/10	Section 108
8. Final revision of preliminary budget	After public hearing but prior to adoption of final budget	12/15	Section 108
9. Submit to OSC information necessary for calculating tax levy limit	Before adoption of final budget	Before adoption of final budget	GML Section 3-C
10. Enact tax cap override local law, if necessary	Before adoption of final budget	Before adoption of final budget	GML Section 3-C
11. Adoption of budget by	11/20	12/20	Section 109
12. Tax Freeze Levy Limit Certification	1/21/15		GML Section 3-d

public hearing (Town Law, §106 (4)).

Public Hearing on the Preliminary Budget: The public hearing on the preliminary budget must be held no later than the Thursday following Election Day – for 2014, this will be November 4 (December 10). The hearing may be adjourned, but may not be adjourned beyond November 15 (December 15) (Town Law, §108).

Notice of the Public Hearing on the Preliminary Budget: Notice must be published in the official newspaper and any other paper that the town board directs. In addition, the notice should be posted on the town clerk's bulletin board and on the town's Web site, if practicable. The notice must state the time, place and purpose of the hearing and that copies of the preliminary budget are available for public inspection by anyone interested. The notice must also state the proposed salary of each member of the town board; the supervisor, the elected town clerk and the elected highway superintendent. At least five days must elapse between the first publication of the notice and the date specified for the hearing (Town Law, §108).

Modification of the Preliminary Budget: After the public hearing has been closed, the town board may make any further changes that it deems necessary, consistent with law. No additional public hearings are required on the changes made to the preliminary budget after the initial public hearing (Town Law, §109(1)).

Adoption of the Tax Cap Override: If the town's real property tax levy required under the preliminary budget exceeds the town's allowable tax levy limit, then a tax cap override is needed. The local law must be adopted by a 60 percent majority of the town board. For most towns, this will be a simple majority, but for those with seven-member town boards, five members must approve the override. The local law overriding the tax cap must be adopted before the final adoption of the budget (General Municipal Law, §3-c).

Report Tax Levy Limit Information to OSC: Towns must submit to OSC the information they used to calculate the tax levy limit for the town. The information should be submitted on the online form, using the user ID and PIN number that OSC provided to the town supervisor. In addition, the town must report to OSC the proposed levy set forth in either the tentative or preliminary budget, depending upon the stage in the budget process the town enters the data (General Municipal Law, §3-d (2)(d)). Although this can be done at any point prior to the adoption of the final budget, OSC recommends it be done later in the process, as the form will seek information relating to the proposed tax levy and whether the town plans on overriding the tax levy limit. Note that this form is simply for reporting the necessary data; OSC will not calculate the tax levy limit for the town for the coming fiscal year (General Municipal Law, §3-c; 3-d (2)(d)); for more information, visit <https://www.osc.state.ny.us/localgov/realprop/>.

Adoption of Final Budget: After the town board has completed its review of the preliminary budget, made any changes it required and adopted the tax cap override (if necessary), the preliminary budget should be adopted as the final budget by town board resolution. The final budget must be adopted no later than November 20 (December 20), and entered in full in the minutes of the town board. If the town board fails to adopt a final budget, the preliminary budget as last amended by the town board becomes the final budget (Town Law, §109).

Report Levy for Final Adopted Budget to OSC: The town must report the tax levy amount for the final adopted budget to OSC. The procedures and timeframes to report this information will be available on the OSC Web site at www.osc.state.ny.us/localgov/realprop/taxfreeze.htm (General Municipal Law, §3-d).

Receipt of Fire District Budgets: Fire districts are responsible for developing their own budgets, and the town board has no authority to alter the fire district's budget. Fire districts must file two certified copies of their budget with the town clerk no later than

November 7 (Town Law, §181 (3)(c))*.

*Town Clerk Duties Regarding Fire District Budgets:

Receive and File Fire District Budget Hearing Notice: The fire district must provide a copy of its published notice to the town clerk(s) of the town(s) in which the district is located (Town Law, §181 (3)(a)).

Post-Notice Hearing on Fire District Budget: The town clerk must post the notice of a fire district budget hearing on the town's Web site (providing the town has a Web site) and on the town clerk's signboard and bulletin board. Such notice shall be posted for at least 15 days prior to such hearing and shall not be posted any sooner than 20 days before such hearing (Town Law, §175-c (2)).

Public Inspection of the Proposed Fire District Budget: The town clerk must receive and make available a copy of a proposed fire district budget for public inspection (Town Law, §181(3)(a)).

Delivery of Budget to County: Once the final budget is adopted, the town clerk must prepare two certified copies of the budget. A certified copy of the fire district budget shall be annexed to each (Town Law, §181 (3)(c)). Within five days, the clerk must deliver the copies of the budget to the supervisor, who must then present them to the county legislative body within 10 days of his receipt. The county then levies the town taxes and other charges in the town budget (such as fire district taxes) at the same time and in the same manner as the county tax (Town Law, §115).

Delivery of Tax Roll/Bill Data

Real Property Tax Law, §1590 (3) requires that each town must submit to the commissioner of the Department of Tax and Finance data files used to prepare its tax rolls and tax bills no later than 10 days after the annexation of the warrant for the collection of taxes for the applicable fiscal year, or where no such warrant is annexed, no later than 10 days after the last date prescribed by law for the levy of taxes of the applicable fiscal year, provided that if its tax rolls or tax bills, or both, are prepared by a different governmental entity, that entity shall be jointly responsible for submitting the applicable data files to the commissioner.

Developing Budgets for Improvement Districts

For any improvement district financed by either a special ad-valorem levy or special assessment, the town board (or commissioners of the district, if any) must develop a separate budget. Like the town budget, the district budget process begins with an estimate of the anticipated revenues and expenditures for the district. The estimate should be detailed and accurate, and may contain an amount for contingent purposes of up to 10 percent of the total amount necessary to meet the expense of maintaining the district. Once the revenues and expenditures are developed, the amount of the anticipated revenue is subtracted from the total of anticipated expenditures, and the difference is assessed on the property within the district, (Town Law, §202-a (3)). For districts that are financed by a special assessment (in proportion to the benefit that is received), this will require the preparation of a special assessment roll that shows the amount of the benefit received by each parcel and the amount assessed against it. The special assessment roll must be filed with the town clerk between the first and 15th day of September (Town Law, §202-a(3),(4)).

Once the special assessment roll is filed, the town board must have public hearing on it. Notice of the public hearing must be published in a newspaper at least 10, but not more than 20, days prior to the date of the public hearing; except for towns in Westchester County, the roll be adopted at least 30 days before the annual meeting of the board of supervisors at which taxes are levied (Town Law, §202-a(5); §239).

In addition to the notice by publication, the New York Court of Appeals has held that the town must also provide actual notice to those property owners whose names and addresses

are known to the town, unless there is a compelling reason not to do so (Garden Homes Woodlands Company v. Town of Dover, 95 N.Y.2d 516 (2000); 11 Op. Counsel SBRPS No. 15).

After the public hearing on the special assessment roll, the town board may adopt the special assessment roll. The board may also make amendments or changes to the special assessment roll, but cannot adopt the amended special assessment roll until another public hearing has been held on it. In any event, the town board must adopt the special assessment roll at least 30 days prior to the meeting of the county board of supervisors at which taxes are levied (Town Law §202-a (5)).

When the budgets and special assessment rolls are completed, the town supervisor will present them to the county legislative body along with the town's annual budget (Town Law, §115). The county then imposes the ad-valorem levies (by computing the tax rate on the basis of assessed valuation) and the special assessments against the parcels within the districts.

Please note that the Department of Taxation and Finance has advised that the levy for special improvement districts governed by the town board are to be included in the town's tax levy for purposes of calculating the town's annual tax levy limit (Dept. Tax and Finance "The Property Tax Cap Guidelines for Implementation - Publication 1000 (10-11)" may be reviewed at their Web site: <http://www.tax.ny.gov/pdf/publications/orpts/capguidelines.pdf>).

Calculating the Available Carryover

For towns that levied less than their tax levy limit for 2015, the law allows a carryover equal to the amount by which the prior year's tax levy was below that year's tax levy limit, not to exceed 1.5 percent of the tax levy limit for the prior year.

Before calculating the available carryover, a town must first determine whether its prior year's levy was below the tax levy limit for that year. If the town met or exceeded its levy limit for 2015, there will be no available carryover to apply to 2016. If the town's levy for 2015 was below the allowable levy limit, the town will be able to carry over that amount up to 1.5 percent of the allowable levy limit.

To determine the amount of the available carryover, multiply the prior year's levy limit by .015. This will give you the maximum carryover that is allowed by law (we'll call this the 'carryover ceiling'). Next, determine the amount by which the actual levy for the prior year was less than the tax levy limit for that year (we'll call this the 'unused levy'). If the unused levy is less than or equal to the carryover ceiling, then you can carry over the entirety of the unused levy. If the unused levy exceeds the carryover ceiling, then you can carry over an amount up to the carryover ceiling. This provision is best explained by the accompanying table.

In order to isolate the carryover calculation, we are assuming that there is a 2 percent allowable levy growth factor and that no adjustments due to PILOTs, quantity growth or any other exclusion apply.

Although columns 1 and 2 each allow for carryover that can be added to the levy limit for 2015, they are significantly different. In column 1, the town was only \$50,000 under its tax levy limit, and therefore, can carry over only that amount. In column 2, however, the town was under its levy limit by \$200,000, but could only carry forward \$150,000 (1.5 percent of the tax levy limit). The remaining \$50,000 cannot be rolled forward to the next year – it is lost forever.

All else being equal, under each scenario provided, the use of the carryover will result in an overall tax levy limit that is less than the allowable levy authorized if the town used the entirety of the tax levy limit during 2015. Remember that the amount of available carryover gets added to the levy limit, along with any amounts that are excluded from the tax cap.

Lastly, remember that even if your town adopted an override of the levy limit last year, you may still have available carryover; some towns may have adopted an override for 2015, but

ended up with an actual levy below the tax levy limit. ☐

<i>Calculating the Available Carryover</i>			
	(1) If carryover is less than 1.5 percent of prior year's levy limit	(2) If carryover is greater than 1.5 percent of prior year's levy limit	(3) No available carryover
2015 tax levy limit	\$10,200,000	\$10,200,000	\$10,200,000
2015 town tax levy	\$10,150,000	\$10,000,000	\$10,200,000
Amount below tax levy limit (unused levy)	\$50,000	\$200,000	0
2015 levy limit x .015 (carryover ceiling)	\$150,000	\$150,000	\$150,000
Available carryover for 2016 (Lesser of unused levy and carryover ceiling)	\$50,000	\$150,000	0
2016 Levy Limit (2014 Levy x 1.02)	\$10,353,000	\$10,200,000	\$10,404,000
2016 allowable levy (2016 levy limit + available carryover)	\$10,403,000	\$10,350,000	\$10,404,000

Boat Washing Advisory Signs Now Required for Boat Launches

Downloadable Versions Available at DEC Web site

As part of the effort to contain the spread of destructive invasive plants and animals, signs encouraging owners to wash their boats after each use must now be posted at all public launches in New York State. Washing down a boat after each use helps avoid spreading invasive species from one body of water to another.

The law requires the sign to measure 18 inches by 24 inches and be posted no later than Sept. 23, 2015. However, given the critical impact invasive species have on our waterways, signs should be posted in time for the coming boating season.

Many boaters are aware of the need to take measures to avoid spreading invasive species, but some may not be, and the required sign can help reinforce the important message about protecting New York's water resources.

The required signs are now available in a downloadable format at the state Department of Environmental Conservation Web site at www.dec.ny.gov/outdoor/101325.html.

Municipalities may download as many images as they wish, but it is the responsibility of the owner of the boat launch to produce (and post) the actual signs.

For more information, contact DEC at 518-402-8894. ☐

Justice Courts Topics

By Judge Anthony M. Provenzano, Justice, Town of Rye

“Hey! Why do the fine and surcharge cost so much?”

The next time that a defendant complains about the amount of the traffic fine and the related surcharge imposed, you may want to inform him or her how they handle fines in Finland.