

# The Property Tax Cap

## *Guidelines for Implementation*



The information presented is current as of this publication's revision date.

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On June 24, 2011 the property tax cap was signed into law (see Chapter 97 of the NYS Laws of 2011). Below is guidance to assist local governments in the implementation of the property tax cap.

### **Key Components of the Tax Cap**

- ✓ **What is the property tax cap?**  
The tax cap law establishes a limit on the annual growth of property taxes levied by local governments and school districts to two percent or the rate of inflation, whichever is less.
- ✓ **Who is subject to the tax cap?**  
The cap applies to all independent school districts outside of the Big Five Cities (i.e. dependent school districts) and to all local governments including counties, cities, towns, villages and special districts (except those special districts noted below). The cap does not apply to New York City.
- ✓ **Are there exceptions to the tax cap?**  
There are limited, narrow exclusions to the cap, including certain costs of significant judgments arising out of tort actions and unusually large year-to-year increases in pension contribution rates.
- ✓ **Is there an override mechanism to the tax cap?**  
The tax levy cannot exceed the cap unless 60 percent of voters (for school districts) or 60 percent of the total voting power of the governing body (for local governments) approve such increase.
- ✓ **When is the tax cap effective?**  
The cap first applies to local fiscal years beginning in 2012. Local budgets that commenced in 2011 but conclude in 2012 are not affected.

## Technical Information

### I. Applicability

The tax cap applies to all independent school districts and all local governments outside of New York City, and is intended to capture the broad range of property taxes levied in New York. Accordingly, the tax cap applies broadly to property taxes that support all local governments, including special districts that are independently governed as well as special districts that are established, governed and administered by another municipality. Where a local government, such as certain special districts, is wholly integrated within another local government – i.e. the special district is established, administered and governed by the board of that other local government, and is supported by a tax levy imposed by and under the authority of that other local government – then any property tax being levied by the overarching local government to support the operations of the subordinate special district is considered part of the tax levy of the overarching local government for purposes of administering the tax cap and override vote, if any. The following entities are covered by the cap:

- All Counties (except those within NYC)
- All Cities (except NYC)
- All Towns
- All Villages
- All Fire Districts
- School Districts (including common, union free, central, central high school, and city school districts, but excluding NYC and the Big Four<sup>1</sup>)
- Special Districts (including, but not limited to sewer, water, library and fire protection districts). In the case of special districts the tax cap applies as follows:
  - The tax levy of a special district (such as a water or sewer district) that (i) has a separate independent elected board, and (ii) has the authority to levy a tax, or can require a municipality to levy a tax on its behalf, **is subject to the tax levy limit.**
  - The tax levy of a special district that (i) has a separate independent board appointed by the governing body of another local government, and (ii) has

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<sup>1</sup> The budgets for the school districts in the Big Four Cities are within the cities' budgets, and those school districts have no separate taxing authority. The portion of the tax cap law applicable to local governments applies to the budgets of the Big Four Cities.

the authority to levy a tax, or can require a municipality to levy a tax on its behalf, **is subject to the tax levy limit.**

- To the extent the budget of a special district, such as a library district, is comprised of revenues generated by its own taxing authority, or by a tax levy of another local government that the local government is required to impose on behalf of that special district, those tax revenues fall within the tax levy limit of the special district. To the extent the budget of that special district is comprised of revenues generated by the taxing authority of another local government (such as a town or village), and that local government is not required to impose that tax levy on behalf of the special district, those tax revenues fall within the tax levy limit of the town or village.
- A tax levy that supports the operations of a special district that is established, administered and governed by the governing body of another local government— such as a tax levy imposed by a town or county board, under its authority, to support an improvement district created, administered and governed by that town or county board - is part of that town or county's tax levy, and **is to be applied to the tax levy limit of that town or county** – it is not to be separately reported by the special district.
- A special district that raises revenue solely through fees based on use **is not subject to the tax levy limit.**

## II. Quantity Change

The Quantity Change Factor adjusts the tax levy limit to reflect an increase in the full value of taxable real property in a local government 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 local governments 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. A physical or quantity change does not result from the splitting or merging of parcels.
  - Property returning to the tax rolls after the expiration of a PILOT does not constitute a basis for a Quantity Change Factor.

### III. Inflationary Factor

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 the purposes of the cap the applicable CPI will be the unadjusted "All Items Consumer Price Index for All Urban Consumers" (CPI-U), the broadest and most comprehensive measure released by the Bureau of Labor Statistics. The CPI-U is released on a monthly basis, generally in the third week of the subsequent month.

Based on the most recently released calendar of release dates, the following table illustrates when the inflationary factor will be available for use by local governments in preparing their levy limit for upcoming budgets.

**Chart 1. Timing of the Release of CPI-U Index for the Property Tax Cap Inflation Factor**

Fiscal Year beginning	CPI-U period ends	CPI-U released
January 1, 2012	June 30, 2011	July 15, 2011
April 1, 2012	September 30, 2011	October 19, 2011
June 1, 2012	November 30, 2011	December 15, 2011
July 1, 2012	December 31, 2011	January 14, 2012

### IV. Calculating the Tax Levy Limit

Each local government shall calculate the tax levy limit for the coming year as follows:

- First, determine the total amount of **taxes levied**, not collected, in the prior fiscal year.
  - Property taxes levied by a town to fund the town budget under its taxing authority fall within the town's tax levy limit.
  - Property taxes levied by a town on behalf of another local government (e.g. fire district) pursuant to the taxing authority of that other local government fall within that other local government's tax levy limit.
- Second, if a "tax base growth factor" has been reported to the local government by the Commissioner of Tax and Finance, the total amount of taxes levied for the prior year is to be multiplied by the growth factor.
- Third, add any PILOTs that were receivable in the base year. The total amount of PILOTs receivable is to be included in the calculation of the tax levy limit. No adjustment is permitted.

- Fourth, beginning for fiscal year 2013, subtract the tax levy necessary to support expenditures for tort actions for any amount that exceeds 5 percent of the local government's tax levy in the prior fiscal year. There is no subtraction for these expenditures in the calculation for the 2012 fiscal year.
- Fifth, multiply the result by the allowable levy growth factor, which will be provided by the Office of the State Comptroller.
- Sixth, subtract any PILOTs receivable in the coming year. The total amount of PILOTs receivable is to be included in the calculation of the tax levy limit. No adjustment is permitted.
- Seventh, beginning with fiscal year 2013 budgets, add any available carryover from the prior fiscal year. There is no available carryover for the 2012 fiscal year.
- Eighth, unused exclusions associated with growth in pension costs or tort judgments may not be carried forward.

## **V. Filing the Levy Limit Calculation**

Each local government shall submit to the Office of the State Comptroller any information necessary for calculating the tax levy limit for the coming fiscal year prior to adopting a budget for that year. The Comptroller's office will provide additional information on the form and manner in which such submissions are to be made.

- A special district whose tax levy is determined by the board of another local government (such as a town or county board) does not have to separately submit the above information to the Office of the State Comptroller. The tax levy for that special district is part of that town or county's tax levy, is to be applied to the tax levy limit of that town or county, and is to be included within the information submitted by that town or county to the Office of the State Comptroller.
- A special district that raises revenues solely through fees based on use is not subject to the tax levy limit, and therefore does not have to submit the above information to the Office of the State Comptroller.
- All other special districts are each responsible for ensuring that its tax levy limit is calculated and reported in an accurate and timely manner.
- A special district may authorize another local government that handles its administrative affairs to calculate and report the tax levy limit on its behalf.

## VI. Limited Exclusions

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

- **Torts.** Local governments can increase their property tax levy beginning for fiscal year 2012 above the levy limit (the base year levy as adjusted for growth and inflation) for costs resulting from court orders or judgments against the local government arising out of tort actions to be paid in the coming fiscal year. The adjustment can only be made for costs of those court orders or judgments that 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 exemption is triggered if the annual growth in the average actuarial contribution rate for the Employees' Retirement System (ERS), the Police and Fire Retirement System (PFRS), or the normal contribution rate for Teachers' Retirement System (TRS) 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.
  - **Variance in Plans.** In years in which the pension exclusion is triggered, the pension exemption rate is the same percentage of salary (growth in the system average actuarial rate minus two percentage points) for all employers.



### Determining the Pension Exclusion

- In accordance with the employer contribution rates recently promulgated by the Office of the State Comptroller, the pension exemption will be triggered for both ERS and PFRS in local governments' FY 2012 budgets. The ERS average contribution rate is increasing by 2.6 percentage points and the PFRS average contribution is increasing by 4.2 percentage points. As a result, the ERS exemption is 0.6 percentage points and the PFRS exemption is 2.2 percentage points. These exemptions are calculated by subtracting two percentage points from the year-to-year increases in the ERS and PFRS average contribution rates (2.6 and 4.2 percentage points, respectively, for FY 2012). A similar exemption is allowed for local governments with TRS pension costs.
- For a hypothetical employer with a \$1 million ERS salary base and a separate \$1 million PFRS salary base, the ERS exemption would be calculated by multiplying 0.6 percent by the \$1 million salary base (\$6,000), and the PFRS exemption would be calculated by multiplying 2.2 percent by the separate \$1 million salary base (\$22,000), for a total pension exemption of \$28,000. All other pension costs fall within the property tax cap limitation.
- The system average contribution rate is to be utilized in calculating the amount of the exemption, even when the system average contribution rate is different than the actual contribution rate that the local government pays for its ERS pension plans. For example, if the ERS average contribution rate is increasing by 2.6 percent, and a local government's actual ERS plan contribution rate increased by only 2 percent, that local government would still be eligible to exclude 0.6 percent of its ERS salary base of \$1 million (or \$6,000). On the other hand, in years where the ERS average contribution rate increased by 3 percent and a local government's actual contribution rate increased by 3.5 percent, that local government can only exempt an amount equal to 1 percent of its \$1 million ERS salary base (or \$10,000).

- **Adjustments and Reconciliations.** Salary reconciliations and adjustments are not to be factored into the pension exclusion.
  
- **Contribution Rates.** The system average actuarial contribution rate is the average contribution rate paid by all employers in ERS and PFRS. It is published annually by the Office of the State Comptroller.
  - For fiscal years beginning in 2012, the Office of the State Comptroller recently published the ERS and PFRS contribution rates. TRS first published its estimated employer contribution rate in February 2011 for fiscal year 2012.
  - Local governments should use the ERS and PFRS contribution rates recently promulgated by the Office of the State Comptroller to calculate their exclusion for fiscal year 2012. Local governments with TRS pension costs should use the TRS contribution rate formally adopted in August 2011 (which was first published as an estimate in February 2011) for their FY 2012 budgets.
  - In future years, no local government may assume a pension exclusion until the Office of the State Comptroller officially promulgates the ERS and PFRS contribution rates. Accordingly, local governments will not be eligible to take advantage of the pension rate exclusion unless they use these contribution rates. If a local government's local law requires an earlier budget calculation and adoption, the local law must be changed with respect to when the budget is due in order to utilize the pension exception.
  
- **Salary Base.** The Office of the State Comptroller will provide local governments with their estimated salary bases to calculate their ERS and PFRS pension exclusions. Local governments with TRS pension costs must use their own salary base estimates to determine their TRS pension exclusion.
  - For ERS and PFRS, local governments must use the salary base projected by the Office of the State Comptroller in the calculation of their pension exclusion.
  - For TRS, local governments must continue to use their own initial salary base projections.
  
- **Amortization.** Local governments utilizing amortization may not levy for the pension exclusion.

## VII. Erroneous Levies

Excess levies that are collected due to calculations that are inconsistent with the statute are required to be placed in reserve.

- The law provides for no minimum threshold before funds are placed in reserve, although the Office of the State Comptroller may issue guidelines in this area.
- The law requires that cash be put in reserve.
- 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.
- If the Office of the State Comptroller finds upon audit that a local government has levied in excess of the tax levy limit, the local government must place an amount equal to the excess amount of the levy in reserve.

## VIII. Overrides of the Tax Levy Limit

Local governments **may override the tax levy limit only by first passing a local law** (or a resolution in the case of a fire or other special district) that allows for the tax levy limit to be exceeded.

- This override vote requires a 60 percent vote of the total voting power of the governing body to pass.
  - In a case where a weighted vote is used to pass the budget, the override will require a 60 percent weighted vote of the local government's governing body.
  - The override vote must precede the vote on adoption of the budget although both votes may occur on the same day.
- The local government may exercise reasonable discretion in drafting a local law or resolution that overrides the tax levy limit, but any such local law or resolution must contain language that clearly overrides the levy limit.
- The local governing body may adopt the budget right after adopting the local law. If the Secretary of State rejects the local law for filing because of technical reasons, and those technical reasons are not cured within a reasonable period of time, the amount of the tax levy that exceeded the tax levy limit (other than a levy for those items excluded from the tax levy limit) shall be placed in reserve pursuant to paragraph 6 of section 3-c of the General Municipal Law.

- In the event that a local government successfully overrides the tax levy limit, the base for the following year's tax levy limit calculation is the amount that was levied in the prior year inclusive of the override amount, less any amounts to be subtracted as set forth in the statute.
- In the case of a special district that requires a popular vote to pass the budgetary increase, the 60 percent voting requirement only applies to the board's vote, not to the popular vote (where only a majority vote continues to be required).

**Example: Non-Charter Counties Budget Process**

- The budget officer of a non-charter County has to submit a tentative budget by November 15, but may be required by the County's board of supervisors to submit that tentative budget by October 1.
- Members of the committee of the board of supervisors designated or created to review the tentative budget are entitled to investigate and inquire about the estimate of any administrative unit or the request for an appropriation of any authorized agency, and are entitled to attend all hearings conducted by the budget officer.
- The board of supervisors of that County has until December 20 to adopt a budget.
- Accordingly, that County has between 5 to 11 weeks to enact a local law that overrides the tax levy limit (which local law has to be upon the desks or tables of the board of supervisors for at least 7 calendar days, excluding Sundays, unless there is a message of necessity).
- As is required for all local laws, the proposed local law that overrides the tax levy limit is subject to a public hearing on five days notice, unless a local law prescribes a different notice requirement.
- See attached charts entitled "**Timeline for Tentative County Budget that Requires Tax Cap Override**" and "**Timeline for Tentative County Budget as Amended by Board of Supervisors that Requires Tax Cap Override.**"

**Example: Town Budget Process**

- The town clerk of a town has to submit a tentative budget to the town board on or before September 30 (or on or before October 30 for towns in Westchester and Monroe Counties).
- A town board has until November 20 (or December 20 for towns in Westchester and Monroe Counties) to adopt the budget.
- Accordingly, towns in counties other than Westchester and Monroe have more than 6 weeks to enact a local law that overrides the tax levy limit (which local law has to be upon the desks or tables of the town board members for at least 7 calendar days, excluding Sundays, unless there is a message of necessity). Towns in Westchester and Monroe Counties have nearly 6 weeks to pass such a local law.
- As is required for all local laws, the proposed local law that overrides the tax levy limit is subject to a public hearing on five days notice, unless a local law prescribes a different notice requirement.
- See attached charts entitled “**Timeline for Tentative Town Budget that Requires Tax Cap Override**” and “**Timeline for Tentative Town Budget as Amended by the Town Board that Requires Tax Cap Override.**”

**IX. Budget Process: Final Adoption of a Budget**

A budget officer, or chief executive, may prepare a tentative budget that requires a tax levy in excess of the levy limit. However, the governing body cannot, without first complying with override requirements, (i) adopt a budget that requires a levy in excess of the tax levy limit, or (ii) impose or cause the imposition of a tax levy to the extent that a budget requires a levy in excess of the levy limit.

**X. Special Circumstances: Consolidation, Dissolution & Transfer of Functions**

When significant changes are made to the structure or governance of a local government, the tax levy limit calculation will need to be determined by the Office of the State Comptroller.

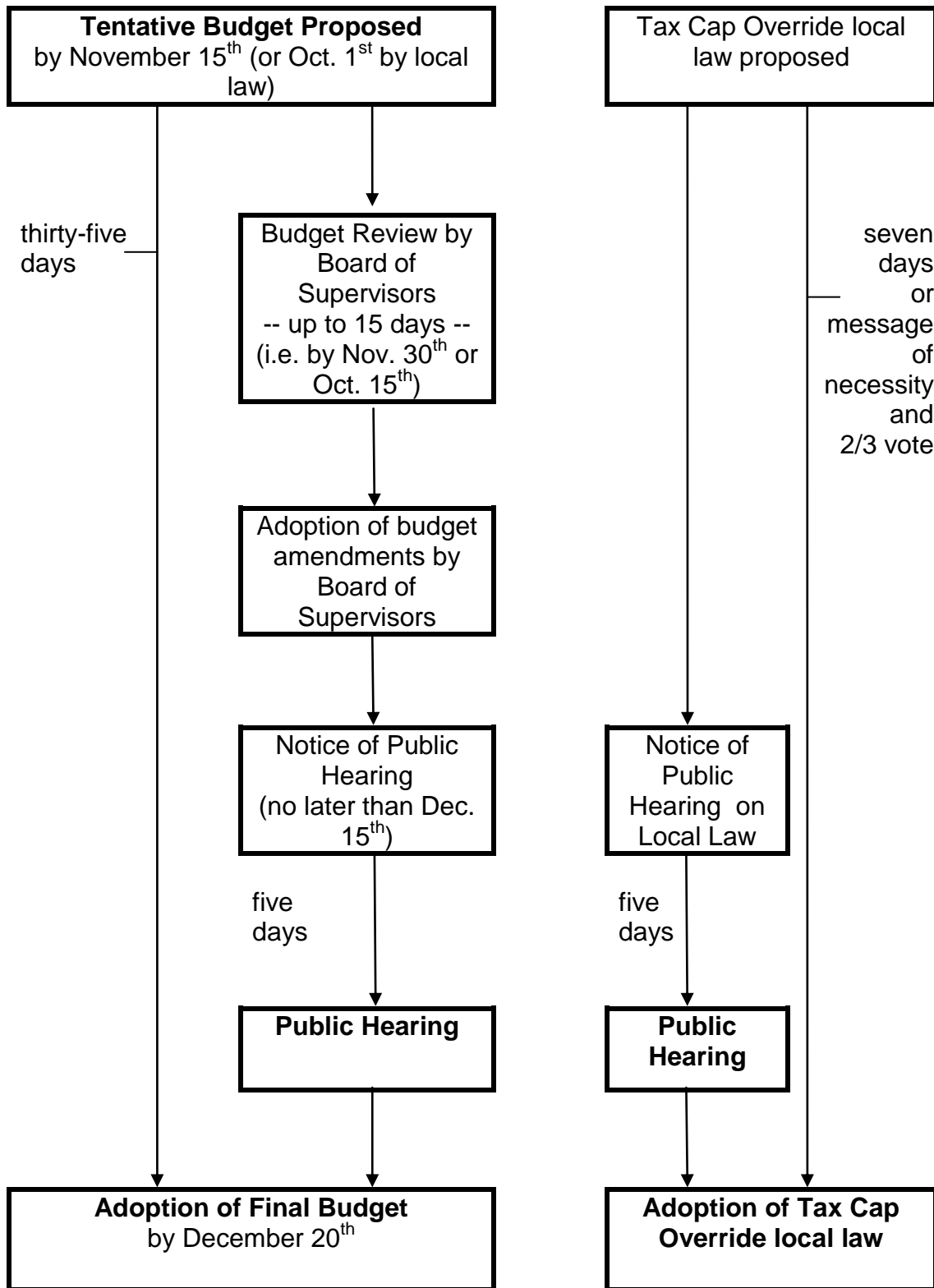
- **Consolidation.** When two or more local governments consolidate, the Office of the State Comptroller will calculate the tax levy limit for the first year after the consolidation. This calculation will be based upon the prior year tax levy limits of both local governments, but other factors pertaining to the consolidation may also be considered.

- **Transfer of Functions.** If a local government determines that it is in the best interest of the citizens to transfer the function for a governmental activity (such as policing) to another local government, the Office of the State Comptroller shall determine the costs and savings of the associated function for both local governments. This determination will be provided to the local governments so that the appropriate adjustments can be made to their tax levy limit calculations.
- **Dissolutions.** When a local government dissolves, the Office of the State Comptroller will calculate the tax levy limit for the local government that assumes the debts, liabilities and obligations of the former local government. This calculation will be based upon the prior year tax levy limits of both local governments, but other factors pertaining to the dissolution may also be considered.
- **New Local Governments.** The tax levy limit does not apply to the first fiscal year of a newly established local government (which is not the result of a consolidation or dissolution).

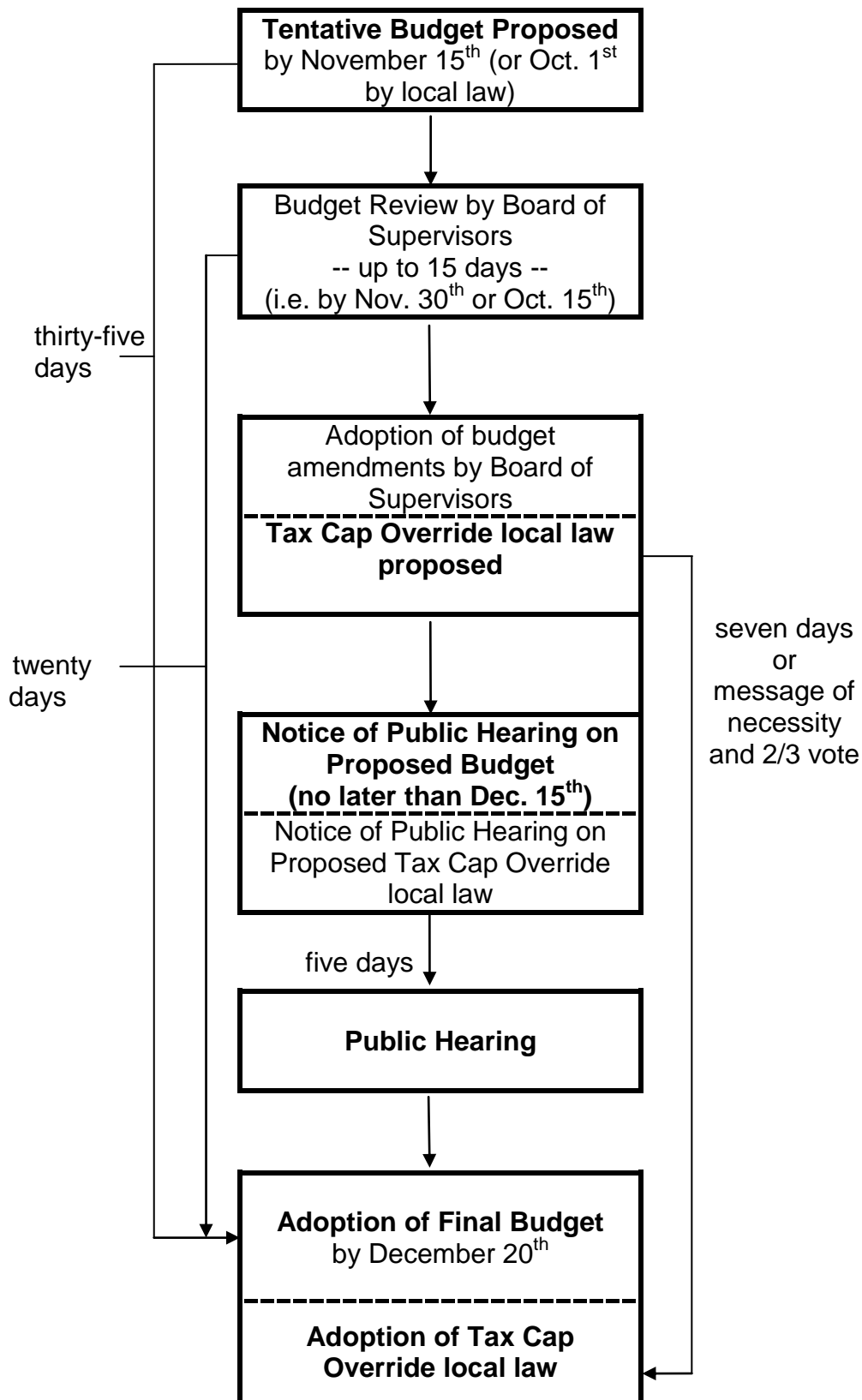
## **XI. Treatment of “Chargebacks” by Counties**

As a general matter, property taxes levied by a County under its taxing authority to fund the County budget fall within the County’s tax levy limit. Accordingly, taxes levied by the County under the County’s taxing authority which are for the support of entities such as Community Colleges and County Boards of Election are subject to the County’s tax cap, notwithstanding the chargeback of those taxes to another local government. Counties may not decide independently to apportion those tax levies to another municipality.

### Appendix A Timeline for Tentative County Budget that Requires Tax Cap Override

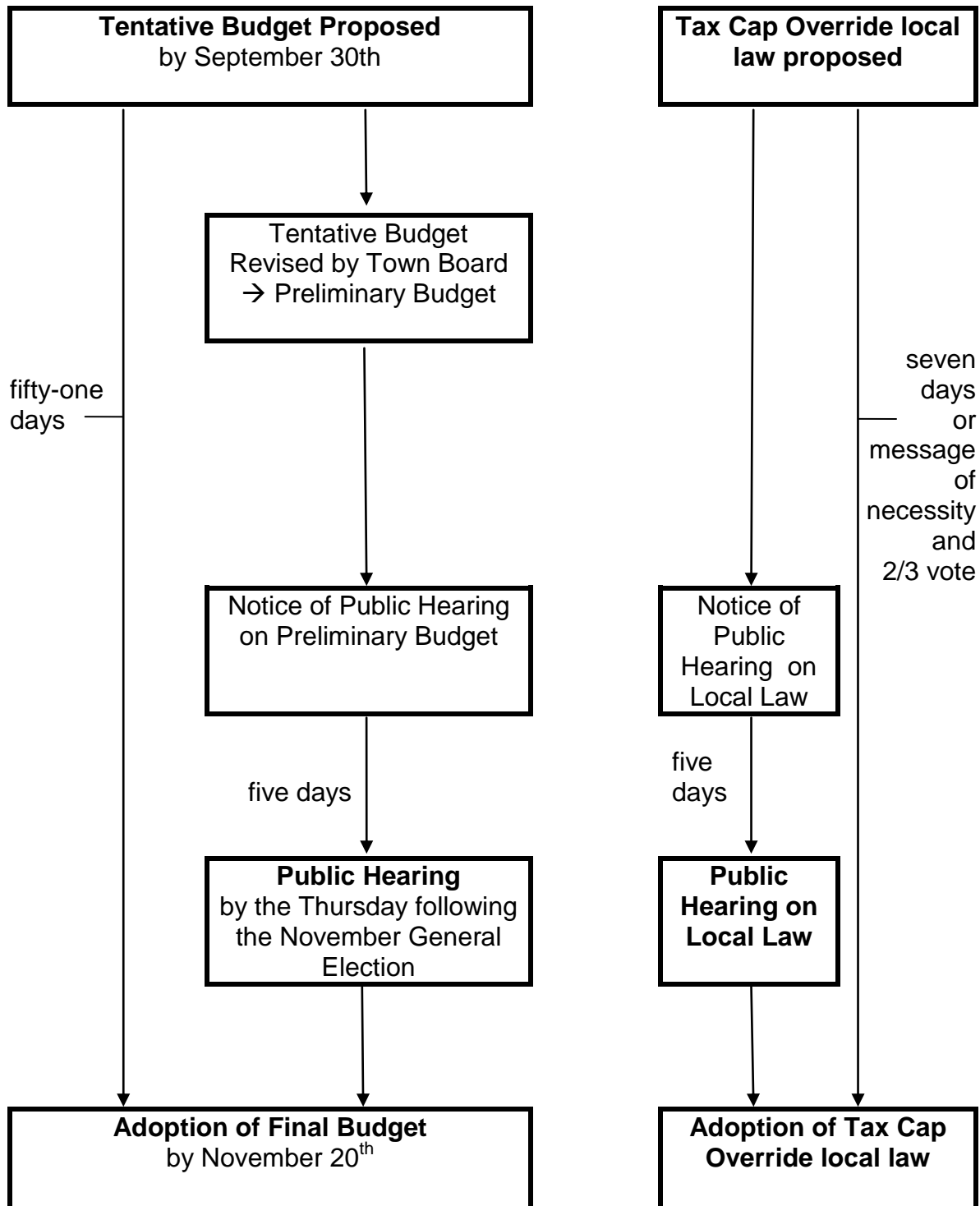


**Appendix B**  
**Timeline for Tentative County Budget as Amended by Board of Supervisors**  
**that Requires Tax Cap Override**



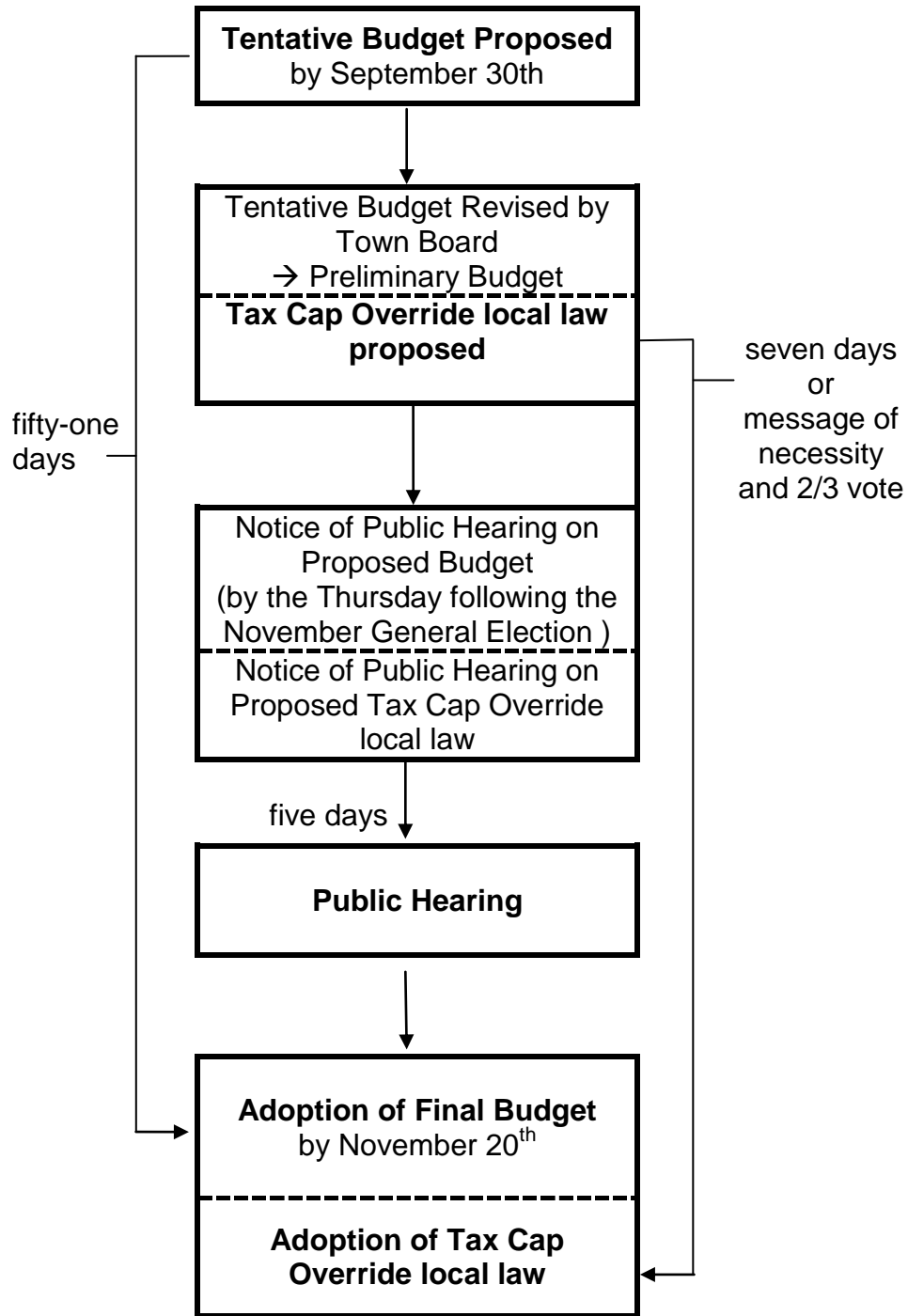


**Appendix C**  
**Timeline for Tentative Town Budget that requires Tax Cap Override\***



\* The budget calendars are different for towns in Monroe and Westchester Counties

**Appendix D**  
**Timeline for Tentative Town Budget as Amended by the Town Board**  
**that requires Tax Cap Override\***



\* The budget calendars are different for towns in Monroe and Westchester Counties