

# FIRE COUNSEL NOTES



## Let's Talk Taxes!

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**F**all is the time when most Fire Protection District Boards undertake the adoption of the annual tax levy for their District. As all trustees should know, the deadline for the filing of tax levies is the last Tuesday in December of each year. Tax levies in Illinois are prepared and filed on a calendar year basis with the levy adopted for a particular year then being payable in the following year. So, for example, when we talk about 2024 taxes, those are the taxes levied for calendar year 2024 which will be paid by taxpayers in calendar year 2025. The tax levy is put in place by ordinance and it may be adopted by the Board of Trustees (following Open Meetings Act Rules regarding the listing of action on the levy on the meeting agenda) at any time during the year, but most districts adopt their levy in the fall months after the adoption of their annual fiscal year budget and appropriation ordinance and after the issuance of the property tax extension report for the District's prior year levy which often is not available until late summer or early fall in some counties. The extension report is an essential tool for the Board to use in deciding how to set its tax levy for each year, and it is important that the Board have the prior year's extension report when it undertakes to adopt its current year tax levy. The extension tells the Board how much of its prior year's tax levy was actually included in the tax bills issued by the County Treasurer(s) based on the District's prior year levy. In other words, the extension tells us what the District should have received in tax revenues compared to the adopted levy. Why the difference between the levy and the extension? There can be multiple

reasons, but the most common one is the District's actual equalized assessed value (EAV) for the tax year. Because this number is determinative of how much tax revenue can be generated within the District, it controls the amount of the actual tax extension along with the District's various tax rate limits on its levies. More on this later.

Unless the District simply adopts the same dollar levy year after year, there are discreet steps that the Board can take to assist it in determining how much to levy for the current year.

First, we must remember how levies work. Districts levy only by dollar amount, not by tax rate. This means that each year the Board must set a dollar amount for each of the tax levies that it imposes and the sum of those numbers will be the total tax levy for the current year. Districts may seek to levy an amount which the Board feels is necessary to support the operation of the District or it may seek to maximize the amount of tax revenue that the District can generate from its EAV for a particular year or it may select an amount anywhere in between as the Board of Trustees determines.

It is important to remember that some levies have specific rate limits, such as the corporate levy for the District which is the base operating levy to support the District's fire department operation. Depending upon the District's situation, the rate limit may be .125%; .30%; or .4%. Which rate limit applies depends upon steps taken by the District previously to obtain approval for a particular rate limit. The extension report which the District will receive from the County will

show the rate limit which is on record for the District with the County for each of the District's separate levies. Regardless of the amount of the dollar levy for a rate limited levy, the extension on that dollar levy cannot exceed the maximum allowed (rate limit X EAV). Remember also, however, that some levies have no specific rate limit such the levy for liability and worker's compensation insurance and unemployment tax and the separate levy for career firefighter pension funds. Subject to the foregoing, whatever dollar amount is levied will be extended by the County Clerk for those levies. This is not, of course, the end of the story. More later.

In order to determine the dollar amount for each of the District's separate levies, in most cases it is relevant to have an estimate of the current year EAV for the District. That number, however, will not be known definitively until the following year—long after the tax levy has been filed with the County Clerk(s). So, what to do? Again, using the prior year's tax extension report is a good starting point. It is possible to make a rough estimate of the current year's EAV by comparing the prior year EAV figure with the same number for the previous year or 2 years and using the percentage change in EAV for those years to estimate the current year EAV. While this is a crude approach, it does typically generate a fairly consistent estimate of the EAV for purposes of setting year tax levy.

Once the estimated EAV for the current year has been computed, the Board can then look at each of its separate levies and using the applicable rate limits,

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if any, on those separate levies ascertain an estimate of what the maximum amount of the dollar levy can be for the current year. After doing that for all of the levies and using the budgeted or otherwise determined non-rate limited levy amounts (such as insurance and pension), a total levy can be determined for the current year. That figure can then be used to set the District's levy or, if the Board determines that the maximum amount is not needed for the current year (remember, payable in the following year), it can reduce the levy amounts for particular levies and the overall total. This is a discretionary determination made in the judgment of the Board based on the financial need of the District.

**BUT**, this is again, not the end of the story. There are further considerations that will affect the current year tax levy and how much the Board may legally levy for the current year.

The first potential limiter is the Truth in Taxation Law (35 ILCS 200/18-55 et seq.). This law applies to units of local government in the state, including fire protection districts. It does not, by itself, limit the dollar amount that a District may levy; rather, it requires that before a total dollar levy for the current year is adopted which exceeds more than 5% over the prior year's total dollar extension for the District, a public hearing on the levy must be held and a notice in special form published in the newspaper announcing the proposed levy, percentage increase, and the public hearing. This is often referred to as the "105% Rule". The notice in at least 12 point type must be published in a part of the newspaper other than the classified or legal notices section and it must be at least 1/8 page in size with a 1/4 inch black border and the content of the notice must strictly conform to the requirements of the statute in terms of content. Any deviation from the statutory requirements will result in the levy being limited by the County Clerk(s) to a 5% increase over the prior extension. The notice must be published

at least seven days before the hearing and no longer than fourteen days before the hearing. All of these notice requirements are strictly construed and any deviation from them will result in the levy not being increased above the 5% allowance. Likewise, if no hearing is held and levy in an amount which exceeds the 5% limit, the County Clerk(s), upon receipt of the levy without a certification of compliance with Truth in Tax, will reduce the levy to a 5% increase over the prior year's extension. At the hearing, the public is entitled to voice its opinion regarding the proposed tax levy of the District, however, that hearing is not a vote or referendum on the tax levy and once the hearing requirement is fulfilled, the Board is authorized to levy at whatever dollar amount it determines to be appropriate.

Some districts routinely increase their tax levies each year by 5% (the amount that they may raise the total dollar levy without holding a public hearing). This is

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done in an effort to capture any additional revenue which may be available from EAV growth, however, it is important to remember that if the EAV in a particular year is expected to grow by more than 5%, taking this approach will not generate the greatest amount of revenue that the Truth in Taxation Law would allow were a public hearing on the tax levy conducted, and a higher dollar levy adopted.

But, this again may not be the end of the story! There is a second limiter that may be applicable to some districts. In some counties of the state, the Property Tax Extension Limitation Law (35 ILCS 200/18-185 et seq.) applies. "PTELL," as it is often referred to (sometimes also called "Tax Caps"), operates in a manner different from the Truth in Taxation Law Rules. Districts which are subject to PTELL are, in simple terms, generally limited to a tax levy amount for the current year which is no more than a 5% increase or an increase based on the change in the cost of living, whichever is less, unless they receive voter approval to set the levy at a higher rate. Unlike Truth in Tax, PTELL does restrict the total levy every year and, again, in simple terms, holds the current year levy to basically the same amount as the prior year's extension. For districts that are operating under PTELL, it, therefore, becomes important to examine the extension report to determine what the prior year's limiting rate for the District is as well as the prior year extension amount. For many districts under PTELL, the routine approach taken is to raise the tax levy by 5% every year in order to capture any adjustment in the PTELL limit as well as any "new property" that may come onto the District's tax rolls and cause an upward adjustment in its PTELL limit. A full discussion of the mechanics of PTELL is beyond the scope of this article, but for districts which are subject to it, it is important to understand the basics of how PTELL restricts a levy each year since setting the levy based upon a maximum figure or based upon an assumption of significant assessed value growth due only to reassessments will likely not lead to significantly increased tax revenues

even if a Truth in Tax Hearing is held. As districts which operate under PTELL know, over time, the effect of PTELL will be lower the actual tax rate of the District as EAV increases and the dollar levy of the District is held to approximately the same dollar amount each year. The only relief from this erosion in the actual tax rate is to seek voter approval for an upward adjustment in the limiting rate. If this is determined (by the Board) to be necessary, it is critical to remember that it placing matters on the ballot is governed by the Election Code which sets lengthy deadlines for the submission of such questions well in advance of any given election in a particular year. It is also important for districts to keep in mind that in some years there will only be one election and in other years only two elections at which such a proposition can be presented to voters. Accordingly, districts need to carefully plan for an election to seek PTELL relief.

In summary, as the foregoing discussion illustrates, setting the District's tax levy each year is not a simple matter. It takes time and a review of a substantial amount of information to reach a determination of the current year's tax levy amount if the process is to be done with appropriate due diligence, but, at the same time, always keeping in mind that the deadline for filing the tax levy is the **last Tuesday in December**. In that regard, remember that the last Tuesday in December will often be the day of or the day before the Christmas or New Year's holidays and this can effect the office hours of County Clerks where the levies must be filed. Consequently, it is critically important to keep the calendar in mind every year when preparing the tax levy.

Good Luck! ■

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