

# FIRE COUNSEL NOTES



## Back to Basics # 2: Mind Your Levy—It's Money!

By James S. Sinclair  
IAFPD Legal Counsel

In the Spring Fire Call Fire Counsel Notes, it was noted that the next few columns of Fire Counsel Notes will be devoted to some of the basic administrative functions and responsibilities involved in administering a fire protection district in Illinois. The Spring article dealt with budgeting. This article will discuss the tax levy.

As stated in the Spring article, the budget and appropriation ordinance plans and authorizes spending while the tax levy generates the funding for the spending. These are two separate, but interrelated functions. For too many district trustees, the tax levy is confused with the budget and appropriation ordinance and people tend to use these terms interchangeably even though they are legally separate and district processes. While related in the sense that both relate to money, understanding what each of these procedures do and how they work is important to understanding the finances of the district.

In discussing the tax levy, it is important to go back to basics and remember how property taxes, at least for fire protection districts, work in Illinois. Fire protection districts are required to levy each year by dollars in order to generate the amount of money needed to operate the district and carry out its emergency services (fire, rescue, EMS). In theory, the way property taxation is intended to work is by the district ascertaining the amount of money needed to fund its operations, levying a tax for that amount, and then collecting it through the county or counties in which the district is located to fund the budget

and appropriation for the year. The reality of budgeting and levying, however, often differs from this due to the need for districts to maximize their tax revenues and the timing of property tax receipts generated by the district's tax levy(ies). There are several variables which come into play in the tax levy process and it is important to understand each of them.

The first point to keep in mind when discussing fire protection districts levies is that most of the tax levies that districts are authorized to levy are subject to a *maximum rate limit*. This means that by statute the legislature has set an upper limit on the rate that a district's *computed tax rate* may not exceed. For example, the corporate, or general, tax levy has a rate limit of either .125%, .30%, or .40% depending on whether the district's voters have allowed the district to have higher corporate rate limit that the original base rate of .125% at the time the district was formed. While not all tax levies are rate limited (insurance, pension, social security contributions, for example), most of the levies utilized by districts are subject to a rate limit (corporate, rescue, ambulance, audit, for example) and regardless of the dollar amount levied, the tax rate for that particular levy may not exceed the statutory rate limit. So, while a district might levy an amount that it feels is needed, it may not receive that amount if the rate limit applies.

The second point to keep in mind is that fire protection districts are required to set their levies by dollar amount and they may not levy by rate. This means that the district cannot direct the county clerk

(with whom the levies are filed to process) to levy a particular levy at its rate limit. Rather, the district must submit a dollar amount for each particular levy each year. So, for example, the district cannot direct the county clerk to levy .005% for the levy to fund audits. Instead, it must levy a dollar amount for that levy.

The next important point to consider is the "*equalized assessed value*" (EAV) of the district. This represents the "*tax base*" of the district and it is determined each year by the assessment process in each county. In general (and overly simple terms), the EAV is supposed to represent 1/3 of the fair market value of the real property (land and structures attached to land such as buildings and other fixed structures). This dollar amount is the base against which the dollar tax levy is applied to determine the amount of real estate tax which will be generated for the district for a particular levy and for the total levy amount each year. Because the EAV changes year to year due to reassessments of existing parcels and improvements on parcels or due to the increase in the tax base as a result of new construction and developments within the district, each year the district must estimate its EAV when preparing its levy for the year. This is an estimate by the district each year, because the final EAV is never known by the tax levy filing deadline of the last Tuesday in December each year.

In simple terms, once the dollar tax levy for each particular levy that the district has in place is divided by the EAV to determine the "*actual tax rate*" for that particular levy. If that actual tax rate

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exceeds the tax rate limit for the particular levy, the county clerk will reduce the dollar levy amount based on the rate limit for that levy and the district will only receive what the rate limit allows. (Note, however, that the converse is not true. If the actual tax rate is less than the tax rate limit, the district will only get the amount of tax that the actual tax rate computed based on the dollar levy amount will generate.)

Those tax levies which do not have a rate limit, are not subject to being lowered. As to those levies, whatever the dollar amount levied, that amount will be taxed against the tax base.

The amount of tax which is ultimately placed against the district's EAV (tax base) is referred to as the "tax extension" and it is the sum of all of the district's levied amounts *after* the tax rate limits are applied to each of the levies which are rate limited. The tax extension is then used to set the district's overall final tax rate, and it is this figure which is applied to the assessed value of each parcel of real estate in the district to set the district's tax as to that particular property.

With these basics in mind, we can next consider some of the variables in the tax levy process which districts should consider every year as they decide what their dollar levy will be. Unfortunately, for too many districts because there is a lack of understanding of the foregoing mechanics of the tax levy process, adopting the tax levy becomes merely a rote exercise of doing essentially the same thing year after year without considering the variables discussed above.

The primary consideration, of course, is what amount the district needs to operate its emergency services for the upcoming budget year. While most district trustees intuitively understand this relationship, they often levy an insufficient amount. If districts simply levy the same or nearly the same dollar amount every year or they increase the levy by a certain percentage each year, they may be depriving their emergency services operation of the funds needed to properly equip and protect the members of their department with the result that firefighter

and public safety are jeopardized. This may come about if district boards have a philosophy that taxes should be kept as low as possible and never increased which means that the amount available to spend being limited to what comes in. As noted above, property taxation in conjunction with the budgeting process, is intended to work the other way around: districts should ascertain what amounts are needed and that amount is levied subject to the various rate limits. While this approach is not prevalent, it is one that can result from a lack of understanding the levy process and believing that the amount levied cannot or should not vary from year to year based on need.

A second consideration is the importance of monitoring the tax base, that is, the EAV of the district from year to year as new construction and property values change. Districts need, each year, to review the prior year's tax base in relation to previous years to see whether there is a discernible trend. Also, often, county assessment officials can provide an estimate of how the EAV will be likely to change in the current year. It pays to check with the county before the levy is completed to obtain whatever information is available and use that to estimate how much the district's tax base can support. Looking at the last couple of years and estimating the percentage growth in the district's EAV can often provide a good guide for estimating the change for the current year.

Third, districts need to avoid the misconception that their tax levy cannot be increased by more than 5% each year. This misunderstanding comes about because of two additional, but different, property tax limiters under current Illinois law: the Truth in Taxation Law ("Truth in Tax") and the Property Tax Extension Limitation Law ("PTELL"). These two laws work very differently, but, perhaps because they both refer to "5%," they are too frequently confused. Let's look at each one briefly.

The Property Tax Extension Limitation Law, PTELL, is in effect in only some counties in the state. It was first put into place in the counties around Cook County (the "collar counties") was subsequently extended to Cook County, and thereafter it has been extended to other, but not

all, counties in the state by voter action through a referendum placed on the ballot by the county board of the county. Where PTELL applies, with only a very few exceptions, it creates an overall limitation on the total dollar tax levy year by reference to the previous year's total tax extension (recall the discussion above). While a detailed discussion of PTELL is beyond the scope of this article, in simple terms, the limitation imposed by it is that the total dollar amount of the current year's levy (of a district whose levy is subject to PTELL) cannot exceed the *lesser* of a 5% increase *or* the increase in the cost of living, *whichever is less*, over the prior year's total tax extension amount. And to make it even simpler—the general effect of PTELL (at least in times of low inflation) is that the current year's total dollar levy amount is going to be limited to be essentially the same amount as last year's total tax extension amount. While there are other factors that go into computing the actual PTELL limitation for a particular year, such as new construction and the annexation of additional territory, this in simple terms is the way that PTELL works where it applies. Under PTELL, the actual tax rate of the district will generally fall over time as the EAV of the district increases. In other words, the amount of revenue which the tax base of the district and the district's statutory rate limits (discussed above) would support, cannot be realized by the district's annual tax levy regardless of the amount of the tax levy. For districts under PTELL, the only relief is to obtain voter approval by referendum to allow a higher levy amount. For most districts under PTELL there will be very little latitude to increase the levy each year absent voter approval.

In contrast to PTELL, which only applies in counties in which it has been imposed by statute or referendum, the Truth in Taxation Law ("Truth in Tax") applies throughout the state to essentially all units of local government. Unlike PTELL, and contrary to the commonly held belief of too many fire district trustees, Truth in Tax does **not** set a limit on the amount of a district's tax annual tax levy. Rather, Truth in Tax is a notification process. PTELL and Truth in Tax are independent of each other

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and compliance with both is required each year by all districts. Under Truth in Tax, a district may not increase the total dollar amount of its annual levy by more than 5% over the prior year's total tax extension, *unless* it holds a special public hearing with a special newspaper notice. If it holds the hearing, however, its levy can be whatever amount is proposed. In the public hearing, the district may be questioned or challenged about the amount of the proposed levy by the public attending the hearing, but the hearing itself is **not** a referendum or town meeting on the question of whether to approve or disapprove the proposed levy and so long as the public hearing is properly noticed and held, the district is free to levy the amount it proposes even if it is more than a 5% increase. This is often also referred to as the "105% rule" and it is this designation that frequently leads trustees to mistakenly believe that the district can never have a levy amount for the current year which is more than 105% of the previous year's tax extension. Only if the hearing is not held or not properly noticed, will the district's levy be reduced. If the district levies more than a 5% increase and does not properly notice the public hearing or hold the hearing, will the county clerk limit the increase in the total levy by 5% over the prior year's extension. Anything in excess of that percentage will not be levied. Accordingly, under Truth in Tax, the district controls, by its compliance or noncompliance with the law, whether the increase may be more than 5%.

Because they are independent statutory limiters of tax levies, PTELL and

Truth in Tax can apply in the same year to the district's levy if it is under PTELL and it chooses to set its levy above a 5% increase (usually due to significant new construction which has never been taxed causing an increase in the PTELL limit for that year). It is important for districts to understand how these two different laws apply and to remember that the "5%" in each of them applies very differently.

An additional step which many districts ignore is review and verification of the district's tax extension following the filing of their levy or levies and the issuance of an extension report by the county clerk or clerks once the district's EAV has been finalized and final tax rates can be computed. In most counties, the county clerk will issue two reports to the district. One will be a levy verification. This report lists the amount of each levy filed by the district for the tax year. Frequently, the levy verification will be issued in January or February following the filing of levies by the last Tuesday in December of the prior year for which the levy or levies are filed. It is especially important that districts check the amount of each levy to be certain the county clerk has the correct amounts listed for all of the district's levies. Too many districts fail to carefully check this report and simply sign and return it. If the county clerk is not notified of an incorrect levy amount or that a particular levy is omitted, returning the levy verification (which is usually required) will result in the levy not being extended with a consequent loss of revenue. Since the district, by returning an incorrect levy report, will lose the revenue from that levy. Districts will also typically receive a second report later in the spring from the county clerk(s) after the EAV has been determined and which

lists the computed extension for each levy. It is critical that this report be reviewed to verify that the extension figure has been correctly computed by the county clerk based on the district's EAV and the applicable rate limit and, if applicable, the computation of the PTELL limitation. Unfortunately, too many districts simply sign and return the extension report without confirming that the computations made at the county level are correct. Again, if the extension report is signed and submitted by the district, the county clerk will use the figures on the report in the preparation of tax bills and, if incorrect, the district will suffer a loss in revenue. If the district has its levies prepared by an outside professional such as its accountant or attorney, a copy of the extension report should forward promptly upon receipt to the professional to verify the computations from the county. It is vitally important not to leave this to chance or assume that the figures on the extension report are correct without checking them. Mistakes do occur.

In summary, not understanding how the levy works can lead to unfortunate consequences to the district in the amount of money available to fund its emergency services operation. For that reason, understanding the mechanics of the levy process from start to finish is of paramount importance.

And last—all fire protection district trustees must remember the one most important date of the year—tax levies must be filed by the **last Tuesday in December** each year!

**Good luck and mind your levy! ■**

**STOBBS,  
SINCLAIR &  
LIVINGSTONE,  
LTD.**

ATTORNEYS & COUNSELORS AT LAW

**JAMES S. SINCLAIR  
DAVID K. LIVINGSTONE**  
REPRESENTING  
FIRE PROTECTION DISTRICTS  
THROUGHOUT THE STATE OF ILLINOIS  
FOR OVER FORTY YEARS

500 BOND STREET, ALTON, IL 62002  
PHONE: 618-465-6978 – FAX 618-465-7022  
WWW.SSLALAW.COM