



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

October 9, 1998

TO: All Interested Parties

FROM: Sandra G. Guilfoil, Assistant Director
Property Tax Division

SUBJECT: LEVY CAPACITY OF TAXING DISTRICTS

Referendum 47 made some significant changes to the process a taxing district must use to increase revenue from property tax collections. The Department has received a number of questions about how this legislation modified the process and the protection of levy capacity. Following our initial interpretation, the Department made additional inquiries to members of the Legislature, Legislative staff, and other interested parties for further clarification.

This memorandum includes a description of the issue and our interpretation of Referendum 47, as it applies to that issue.

Issue

While several new statutes were enacted by Referendum 47, RCW 84.55.092 *Protection of future levy capacity* was not amended. The issue involves districts with populations of 10,000 or more. Can these districts pass a resolution under Section 204 of Referendum 47 (RCW 84.55.0101) with a finding of substantial need for money in excess of the rate of inflation, levy something less than this amount, and protect that unused levy capacity for future years?

An example may be useful:

District Population:	15,000
Implicit Price Deflator (inflation):	2%
Previous Highest Lawful Levy:	\$100,000

The district submits a budget in 1998 asking for a levy of \$104,000 (4% increase). The first resolution (Section 209 of the Referendum; RCW 84.55.120) is passed showing the dollar and percentage increase above the previous year's levy. The second resolution (Section 204 of the Referendum; RCW 84.55.0101), passed by a super-majority vote of the governing board of the district, states the substantial need for a **six percent** increase

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due to the need for "additional money to support the operation of a new jail slated for future development".

Year	Highest Lawful Levy	Amount of Actual Levy
1997	\$100,000	\$100,000
1998	\$106,000	\$104,000

Question: Has the district protected its highest lawful levy in 1998 at \$106,000 or \$104,000?

Analysis

RCW 84.55.120 was amended by Referendum 47 to say in part:

"No increase in property tax revenue, other than that resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, may be authorized by a taxing district, other than the state, except by adoption of a separate ordinance or resolution, pursuant to notice, specifically authorizing the increase in terms of both dollars and percentage. The ordinance or resolution may cover a period of up to two years, but the ordinance shall specifically state for each year the dollar increase and percentage change in the levy from the previous year."

RCW 84.55.005 defines "Limit Factor" to mean:

- (a) For taxing districts with a population of less than ten thousand in the calendar year prior to the assessment year, one hundred six percent;*
- (b) For taxing districts for which a limit factor is authorized under RCW 84.55.0101, the lesser of the limit factor authorized under that section or one hundred six percent;*
- (c) For all other districts, the lesser of one hundred six percent or one hundred percent plus inflation;*

RCW 84.55.0101 says in part:

Upon a finding of substantial need, the legislative authority of a taxing district other than the state may provide for the use of a limit factor under this chapter of one

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hundred six percent or less. In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution under this section. In districts with more than four members, a majority plus one vote must approve an ordinance or resolution under this section. The new limit factor shall be effective for taxes collected in the following year only.

It is clear that any district, regardless of its size, must pass a separate resolution to increase its levy above the previous year (other than the increase due to new construction, improvements to property and increase in the value of state assessed property, hereinafter referred to as "add-ons"). It is also clear that districts with a population below 10,000 may protect levy capacity for future years at a six percent increase with the adoption of an ordinance or resolution under RCW 84.55.120 (Section 209 of the Referendum) levying something less than a six percent increase.

The question is whether a large district (with 10,000 or more in population) may identify a future need for additional money and protect the "highest lawful levy" at an amount above that which is actually levied in the current year. Prior to the passage of Referendum 47, RCW 84.55.092 allowed taxing districts to voluntarily take less than a six percent increase in their levies, and yet retain the levy capacity at six percent under most circumstances. It is our opinion that the changes to chapter 84.55 RCW created by Referendum 47 have amended the meaning of RCW 84.55.092 even though the specific text of this statute was not changed. We believe a district cannot lawfully increase its levy except for add-ons without adopting a resolution. The "full amount allowed under this chapter" (RCW 84.55.092) is determined by the adoption of a resolution or ordinance. Without it the "full amount allowed" is the increase for add-ons.

Additionally, large districts can only increase their levy beyond the rate of inflation with the adoption of a second resolution by a super-majority of the governing board, which identifies a "substantial need" for additional money. The "full amount allowed under this chapter" is determined by the adoption of a resolution/ordinance that is based on substantial need. "Substantial need" is not defined by this legislation. It is our opinion that determination of substantial need is unique and specific to the governing bodies of any jurisdiction and the taxpayers they represent. The public process required in the adoption of any resolution serves as notification to the taxpayers of the district that there is need for funding in excess of the rate of inflation. The need may not be immediate but if levy capacity is not protected for the future need, the district would have to increase its current budget and set aside the money for use in later years. The purpose of RCW 84.55.092 is to prevent districts from having to levy currently in order to not lose levy capacity. Rather than levying the money now and setting the funds aside, this statute allows the district to protect the capacity to levy while not requiring the actual levy to be done until the time of need. This protection is only authorized when the governing

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board of the district has held a public hearing and adopted a resolution or ordinance stating the district's substantial need to do so.

Conclusion

It was the stated intent of Referendum 47 "...to lower the one hundred six percent limit while still allowing districts to raise revenues in excess of the limit..." (Section 208 of the Referendum). Districts can no longer automatically "bank" their levy capacity. Rather, the district must now pass a resolution/ordinance through a public hearing in order to do so. Districts with a population at or above 10,000 can "bank" levy capacity at the rate of inflation by passing one resolution/ordinance. Large districts that demonstrate substantial need by passing a resolution/ordinance by a super-majority of the governing board can also protect levy capacity above the rate of inflation up to a maximum of six percent. The actual capacity that is protected must be stated in the resolution/ordinance.

SGG:slc