LEVY LIMITS: A PRIMER ON PROPOSITION 2 ½

DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Introduction

The Division of Local Services has developed this primer to guide local officials through the mechanics of Proposition 2½. Proposition 2½ revolutionized property tax administration and is a fundamental feature of the Massachusetts municipal fiscal landscape. Yet there is still some confusion about its meaning for cities and towns, particularly because the law is complex and has undergone a number of changes since Proposition 2½ was enacted in 1980.

The purpose of this primer is to explain, as simply as possible, the basic provisions of Proposition 2½. We focus in particular on those aspects of the law that we have found to cause the most confusion, for example: the ways in which Proposition 2½ limits the property tax, how the levy limit is calculated, how an override differs from a debt exclusion or capital outlay expenditure exclusion, and how new growth works.

With the help of this primer, a local official should be able to understand the fundamentals of Proposition 2½. However, this primer is not intended as a substitute for legal guidance on a community's options and obligations under the law. If you have any questions, please refer to the Resources section included in this primer and contact the Division of Local Services for assistance and information.

We hope this primer will help you grasp the basic concepts of Proposition 2½ and act on behalf of your community with a better understanding of the law. We welcome questions and comments on this publication.

What is a Levy?

The property tax levy is the revenue a community can raise through real and personal property taxes. We will refer to the property tax levy simply as the **levy**. In Massachusetts, municipal revenues to support local spending for schools, public safety and other public services are raised through the property tax levy, state aid, local receipts and other sources. The property tax levy is the largest source of revenue for most cities and towns.

What is a Levy Ceiling? What is a Levy Limit?

Proposition 2½ places constraints on the amount of the levy raised by a city or town and on how much the levy can be increased from year to year.

A levy limit is a restriction on the amount of property taxes a community can levy. Proposition 2½ established two types of levy limits:

First, a community cannot levy more than 2.5 percent of the total full and fair cash value of all taxable real and personal property in the community. In this primer we will refer to the full and fair cash value limit as the **levy ceiling**.

Second, a community's levy is also constrained in that it can only increase by a certain amount from year to year. We will refer to the maximum amount a community can levy in a given year as the **levy limit**. The levy limit will always be below, or at most, equal to the levy ceiling. The levy limit may not exceed the levy ceiling.

Proposition 2½ does provide communities with some flexibility. It is possible for a community to levy above its levy limit or its levy ceiling on a temporary basis, as well as to increase its levy limit on a permanent basis. These options are discussed in more detail in other sections of this primer. The concepts of levy ceiling and levy limit are illustrated in *Figure 1*.

How is a Levy Ceiling Calculated?

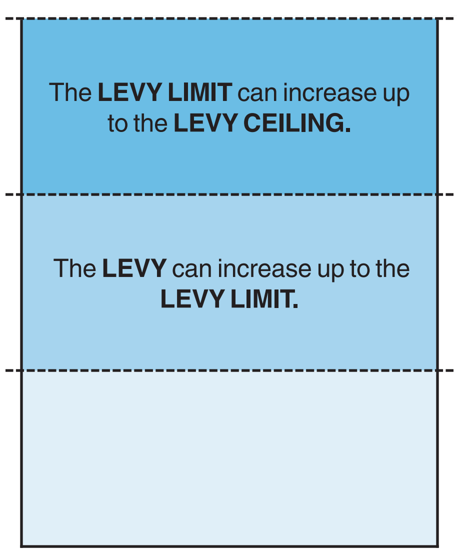
The levy ceiling is determined by calculating 2.5 percent of the total full and fair cash value of taxable real and personal property in the community:

Full and Fair Cash Value x 2.5% = LEVY CEILING

Full and Fair Cash Value = $100,000,000

$100,000,000 x 2.5% = $2,500,000

In this example, the levy ceiling is $2,500,000.



LEVY CEILING: The maximum the levy limit can be. The ceiling equals 2.5 percent of the community's full and fair cash value.

LEVY LIMIT: The maximum the levy can be in a given year. The limit is based on the previous year's limit plus certain allowable increases.

LEVY: The amount the community can raise through the property tax. The levy can be any amount up to the levy limit.

Figure 1

How is a Levy Ceiling Changed?

The total full and fair cash value of taxable real and personal property in a community usually changes each year as properties are added or removed from the tax roll and market values increase or decrease. This also changes the levy ceiling. See *Figure 2.*

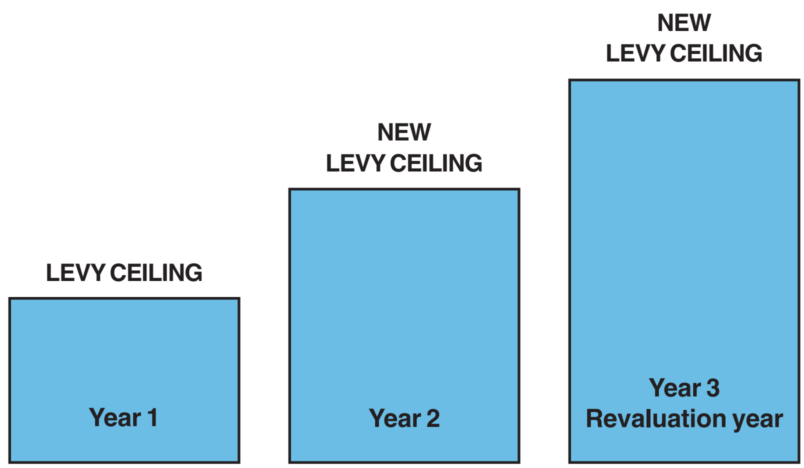


Figure 2

How is a Levy Limit Calculated?

A levy limit for each community is calculated annually by the Department of Revenue. It is important to note that a community's levy limit is based on the previous year's levy limit and not on the previous year's actual levy.

Each step in the example below is detailed in other sections of this primer. A levy limit is calculated by:

Taking the previous year's levy limit and increasing it by 2.5%:

A. FY2007 Levy Limit		**$1,000,000**
B. (A) x 2.5%	**+**	**$25,000**

Adding to the levy limit amounts of certified new growth added to the community's property tax base:

C. FY2008 New Growth	**+**	**$15,000**

Adding to the levy limit amounts authorized by override votes:

D. FY2008 Override	**+**	**$100,000**
E. FY2008 Subtotal (A+B+C+D)	**=**	**$1,140,000**

Comparing the FY2008 levy limit to the FY2008 levy ceiling and applying the lesser number (compare E and F):

F. FY2008 Levy Ceiling		**$2,500,000**

$1,140,000
Applicable FY2008 Levy Limit
(Lesser of E and F)

This community's levy limit, the maximum amount in real and personal property taxes it can levy, is $1,140,000 for FY2008. How much of this amount the community actually wants to use — that is, the amount of the levy — is up to the discretion of local officials. The community can levy up to or at any level below the entire levy limit amount, regardless of what its levy was in the previous year. Levy increases are discussed on page 13.

How is a Levy Limit Increased?

The levy limit is increased from year to year as long as it remains below the levy ceiling. Permanent increases in the levy limit result from the following:

Automatic 2.5 percent increase. Each year, a community's levy limit automatically increases by 2.5 percent over the previous year's levy limit. This does not require any action on the part of local officials; the Department of Revenue calculates this increase automatically.

New Growth. A community is able to increase its levy limit each year to reflect new growth in the tax base. Assessors are required to submit information on growth in the tax base for approval by the Department of Revenue as part of the tax rate setting process. New growth is discussed on page 8.

Overrides. A community can permanently increase its levy limit by successfully voting an override. The amount of the override becomes a permanent part of the levy limit base. Overrides are discussed on page 9.

Please note: Debt exclusions, capital outlay expenditure exclusions and overrides are all often referred to as "overrides" and enable a community either to permanently increase its levy limit or temporarily levy above its levy limit or levy ceiling. This primer makes a distinction between an override and a debt or capital outlay expenditure exclusion, because there is a significant difference in the impact of each on a community's levy limit. An override enables a community to permanently increase its levy limit, while an exclusion only allows for a temporary increase in taxes over a community's levy limit. Overrides, debt exclusions and capital outlay expenditure exclusions are discussed in greater detail in other sections of this primer.

In summary, the levy limit can increase from year to year in these ways: automatic 2.5 percent increase, new growth and overrides. Once the levy limit is increased in any of these ways, the increased levy limit amount becomes the base upon which levy limits are calculated for future years. See *Figure 3*.

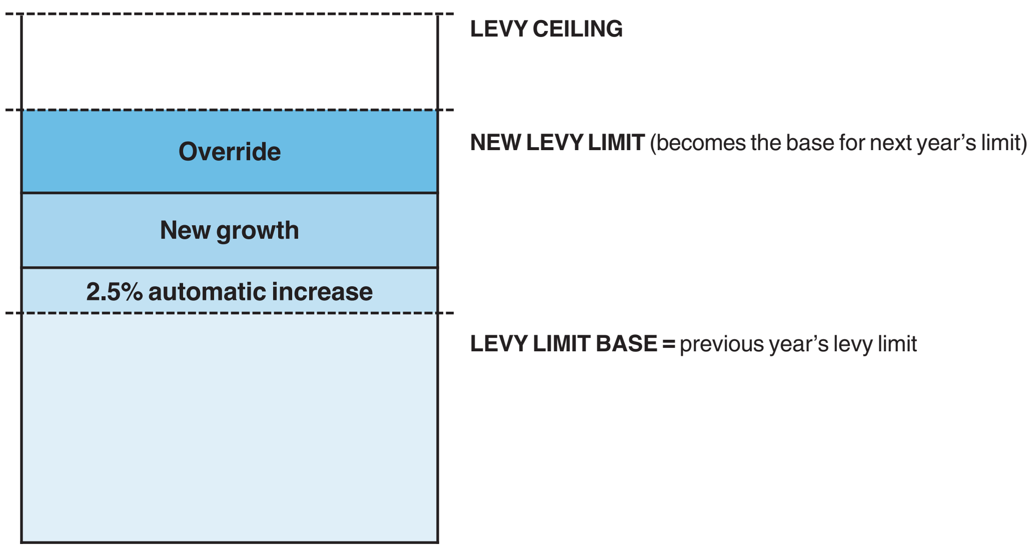


Figure 3

How Can a Community Levy Taxes in Excess of its Levy Limit or Levy Ceiling?

A community can assess taxes in excess of its levy limit or levy ceiling by successfully voting a debt exclusion or capital outlay expenditure exclusion. The amount of the exclusion does not become a permanent part of the levy limit base, but allows a community to assess taxes for a certain period of time in excess of its levy limit or levy ceiling for the payment of certain debt service costs or for the payment of certain capital outlay expenditures. See *Figures 4a and 4b*.

In *Figure 4a* the debt exclusion or capital outlay expenditure exclusion gives the community temporary additional taxing capacity over and above its levy limit, but below its levy ceiling.

In *Figure 4b* the debt exclusion or capital outlay expenditure exclusion gives the community temporary additional taxing capacity that is over and above not only its levy limit, but also its levy ceiling.

For more information on debt exclusions and capital outlay expenditure exclusions, see page 10.

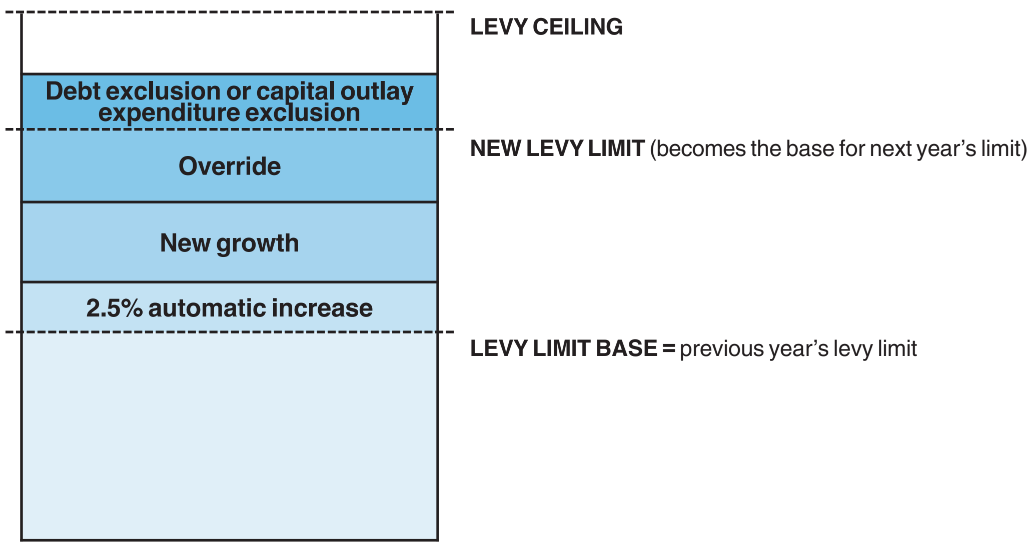


Figure 4a

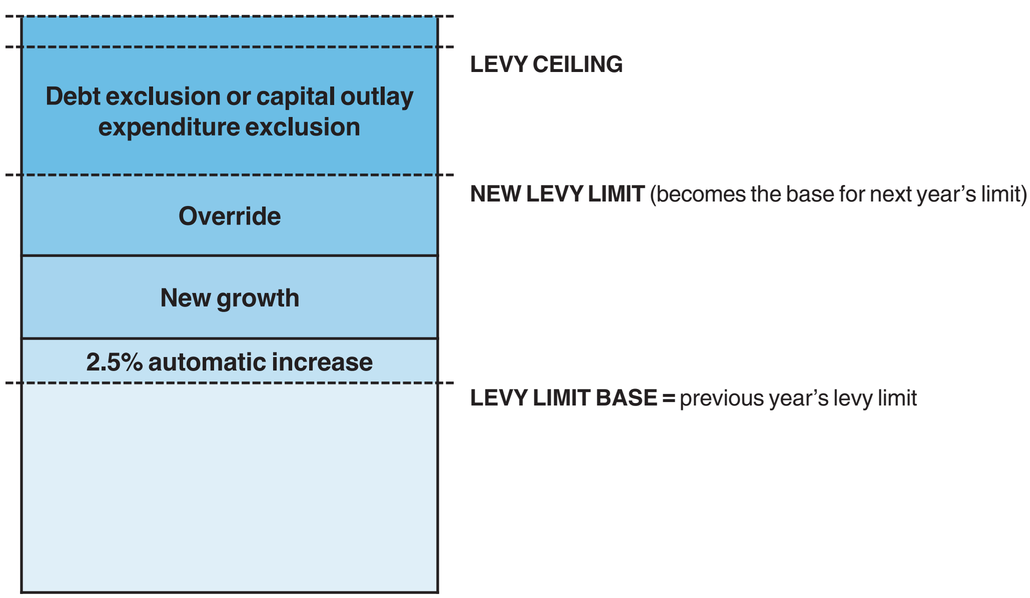


Figure 4b

What is New Growth?

Proposition 2½ allows a community to increase its levy limit annually by an amount based on the increased value of new development and other growth in the tax base that is **not** the result of revaluation. The purpose of this provision is to recognize that new development results in additional municipal costs; for instance, the construction of a new housing development may result in increased school enrollment, public safety costs, and so on. New growth under this provision includes:

- Properties that have increased in assessed valuation since the prior year because of development or other changes.
- Exempt real property returned to the tax roll and new personal property.
- New subdivision parcels and condominium conversions.

New growth is calculated by multiplying the increase in the assessed valuation of qualifying property by the prior year's tax rate for the appropriate class of property. **Any increase in property valuation due to revaluation is not included in the calculation.**

Below we highlight how new growth is calculated:

Increases in Assessed Valuation
x Prior Year's Tax Rate for Particular Class of Property
= New Growth Addition to Levy Limit

For example, for a community that applies the same tax rate to all classes of property:

Increases in Assessed Valuation = $1,000,000
Prior Year's Tax Rate = $15.00/1000
$1,000,000 x ($15.00/1000) = $15,000
New Growth Addition to Levy Limit = $15,000

Below we highlight where the addition of new growth occurs in the calculation of the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:

A. FY2007 Levy Limit		**$1,000,000**
B. (A) x 2.5%	**+**	**$25,000**

Adding to the levy limit amounts of certified new growth added to the community's property tax base:

C. FY2008 New Growth	**+**	**$15,000**

Adding to the levy limit amounts authorized by override votes:

D. FY2008 Override	**+**	**$100,000**
E. FY2008 Subtotal (A+B+C+D)	**=**	**$1,140,000**

Comparing the FY2008 levy limit to the FY2008 levy ceiling and applying the lesser number (compare E and F):

F. FY2008 Levy Ceiling		**$2,500,000**

$1,140,000
Applicable FY2008 Levy Limit
(Lesser of E and F)

New growth becomes part of the levy limit base, and thus increases at the rate of 2.5 percent each year as the levy limit increases. Reporting of new growth provides a community with an opportunity to increase its levy limit, which can provide for added budget flexibility in the future. Boards of Assessors are required to report new growth each year as a part of setting the tax rate.

What is an Override?

Proposition 2½ allows a community to assess taxes in excess of the automatic annual 2.5 percent increase and any increase due to new growth by passing an **override**. A community may take this action as long as it is below its levy ceiling, or 2.5 percent of full and fair cash value. An override cannot increase a community's levy limit above the level of the community's levy ceiling.

When an override is passed, the levy limit for the year is calculated by including the amount of the override. The override results in a permanent increase in the levy limit of a community, which as part of the levy limit base, increases at the rate of 2.5 percent each year.

A majority vote of a community's selectmen, or town or city council (with the mayor's approval if required by law) allows an override question to be placed on the ballot. Override questions must be presented in dollar terms and must specify the purpose of the override. Overrides require a majority vote of approval by the electorate.

Below we highlight where the amount of an override is added in the calculation of the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:		
A. FY2007 Levy Limit		**$1,000,000**
B. (A) x 2.5%	**+**	**$25,000**
Adding to the levy limit amounts of certified new growth added to the community's property tax base:		
C. FY2008 New Growth	**+**	**$15,000**
Adding to the levy limit amounts authorized by override votes:		
D. FY2008 Override	**+**	**$100,000**
E. FY2008 Subtotal (A+B+C+D)	**=**	**$1,140,000**
Comparing the FY2008 levy limit to the FY2008 levy ceiling and applying the lesser number (compare E and F):		
F. FY2008 Levy Ceiling		**$2,500,000**
$1,140,000 Applicable FY2008 Levy Limit (Lesser of E and F)		

The community can levy up to its levy limit of $1,140,000 in FY2008.

What is a Debt Exclusion? What is a Capital Outlay Expenditure Exclusion?

Proposition 2½ allows a community to raise funds for certain purposes above the amount of its levy limit or levy ceiling. A community can assess taxes in excess of its levy limit or levy ceiling for the payment of certain capital projects and for the payment of specified debt service costs. An exclusion for the purpose of raising funds for debt service costs is referred to as a **debt exclusion,** and an exclusion for the purpose of raising funds for capital project costs is referred to as a **capital outlay expenditure exclusion**. Both exclusions require voter approval with very limited exceptions. These exceptions are explained on page 12.

The additional amount for the payment of debt service is added to the levy limit or levy ceiling for the life of the debt only. The additional amount for the payment of the capital project cost is added to the levy limit or levy ceiling only for the year in which the project is being undertaken. Unlike overrides, exclusions do not become part of the base upon which the levy limit is calculated for future years.

Reimbursements such as state reimbursements for school building construction are subtracted from the amount of the exclusion.

A capital outlay expenditure exclusion or debt exclusion is effective even in the rare case when the exclusion would bring the community's levy above its levy ceiling.

Both of these exclusions require a two-thirds vote of the community's selectmen, or town or city council (with the mayor's approval if required by law) in order to be presented to the voters. A majority vote of approval by the electorate is required for both types of exclusion.

Questions presented to exclude a debt obligation must state the purpose or purposes for which the monies from the debt issue will be used. Questions presented to exclude a capital outlay expenditure exclusion must state the amounts and purposes of the expenditures.

Below we highlight how exclusions are added to the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:

A. FY2007 Levy Limit	**$**	**1,000,000**
B. (A) x 2.5%	**+**	**$25,000**

Adding to the levy limit amounts of certified new growth added to the community's property tax base:

C. FY2008 New Growth	**+**	**$15,000**

Adding to the levy limit amounts authorized by override votes:

D. FY2008 Override	**+**	**$100,000**
E. FY2008 Subtotal (A+B+C+D)	**=**	**$1,140,000**

Comparing the FY2008 levy limit to the FY2008 levy ceiling and applying the lesser number (compare E and F):

F. FY2008 Levy Ceiling		**$2,500,000**

$1,140,000
Applicable FY2008 Levy Limit
(Lesser of E and F)

Calculating FY2008 levy limit with debt exclusion or capital outlay expenditure exclusion:

H. FY2008 Levy Limit	**$**	**1,140,000**
I. Add FY2008 Debt Exclusion or Capital Outlay Expenditure Exclusion	**+**	**$50,000**

$1,190,000
Applicable FY2008 Levy Limit with Debt Exclusion
or Capital Outlay Expenditure Exclusion

In FY2008, this community can levy up to $1,190,000, its applicable levy limit with this debt exclusion or capital outlay expenditure exclusion.

What is a Special Exclusion?

For a few limited capital purposes, a community may assess taxes above the amount of its levy limit or levy ceiling without voter approval. Otherwise, special debt and capital outlay expenditure exclusions are like voter approved exclusions. The amount of the special exclusion is only added to the levy limit or ceiling for a temporary period of time, and does not become part of the base upon which the levy limit is calculated for future years.

One special debt exclusion allows a community to add water and sewer project debt service costs to its levy limit or levy ceiling for the life of the debt, as long as it reduces water and sewer rates by the same amount. The water and sewer debt exclusion is adopted by a majority vote of the community's selectmen, or town or city council (with the mayor's approval if required by law) and may include all or part of existing and subsequently authorized water and sewer debt or just the residential share of that debt.

Another special debt or capital outlay expenditure exclusion applies if a community has a program to assist homeowners to repair or replace faulty septic systems, remove underground fuel storage tanks or remove dangerous levels of lead paint in order to meet public health and safety code requirements. Under the program, the board of health and the homeowner agree that the board may contract with third parties to perform the work, and the homeowner will repay the community for all project costs. Homeowners may make the repayment by having a portion of the repair costs, with interest, added to their property tax bills for up to 20 years. The community may automatically add to its levy limit or levy ceiling the amount appropriated, or the amount of the debt service costs on any borrowing for the program.

What is an Underride?

Proposition 2½ allows a community to reduce its levy limit by passing an **underride**. When an underride is passed, the levy limit for the year is calculated by subtracting the amount of the underride. The underride results in a permanent decrease in the levy limit of a community because it reduces the base upon which levy limits are calculated for future years.

A majority vote of a community's selectmen, or town or city council (with the mayor's approval if required by law) allows an underride question to be placed on the ballot. An underride question may also be placed on the ballot by the people using a local initiative procedure, if one is provided by law. Underride questions must state a dollar amount and require a majority vote of approval by the electorate.

Below we highlight where the amount of an underride is subtracted in the calculation of the levy limit:

Taking the previous year's levy limit and increasing it by 2.5%:		
A. FY2007 Levy Limit		**$1,000,000**
B. (A) x 2.5%	**+**	**$25,000**
Adding to the levy limit amounts of certified new growth added to the community's property tax base:		
C. FY2008 New Growth	**+**	**$15,000**
Subtracting from the levy limit amounts authorized by underride votes:		
D. FY2008 Underride	**–**	**$ 40,000**
E. FY2008 Subtotal (A+B+C–D)	**=**	**$1,000,000**

$1,000,000
Applicable FY2008 Levy Limit

The community can levy up to its levy limit of $1,000,000 in FY2008.

Levy Increases

Once a community's levy limit is established for a particular year, the community can determine what its levy will be. The community may set its levy at any amount up to the levy limit. (Or, if it has voted a debt exclusion or capital outlay expenditure exclusion, it may levy up to the levy limit plus the additional temporary capacity resulting from the exclusion.)

It is important to note that as long as a community levies no more than its levy limit, there is no restriction on the dollar increase or percentage increase in its levy from year to year. Proposition 2½ restricts increases in the levy limit, not the levy. A community is permitted to tax up to its levy limit, even if it must raise its levy by a large percentage over the previous year's levy.

For example, a community could decide to increase its levy between FY2007 and FY2008 because the people of the community feel that the town should respond to some unmet local needs. Below we highlight the community's FY2007 and FY2008 levy limits and levies:

FY2007 Levy Limit = $1,000,000
FY2007 Levy = $900,000

FY2008 Levy Limit = $1,025,000
FY2008 Levy = $1,025,000

Percentage Change In Levy Limit = 2.5%
Percentage Change In Levy = 13.8%

From FY2007 to FY2008, the community's levy limit only increases by the allowed 2.5 percent. (In this example assume the community has no new growth and has not voted an override.) The community's levy increases from the FY2007 amount of $900,000 up to its FY2008 levy limit of $1,025,000. This is a total dollar increase in the actual levy of $125,000 — and a percentage increase in the actual levy of 13.8 percent. From FY2007 to FY2008, the actual levy increases by 13.8 percent while the levy limit only increases by the allowed 2.5 percent.

It is important to note that the 13.8 percent increase described here is allowable under the provisions of Proposition 2½. As long as the levy limit only increases each year by the amount allowed under Proposition 2½, the actual levy can increase or decrease within the levy limit established each year, as decided by the community. The community may increase its levy up to its new levy limit regardless of the percentage increase in the levy. This concept is illustrated in *Figure 5*.

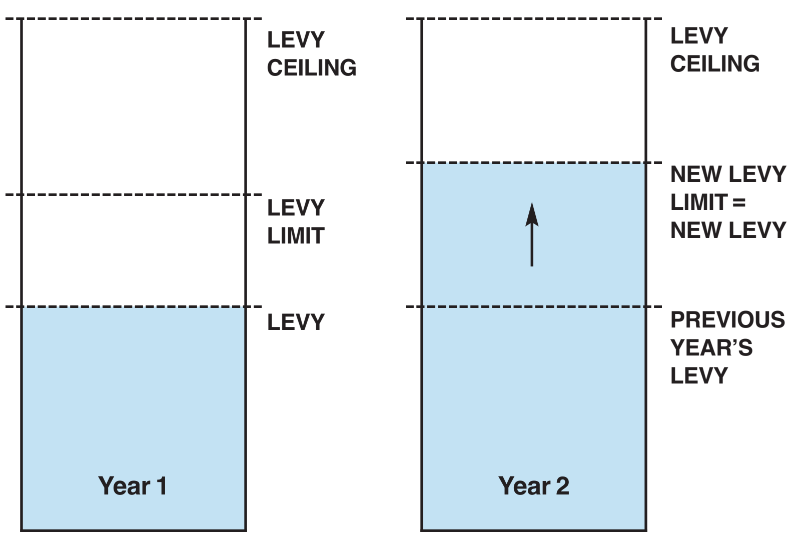


Figure 5

In Year 1, the community levies well below its levy limit.

In Year 2, the community's levy limit increases by the amount permitted under Proposition 2½. The community decides to levy all the way up to its new levy limit. The increase in the levy in Year 2 over Year 1 is indicated by the arrow. This increase is permissible under Proposition 2½.

Excess Levy Capacity

As discussed in the previous section, a community may choose to set its levy at any amount below or equal to its levy limit. When a community sets its levy below the limit, the difference between the levy and the levy limit is commonly referred to as **excess levy capacity**. This is an additional amount the community could, but chose not to, levy.

Levy Limit – Levy = Excess Levy Capacity

The concept of excess levy capacity is not a part of the Proposition 2½ law, as are the levy limit and levy ceiling. However, excess levy capacity is an important factor in municipal finance, and local officials should understand this concept.

There are two common misconceptions about excess levy capacity. The first misconception is that if a community has excess levy capacity in one year, then its ability to levy up to its levy limit in succeeding years is negatively affected. This misconception is based on the fact that Proposition 2½ limits the amount a community can increase its property taxes from year to year. Many think this means that a community cannot raise its levy all the way up to the levy limit to use all its excess capacity in just one year.

This is not true. As we have already seen, Proposition 2½ limits increases from year to year in the levy limit, not the levy. Before the tax rate is set, the full amount of the levy limit is always available to the community, **regardless** of how much of the limit the community has chosen to levy in previous years. It is within the law under Proposition 2½ for a community to have excess levy capacity in one year and, in the following year, to levy right up to the full amount of its new levy limit. This is true no matter what the percentage increase in the levy would be in order to achieve this result.

The second misconception about excess levy capacity is that a community is able to go back and "capture" excess levy capacity from a previous year. This is also not true. Once the community sets its tax rate for a given year, any revenues foregone because of excess levy capacity in that year are lost forever. This is only a one-time loss, however. In the following year, the community may levy up to its new levy limit, regardless of its levy in the previous year. See the example below:

FY2007 Levy Limit = $1,000,000
FY2007 Levy = $900,000
FY2007 Excess Levy Capacity = $100,000

FY2008 Levy Limit = $1,025,000
FY2008 Levy = $1,025,000
FY2008 Excess Levy Capacity = $0

Increase In Levy Limit = $25,000
Increase In Levy = $125,000

In FY2007, the town levies only $900,000 of its levy limit of $1,000,000, foregoing $100,000 of tax revenue it could have collected. In FY2008, the town's levy limit increases by the automatic 2.5 percent allowed by Proposition 2½, or up by $25,000 to $1,025,000. The town decides to levy all the way up to its new levy limit, so it has no excess capacity in FY2008. Its FY2008 levy is $125,000 higher than its FY2007 levy. The town cannot also levy an additional amount to capture the $100,000 foregone in FY2007. In other words, it cannot levy up to $1,125,000 for a total levy increase of $225,000. The $100,000 foregone in FY2007 is lost forever. This is a one-time loss, since the community can, in FY2008, levy all the way up to its new levy limit. This is highlighted in *Figure 6*.

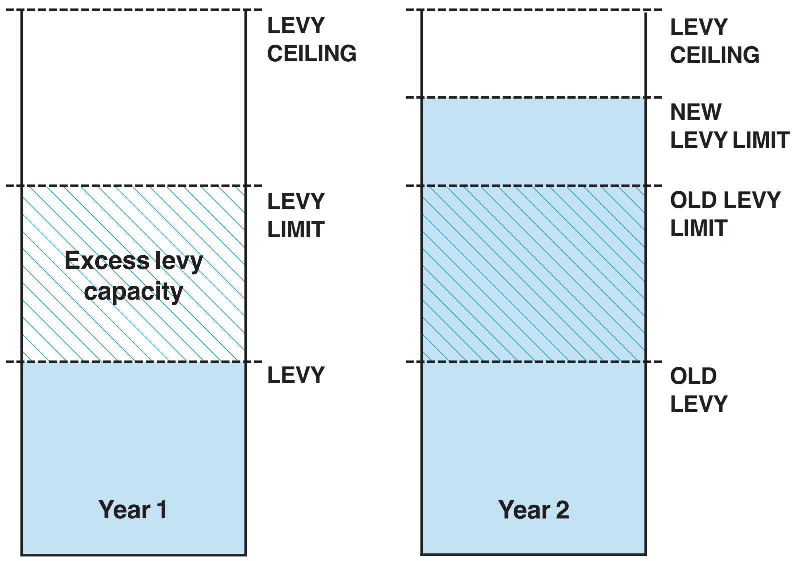


Figure 6

In Year 1, the community levies below its levy limit and as a result has excess levy capacity, represented by the area indicated.

In Year 2, the community may levy all the way up to its new levy limit. By levying up over its "old" levy limit (that is, its levy limit in Year 1), the community "uses" the excess capacity accrued in Year 1, shown by the area indicated. The community may increase its levy up to the new levy limit regardless of the percentage increase in the levy that is required to do so.

However, in Year 2 the community may not go back and recover the actual dollars of excess levy capacity foregone in Year 1 (the area indicated in the Year 1 diagram). That tax revenue is lost forever. It is only a one-time loss since the community can tax up to or above that level in Year 2.

Resources

For information on levy limits, levy ceilings, new growth and ballot questions (overrides, debt exclusions and capital outlay expenditure exclusions), contact DOR's Division of Local Services at:

- (617) 626-2300 by phone;
- (617) 626-2330 by fax; or
- the DLS website at **www.mass.gov/dls**.