

Modernize & Rationalize Taxation and Finance Powers

Different classes of government, including cities, towns, villages and counties have very different financial and taxation powers. However, most of these distinctions are made in statute, rather than constitutionally prescribed. The state constitutional finance provisions primarily limit property tax levies and impose debt limits, and both tax and debt limits apply differently depending upon the class of government.

Constitutional Provisions

Home rule concepts do not generally apply to local finances, and local governments have no constitutionally based power to levy taxes other than the property tax. Article XVI expressly provides that the “power of taxation shall never be surrendered, suspended or contracted away” and that any state laws which delegate the taxing power “shall specify the types of taxes which may be imposed thereunder and provide for their review.” This prohibits blanket enabling acts empowering localities to impose taxes at their own discretion. If a local government seeks an additional source of revenue, or the authority to raise the rate of any non-property tax the Legislature previously authorized it to impose, it must obtain the necessary authority from Albany.

Property Tax Limits

Even with respect to property taxation, local autonomy is limited. The constitution mandates exemptions for property used for religious, educational, or charitable purposes. It also imposes limits on property taxation overall, depending upon the class of local government. These tax limits refer to the maximum amount that a local government can levy (allowing for certain exclusions), and are calculated as a percentage of the full value of taxable property within the jurisdiction, as follows: New York City, 2.5%; other cities, 2.0%; counties, 1.5% (which may be raised to 2.0%); villages, 2.0%. Towns have no constitutional limit. Note that these limits apply to localities, not properties. Multiple local governments tax a property, such as a county, town and village. School districts also impose property taxes, which are not included in the limits, with the exception of the big five cities (over 125,000 in population), where the school districts are “fiscally dependent” on the municipal government (and their taxes are therefore included) – note, however, that the fiscal dependence of these districts is statutorily, not constitutionally, prescribed. Currently, only a small number of municipalities are brushing up against tax limits, which the Office of the State Comptroller monitors, paying particular attention when a municipality exceeds 80% of its available limit, as this is considered an indicator of fiscal stress. In 2005 and 2006, 26 municipalities exceeded the 80% threshold, but with rising property values, the number of cities, counties and villages in this risk pool declined to 19 in 2007 (the first aggregate decrease since 2000).

Debt Limits

The constitution also limits local debt (or at least, that which is issued directly, rather than through a local public authority). Debt limits are stated as a percentage of the full value of taxable property (with certain portions of local debt excluded, such as water



and, under certain circumstances, sewer debt). The percentages are as follows: New York City, 10%; Nassau County, 10%; cities with population greater than 125,000 (other than NYC), 9%; all other cities, counties, towns and villages, 7%; and school districts wholly or partly within cities with a population under 125,000, 5%. School districts wholly outside cities have no constitutional limit (although they have a statutory limit, set at 10%, and which excludes the portion of debt paid through state aid). Debt limits are measured solely in terms of the property tax base, and not other forms of local revenue-generating capacity. Very few governments have run up against debt limits, and where they do, the Legislature often provides a way out. For example, the upstate big cities with fiscally dependent school districts have been close to their debt limits in recent years (in part, this is due to the inclusion of school debt, which does not apply against other cities' debt limits. However, special legislation in recent years has allowed for the creation of "joint schools construction boards" in each of these cities to provide for debt issuances which do not count against the cities' limits. The Office of the State Comptroller has called for an assessment of the effectiveness of the constitutionally established debt limits in controlling local reliance on debt. OSC and others have recommended moving to a more comprehensive measure of debt affordability, looking at other revenue sources beyond property taxes.

General Description of Non-Property Taxes

As noted, most local government revenue raising abilities are controlled by state statutes, and like the constitutional finance provisions, are also dependent upon municipal classification. However, there are a series of exceptions authorized by special legislation, the end result of which is a very complex local tax structure, the net result of many years of incremental additions.

Sales taxes are a primary example, which now represent the largest local revenue source for counties generally, and which are also distributed to other local governments (43 of 57 counties have some form of sales tax sharing arrangement). Sharing tends to occur in counties which contain cities, as cities have the power to "pre-empt" sales tax collections within their borders. This is an important aspect of potential city-town consolidations, as cities combining with towns would have a larger retail base to potentially tap into. Local sales tax rates in New York range from 3 to 4.75%. While general state statutes allow local rates up to 3%, currently only six counties are still at this level – the other 51 counties and NYC have received special approval for rates above 3%. Although often referred to as "temporary" these rates in most cases have been in effect for decades. Many local leaders complain of the necessity of returning to the Legislature biannually to seek re-authorization for their non-temporary "temporary" taxes. Often this reauthorization process is used to apply leverage in other areas of legislative interest.

Sales taxes are only part of the picture. Counties, cities and small city school districts can levy consumer utility taxes, for example, whereas towns and villages cannot. In addition, cities and villages may impose gross receipts taxes on utility services. Mortgage recording taxes are collected in counties, cities, towns and villages. However, the tax is imposed at differing rates and localities are not free to change its application.



Most counties impose hotel occupancy taxes, and many cities, towns and villages are also authorized to impose such taxes. In all, there is an overwhelming complexity of local taxes, all of which are authorized under state law, and most of which are imposed in a pattern that is far from rational or transparent.

Resources

A variety of resources provide further information on local tax limits, debt, and non-property taxes:

Handbook of New York State and Local Taxes (NYS Dept. Taxation and Finance)

http://www.tax.state.ny.us/pdf/stats/policy_special/handbook_of_new_york_state_and_local_taxes_september_2007.pdf

Reports from the Office of the State Comptroller:

2007 Annual Report on Local Governments

<http://osc.state.ny.us/localgov/datanstat/annreport/07annreport.pdf>

Layers of Debt: Trends and Implications for New York's Local Governments

<http://www.osc.state.ny.us/localgov/pubs/research/lqdebt.pdf>

Property Taxes in New York State

<http://www.osc.state.ny.us/localgov/pubs/research/propertytaxes.pdf>

Financing Education in New York's "Big Five" Cities

<http://www.osc.state.ny.us/localgov/pubs/research/financingeducation.pdf>

