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RECAPTURE OF AGGREGATE EXTENSION BASE NOW ALLOWS UNDER-LEVY WITHOUT PENALTY

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Since its adoption about 30 years ago, the Property Tax Extension Limitation Law ("PTELL" or "tax cap") has contained an inherent disincentive for school districts and other taxing bodies to ever levy less than the legal maximum in any year. That is because when a district levies less than the maximum in one year it forever reduces the limit on its future tax levies. However, a new provision added to the PTELL this year will now provide districts with a means to avoid this problem. If a timely certification is made, a district can under-levy one year without penalizing itself with reduced tax caps in the future.

The new provision is contained in Section 18-190.7 of the Property Tax Code. The terms used in the law are "alternative aggregate extension base" and "recapture" (which should not be

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confused with the amendment last year allowing districts to recover revenues lost due to refunds awarded to taxpayers in tax assessment appeals). This "recapture" relates to the aggregate extension base, the starting point for calculating the district's limiting rate under PTELL. The way this recapture works is that a county clerk, when directed to do so by a taxing district which has levied less than its legal maximum in any year, will use an alternative aggregate extension base. Instead of just using the actual extension from the previous tax year or the highest actual extension over the last 3 years, the clerk will use an amount equal to whatever the maximum extension would have been.

However, districts need to be aware of two important caveats to this new law. The first caveat is that, even under this new law, an extension base cannot be greater than 5% more than the previous year. Although the law says that increases over 5% can be recaptured over time in succeeding years, this limitation presents a major practical obstacle to accessing new revenues, especially in times of high inflation and in cases where there has been substantial new construction in a district. Given current consumer price index (CPI) rates, districts should

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recognize that revenues lost due to even one year of under-levy may not be recovered for many years.

The second important caveat is that a district must have an ISBE Financial Profile System designation of "recognition" or "review" to be eligible to make use of the new law. Districts with a designation of "early warning" or "watch" cannot do so.

To take advantage of the recapture procedure, there is a strict time limit for district action. A district which wants its aggregate extension base to be adjusted after levying less than the maximum for that year must certify that fact to the county clerk within 60 days after the filing of the less-than-maximum levy. So, for instance, if a district levies less than the maximum for tax year 2022 and then files that levy on December 15, the district must file its recapture certification with the county clerk no later than February 13, 2023, even though it will not affect the district until the 2023 levy extended during 2024. That obviously takes some advance planning. Districts which might want to take advantage of this new law will have to act quickly. For that reason, we advise school boards to decide on whether to recapture their aggregate extension base at the same time that they approve any levy which is less than the

maximum.

While not perfect, the new law is an important and logical reform to PTELL which should have happened long ago. It is designed to allow taxing districts in good financial years to save the taxpayers money without reducing access to future tax revenues in years when those revenues might be more needed. However, because the new law as written will likely be difficult for county clerks to administer, we expect to see some legislative revisions in the near future.

If you have any questions, please do not hesitate to contact one of our attorneys.