Council Comments:

Citizens Research Council of Michigan
625 SHELBY STREET, SUITE 1B, DETROIT, MI 48226-3220
(313) 961-5377
1502 MICHIGAN NATIONAL TOWER, LANSING, MI 48933-1738
(517) 485-9444

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LOCAL PROPERTY TAX LIMITATIONS IN MICHIGAN

THE ISSUE IN A NUTSHELL

The local property tax has long been the source of considerable public policy conflict, on occasion generating as much dissatisfaction from taxpayers as it has revenue for local units. In 1932, this conflict culminated in a voter-initiated amendment to the State Constitution, limiting the aggregate rate of taxation. The adoption of fifteen and fifty mill amendment represented the first time such a limitation upon the general power of taxation was placed in the fundamental law of the state, but the underlying conflict was not resolved.

By 1963, when voters adopted a new constitution, the fifteen mill and fifty amendment had been so enervated through judicial interpretation that it scarcely resembled what voters had originally enacted. The present state Constitution continues to limit the aggregate of property taxation, but there is much millage to which the limitations do not apply.

At the local level, property taxation is the primary revenue source and local units depend heavily upon it to fund governmental services. Local property tax collections were $6.2 billion in 1988, based on the 1987 levy. Approximately $4.4 billion, or seventy percent of this amount went to support local schools, while another $960 million went to cities.

Due to this heavy dependence and the relative stability of the property tax, local officials generally view with disfavor any arrangement intended to limit that revenue. A level of taxation seen by local officials as no more than necessary to fund governmental services may, however, be viewed by taxpayers as unduly burdensome. Thus, Michigan on several occasions undertaken to limit property taxes, regardless of whether the resulting revenue was deemed sufficient by local officials.

This **Council Comments** examines the history of these efforts, the treatment they have been accorded by state courts, and why these limitations have so often proven less effective than intended. A more detailed treatment of this subject (43 pages) in the form of **Report No. 295** is available upon request.

I. Origins of the Fifteen Mill Amendment

At the November 1932 general election, Michigan voters approved an amendment to the 1908 state Constitution which limited the rate of ad valorem property taxation to fifteen mills. (A mill equals one-tenth of one cent or one dollar per thousand.) However, the limit could be increased to a maximum of fifty mills for not to exceed five years at any one time, when approved by a two-thirds majority of the voters, or when provided

for by the charter of a municipal corporation. The amendment excluded taxes levied to pay principal and interest on existing debt.

The fifteen mill amendment was not long in existence before the state Supreme Court was called upon to resolve a number of questions, notwithstanding that the amendment was written in straightforward language. These questions generally regarded whether the limitation extended to all purposes for which property taxation could be imposed, or if not, what purposes were excluded. The first in a series of cases was decided within six months of the amendments adoption. The cumulative effect of these decisions gradually eroded the effectiveness of the amendment. These decisions held:

- that the amendment did not extend to property taxes levied by home-rule cities, special-charter cities, fourth-class cities, incorporated villages and later, charter townships and school districts because those units were municipal corporations;

- that the Legislature could amend at will the charters of municipal corporations to require unlimited taxation for specific purposes;

- that the amendment did not cover special assessments;

- that the appropriate base against which local property taxes must be levied was county-equalized value and later, state-equalized value.

This was the condition of the fifteen mill amendment on the eve of the 1961 Constitutional Convention. In viewing the amendment from the vantage point of the late 1950s, it seemed clear that in construing the amendment, the "Court visibly and admittedly ha[d] looked with jaundiced eye on efforts of the people to restrict taxation by constitutional means." **Lockwood** v **Commissioner of Revenue,** (357 Mich 517, 575; 1959).

II. Present Constitutional Provisions

The fifteen mill limitation is now contained in the first paragraph of Section 6 of Article 9 of the 1963 state Constitution as amended. Millage levied within the fifteen mill limitation is allocated among local units on an annual basis by a tax allocation board in each county.

Eighteen Mill Limitation

The state Constitution also provides for an alternative "local option." Under procedures provided by law, the voters of a county may adopt a separate, fixed allocation for the county, together with townships and school districts contained therein of not to exceed **eighteen** mills. Since the allocation remains fixed until altered by the voters, the need for a local tax allocation board to annually divide up available millage is eliminated.

Voters in seventy of the state's eighty-three counties have adopted a fixed allocation of millage under the local option provision as of 1988; in forty-eight instances the allocation has been fixed at fifteen mills.

Fifty Mill Limitation

Both the fifteen and eighteen mill limitations may be increased to not to exceed **fifty** mills, for not to exceed twenty years at any one time. Such millage is generally referred to as extra-voted, it being in addition to that which is allocated either by tax allocation boards or by the voters. The application of present constitutional limitations may be summarized as follows:

	Operating Millage	Debt Millage
Unchartered Counties	Included	Excluded
Unchartered Townships	Included	Excluded
School Districts	Included	Excluded
Intermediate School Districts	Included	Excluded
(special or vocational education operating millage)	Excluded	
Cities	Excluded	Excluded
Villages	Excluded	Excluded
Charter Counties	Excluded	Excluded
Charter Townships		
(incorporated before December 23, 1978)	Excluded	Excluded
(incorporated solely by resolution and without a vote of township electors on or after December 23, 1978)	Included	Excluded
Charter Authorities, or Other Authorities (such as district libraries and community colleges)	Excluded	Excluded

These exclusions explain why the statewide average tax rate for all units in calendar 1988 exceeded fifty-six mills and why the total tax rates in Highland Park and Detroit for example, were 90.42 mills and 84.13 mills respectively.

Enforcing the Fifty Mill Limitation

The enforcement of the fifty mill limitation is not self executing. Rather, responsibility for its enforcement appears to rest with county commissioners. Section 37 of the general property tax act requires the board of commissioners of each county to annually apportion such millage rates within the county as shall be authorized by law. Consistent with that requirement, county commissioners may refer to the prosecuting attorney any legal questions regarding proposed millage.

Notwithstanding the above, the state tax tribunal concluded that county commissioners are not required to determine whether requested operating millage would in the aggregate exceed the fifty mill limitation. In reaching its conclusion, the tribunal misplaced reliance upon **Delta College** v **Saginaw County Board of Commissioners,** (395 Mich 562; 1975). **Delta College** merely held that a board of commissioners has a clear legal duty to approve authorized taxes and that a "board's inquiry is limited to the question of whether the levies are 'authorized by law.'" (395 Mich at 567.) By definition, operating millage which is subject to the fifty mill limitation, but levied in excess thereof cannot be considered "authorized by law."

It is not known to what extent, if any, county commissioners attempt to determine prior to apportioning taxes whether requested operating millage would in the aggregate exceed the fifty mill limitation. Two facts are known, however. First, apportionment data filed with the state tax commission in 1988 revealed four instances in which the aggregate operating millage levied on parcels of property by a school district unchartered county, and unchartered township is in excess of the constitutional fifty mill limitation.

Secondly, neither the Legislature nor the courts have definitively addressed the method by which millage subject to the fifty mill limit, but levied in excess thereof, should be reduced. One approach would be to require the local unit last receiving voter approval to levy additional mil age to reduce its rate sufficiently to bring the aggregate rate to fifty mills. This approach has been described as last in, first out.

Compliance with constitutional and statutory requirements relative to property tax limits has been hampered by numerous exceptions which have produced a system that is so complex it is not entirely understood either by taxpayers, nor by many local officials who play a role in its administration. This complexity makes it unlikely the system can be adequately policed by taxpayer lawsuits.