



HARMONIZING JUDGMENT LEVIES WITH TAX LIMITATIONS

A few recent developments in Southeast Michigan are drawing renewed attention to the provisions in the Revised Judicature Act of 1961 (RJA), Public Act 236 of 1961, that authorizes judgment levies for the financing of court judgments. With that renewed attention, the Citizens Research Council of Michigan (CRC) is reiterating its call for the RJA to be amended to bring the imposition of judgment levies within the statutory and charter tax limitations required by the Michigan Constitution.

Judgment levies are imposed as a result of lawsuits against local units of government. Whereas lawsuits against people or businesses can result in liens or other actions to ensure payments, in the case of lawsuits against governments, the payments must come from tax generated resources. When the governments do not have sufficient resources on hand, usually because of the size of the settlement, the RJA provides that courts may mandate the imposition of a tax to raise the monetary remunera-

tion on behalf of a local government – judgment levies. Judgement bonds are similar to conventional municipal bonds and are likewise the result of a court decision; they become a form of local government debt issued to finance the decision. The issuance of a bond provides funding to remunerate the wronged party. Financing of the principal and interest associated with the bond is financed with a judgment levy spread over several years.

The use of judgment levies raises two questions relative to the provisions of the 1963 Michigan Constitution:

- Why don't voters in the local government have to vote on the new millage as they do for other new taxes and/or tax rate increases?
- How can these judgment levies be imposed if they result in the tax rate of the local governments exceeding constitutional and/or statutory tax rate limitations?

Background

In 2013, the Oakland County Circuit Court ordered a tax levy on taxpayers in the Pontiac School District for the district's failure to pay its bills for employee health care premiums. The leaders of the Pontiac School District opted over several years not to fund the district's health care obligations. With the school district in arrears, the health care provider for public school employees, MESSA, sued and beginning with the summer 2013 levy, the court ordered the district to levy a 0.3071 mill annually for ten years to finance the \$7.8 million judgement.

More recently, the City of Inkster announced that it would levy two new taxes at a combined rate of 6.92 mills to pay for settlements involving alleged police abuse. Similarly, cash-strapped Wayne County will levy a new tax to fund a court-ordered \$49 million payment into a county retirement fund.

In each of these specific cases, the judgment levies create a tax rate in excess of the current statutory and voter-approved millage capacity.^a

^a School districts are limited to an 18 mill property tax (one mill of taxation is equal to \$1 of tax for every \$1,000 of taxable value) on non-homestead properties as the only source of local revenue for operations.

The Inkster City Charter limits the city's taxing capacity to 20 mills. That rate has been "rolled back" pursuant to Article IX, Section 31 of the Michigan Constitution. As of the most recent city budget, Inkster's general obligation millage rate was at 17.2349 mills. With the addition of the judgement levy, the tax rate would be in excess of 24 mills.

The Wayne County Charter limits the county's taxing capacity to 8.9300 mills (6.07 mills for operations plus 2.86 voter approved mills for other purposes). Those rates also have been "rolled back" over the years. With a current levy of 7.8220 mills, the judgement levy would increase the tax rate above the charter limit.



Each of these cases illustrate how judgment levies may come to be necessary. On the one hand, Inkster’s judgment levy results from the actions of a public servant employed by the city. The alleged abuse did not result from directives by the city leaders, but did occur while in employment by the city. The city did not budget for the settlement costs that might arise in such instances and does not have a sufficient fund surplus to make the ordered remuneration. In Inkster’s case, the financial obligation was simply unforeseen and impossible to plan for in advance.

On the other hand, the Pontiac School District and Wayne County judgment levies arise because of budget actions taken in an effort to maintain budget balance while satisfying obligations to employees

(current and former). The Pontiac School District was sued to make the required contributions to MESSA. Because the district had not funded its health care obligation on an annual basis for several years, and had used the funding for other purposes, it did not have the resources to fund its accumulated debt.

Wayne County faced a lawsuit challenging its funding shift. Setting money aside in the budget to account for a potential adverse verdict in the case challenging the actions was neither prudent – given the county’s financial condition – nor politically feasible – signaling to the court and those challenging the action that county management had its own doubts about the legality of the actions. The county does not have a sufficient fund surplus to make the ordered payment.

Vote Requirements

In 1978, the voters of Michigan amended the 1963 Constitution to create a number of state and local tax limitations. The “Headlee Amendment” included the adoption of Article IX, Section 31 which states in pertinent part:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government

voting thereon.... [Emphasis supplied by CRC]

The Revised Judicature Act was enacted in 1961. Sections 6093 and 6094 of that act (as amended by Public Act 297 of 1974), which provide for judgment levies, predate the 1978 Headlee Amendment and are included in the class of laws that were covered by taxes that were “authorized by law or charter” when this section was ratified. As such, voter approval of the tax is not required for the imposition of a judgment levy.

Tax Limitations

The Michigan Constitution limits directly, or requires the legislature to limit, the power of local governments to tax and incur debt. Namely, there are two specific types of limitations on taxation and debt to keep in mind:

1. For non-charter units of government (e.g., general law townships, general law counties), operating millage without voter approval is limited to a total of 15 mills. This limit may be increased

to a total not to exceed 50 mills for a period of 20 years with voter approval. Unlimited taxes in excess of the 15- and 50-mill limits may be levied to repay bonds issued, with voter approval, after December 23, 1978, or bonds issued with or without voter approval before that date.

2. For home rule cities, villages, and counties, the Constitution requires that the general law that provides for the incorporation of these units to

CRC BOARD OF DIRECTORS

TERENCE M. DONNELLY, Chair
ALEKSANDRA A. MIZIOLEK, Vice Chair
LAURA APPEL
MICHAEL G. BICKERS
BETH CHAPPELL
RICHARD T. COLE

JIM DAVLIN
DANIEL P. DOMENICUCCI
RANDALL W. EBERTS
SHERRIE L. FARRELL
EUGENE A. GARGARO, Jr.
JOHN J. GASPAROVIC

INGRID A. GREGG
JUNE SUMMERS HAAS
MARYBETH S. HOWE
GORDON KRATER
WILLIAM J. LAWRENCE III
DANIEL T. LIS

KRISTEN McDONALD
MICHAEL P. McGEE
PAUL OBERMEYER
KEVIN PROKOP
JAY RISING
KELLY ROSSMAN-McKINNEY

CANDEE SAFERIAN
CHRISTINE MASON SONERAL
TERENCE A. THOMAS, Sr.
THEODORE J. VOGEL
LARRY YACHCIK

also limit their powers of taxation, borrowing money, and contracting debts. Taxes imposed for purposes other than debt retirement are not subject to the 15- and 50-mill constitutional limitations, but rather to the limits provided in the general law and incorporated in the locally-adopted charter. As with non-charter units, the taxes imposed by cities, villages, charter counties, and other charter authorities may be levied to repay bonds issued, with voter approval, after December 23, 1978, or bonds issued with or without voter approval before that date.

Like the need for voter approval, the courts have

Statutory Tax Limitations for Charter Authorities*

Charter Counties	10 mills
Home Rule Cities	20 mills
Home Rule Villages	12 mills

* These limitations represent the upper limits. Citizens organizing their governments under these acts can and do set tax limitations at lower amounts within charter parameters.

found that the language of Section 6093 of the RJA permits “the imposition of a tax rate necessary to pay the judgment even if the effect is to raise tax rates above otherwise applicable limits.” *American Axle & Manufacturing, Inc. vs City of Hamtramck* [461 Mich. 352; 2000]

A Call for Change

It is time to bring judgment levies within the tax limitations imposed on local governments by the 1963 Michigan Constitution. The concept of tax limitations must be harmonized with the payment of legally incurred government obligations. This is especially true of taxes imposed pursuant to a court order requiring a judgment levy. CRC has long maintained that judgment levies should not be external to the tax limitations that are either constitutional in nature or were created pursuant to constitutional directives.

The recent judgment levies in the Pontiac School District and Wayne County cases illustrate well the need for change. In the school funding model used in Michigan since adoption of Proposal A of 1994, school districts have limited tax options available to them and the maximum tax rate for operations is uniform statewide. The Pontiac School District was one of several in the state that found it difficult to fund operations within the available resources. The decision not to fund the district’s health care costs enabled it to evade a major cost. By imposing a judgment levy to fulfill the district’s obligation, the courts enabled the school district to exceed the tax limitation imposed on all other school districts in the state.^b

^b The legislature responded to the Pontiac School District’s actions and the judgment levy to fund the health care obligations with Public Acts 184 and 185 of 2013 that amended the Revised School Code and the Revised Judicature Act (Section 6094) to prevent the enforcement of a judgment for damages in a contract action against a school district or intermediate

Wayne County leadership apparently did not have sufficient resources in 2010 to meet all of its demands with funds generated within the county charter tax limitations. The alternatives were to cut the budget further to free up funds or to take actions to redirect funds that otherwise would have been used for pension funding for use on other purposes. Specifically, county policymakers opted to use dollars that would have gone toward funding the “13th” pension check (an inflation allowance) to meet the required pension trust fund payments. County officials could have sought enhanced taxing authority at that time, but the county’s charter tax limitations and the necessity of voter approval stood in the way. By taking actions that were subject to legal challenge (i.e., not funding the “13th” check) the ultimate result was a judgment levy – for which voter approval is not required and tax limitations have not stood as a hindrance. In the end, the county leaders got the best of both worlds.

Additionally, the use of judgment levies outside of tax limitations in reaction to budgetary decisions run the risk of prolonging unsustainable public policies. At the root of the Wayne County case was a policy of providing a “13th” check to retirees to compensate them for lost buying power because of inflation. The Wayne County pension system was and is underfunded. Pension reform was needed in 2010

school district in similar circumstances. This remedy, which is specific to school districts, raises the question of how a future vendor would be paid if a district breaks its contract.

as it is needed today. The shifting of funds within the budget allowed county policymakers to elude this need in 2010. While a judgment levy that funds the payment to the 13th check could have allowed

county leaders to further elude the need for pension reforms, it appears that efforts are being made to end the annual 13th check pension payment.

Harmonizing Judgment Levies and Tax Limitations

An example of such harmonization of the two requirements was set forth by the Michigan Supreme Court in the *Morley Brothers v Carrollton Township Supervisor* [312 Mich. 607; 1945] decision in 1945. The Carrollton Township supervisor was ordered by the circuit court to levy certain judgments held against the township. The township claimed “that obedience to the writ would necessitate the assessment of taxes in excess of the constitutional 15-mill limitation.” However, the Supreme Court ruled that the judgments must be paid from within the allocated millage. Until recently, this case was commonly referenced whenever courts were confronted with such an issue.

Property tax limits expressly fixed by law would be respected if the courts authorized the tax collecting agent of the government to set aside a portion of the next regular property tax levy sufficient to satisfy the judgment. The judgment would be paid, therefore, from within the taxing authority granted by the voters. This would turn the judgment statute from what some have interpreted to be a law granting the judiciary independent taxing authority to a law granting the judiciary power to garnish a part of the next property tax levy of the local government. It would also put local public officials on notice that

they no longer have an unlimited charge account at taxpayer expense, and that they are required to finance government operations from within existing revenue sources.

The Revised Judicature Act also authorizes the issuance of court-ordered bonds to satisfy judgments, and a similar concept can be used to harmonize the repayment of the bonds with voter imposed tax limits. If a judgment is so large that a one-time garnishment would inflict financial hardship on the local government, the court could order the issuance of judgment bonds. Repayment of the principal and interest due each year on the bonds would become a first budget obligation – to be paid from within existing taxing authority. The local government could seek voter approval of the bond issue, thereby pledging the full faith and credit (and unlimited taxing authority) of the issuing governmental unit. Since any judgment bonds impose a direct obligation on the issuing governmental unit, these bonds should be subject to any voter-imposed debt limitation. If the unused debt authority within the limit is insufficient to satisfy the judgment, new bonds could be issued in concert with the retirement of previously issued debt.