

<https://www.osc.ny.gov/files/local-government/property-tax-cap/pdf/faqs.pdf>

**The statute provides that the tax levy limit generally does not apply to the first fiscal year after a "local government" is newly established. When a town establishes a new special district, governed by the town board, is the first year's levy for the new district included in the town's tax levy limit calculation?**

Yes. In accordance with the guidance issued by the Department of Taxation and Finance and the Department of State, the tax levy that supports the operations of a special district that is "established, administered and governed by the governing board of another municipality," is part of that municipality's tax levy and is subject to the municipality's overall property tax cap calculation. Therefore, under this guidance, the exception for a newly established local government does not apply and the levy for the special district is not exempt from the tax cap in the first year.

**Is a unit based charge imposed to fund a town or county special district (e.g. sewer or water district) subject to the tax levy limit?**

A unit based benefit assessment is subject to the limit. Special assessments (benefit assessments) and special ad valorem levies imposed within a town or county district are both included in the definition of "tax" in Chapter 97 of the Laws of 2011. Therefore, a benefit assessment, whether based on units or some other formula, constitutes a tax for purposes of the tax levy limit calculation. As noted earlier, however, user fees are not taxes subject to the levy limit. In limited circumstances, a user fee also may be properly based on units. It can sometimes be difficult to differentiate between a unit based benefit assessment and a unit based user fee. As a general guide, a special assessment is imposed on an assessment roll, against benefited properties within the district, in proportion to the benefit received by the property. A user fee is a contractual charge to district users and must bear a rational relationship to the amount of use. If you are uncertain whether a certain charge is a special assessment or a user fee, you should consult your attorney. Our legal staff is also available to speak to your attorney at (518) 474-5586 for assistance.