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TO: All County Auditors  
Through: Shelley Wilson, <sup>Shelley</sup> Administrator, Tax Equalization Division  
From: Rebecca R. Luck, <sup>RL</sup> Legal Counsel for the Tax Equalization Division  
RE: Renewal and Replacement of Property Tax Levies  
DATE: June 11, 2012

The following explains when an existing property tax levy, other than bond levies, may be properly renewed or replaced. Bond levies, by their terms, may not be renewed or replaced.

### I. RENEWAL LEVIES (excluding school district levies)

**General Rule (§ 5705.25):** A renewal of an existing levy may be placed on the ballot only at the general election held during the last year the levy may be extended on the real and public utility property tax list, or at any election held in the following year. For example, a levy that expires in tax year 2012 (last collected in calendar year 2013) may be renewed only at the November 2012 election or at any election in 2013. An existing levy may be renewed at the same rate, or with an increase or a decrease.

**Exception (§ 5705.191):** The renewal of certain levy issues may be placed on the ballot at any election in any year, if the levy satisfies both the following conditions.

1. The existing levy was imposed for public assistance, human or social services, relief, welfare, hospitalization, health, or support of general or tuberculosis hospitals.
2. The renewal resolution is to "renew and increase" or to "renew part of" the existing levy. In other words, the resolution must increase or decrease the existing authorized rate of the levy. A renewal of the existing authorized rate must follow the general rule.

For example, suppose a county health levy was passed at the November 2002 election to run from tax year 2003 to 2012. A renewal of that levy with an increase or with a decrease may be placed on the ballot at any election in 2003 through 2012. If such a levy passes, this new levy is substituted for the original levy and begins a new term. However, a renewal of the original levy at the same rate may be placed on the ballot only at the November 2012 election or at any election in 2013.

**II. RENEWAL LEVIES (§ 5705.194)**  
**(only school district emergency levies)**

**Single Levy:** The renewal of a single emergency levy may be submitted at a special election in May and November during the last year the levy may be extended on the tax list and duplicate, or at any election held during the following year. Consequently, the renewal of a single levy may be held in May, during the last year the levy may be extended on the tax list and duplicate, even if no election of candidates is being held. For example, a levy that expires in tax year 2013 (last collected in calendar year 2014) may be renewed only at the May and November 2013 elections or at any election in 2014. An existing levy may be renewed at the same amount, or with an increase or a decrease from the original voted amount.

**Two or More Levies:** The renewal of two or more existing, emergency levies (on a single ballot issue) may be submitted only at the primary or general election held during the last year at least one of the levies may be extended on the tax list and duplicate, or at any election held during the following year. Consequently, the renewal of two or more emergency levies may be held in May, of the last year at least one of the levies may be extended on the tax list and duplicate, only if a primary election of candidates is being held at the same time.

The resolution and ballot language must state that the existing levies shall not be levied once the renewal levy is first imposed. A levy is considered to be an "existing levy" through the year following the last year it can be placed on the tax list and duplicate.

For example, assume a school district has two emergency levies: (1) a \$200,000 levy running from 2009 to 2013, and (2) a \$100,000 levy running from 2010 to 2014. The first opportunity to renew both levies for \$300,000 would be at the May 2013 primary election, if an election of candidates is being held at the same time. The last opportunity to renew both levies would be at the November 2014 general election, since by May 2015 the first levy for \$200,000 would no longer be an "existing levy." The school district could also renew those levies with an increase or a decrease from the original voted amounts.

**III. SUBSTITUTE LEVIES (§5705.199)**  
**(only school district emergency levies)**

**General Rules:** House Bill 563 (effective September 23, 2008) provided for the substitute levy, which is a special type of levy, whose submission of the question is governed by R.C. §§ 5705.194 and 5705.196, whereby all or a portion of one or more existing, school district emergency levies may be substituted by a levy for a specified amount of money with a built-in growth factor. In the initial year of the substitute levy, the amount levies shall equal the aggregate amount of the existing emergency levies, or portion thereof, being substituted. In each subsequent year, the amount levied equals the sum of (a) the amount levied in the prior year and (b) the product of the taxable value of all noncarryover property (e.g., new construction, omitted property, previously exempted property, and property that switched factor classes) added to the current tax year times last year's tax rate. The amount calculated under (b) shall not be less than zero. The term of the substitute levy may be for any number of years not exceeding ten, or for a continuing period of time. **Note:** The substitute levy is treated like a new levy for election purposes. The substitute levy is treated like a renewal of the existing emergency levies being substituted for purposes of the tangible personal property tax replacement moneys under R.C. §§ 5751.20 to 5751.22.

**Initial Substitute Levy:** At any time, the board of education of a city, local, exempted village, cooperative education, or joint vocational school district may propose a levy to substitute all or a portion of one or more existing emergency levies. A levy is considered to be an "existing levy" through the year following the last year it can be placed on the tax list and duplicate. Consequently, at any time during an existing emergency levy's term, it can be substituted. Moreover, that proposal for a substitute levy may be placed on the ballot at any available election. If the substitute levy is passed, any existing emergency levy that is substituted will cease to be levied when the substitute levy begins.

**Renewal of a Substitute Levy:** Although it may seem logical and even desirable to allow for a renewal of a substitute levy, for example, to change the term of the levy from one fixed term to another fixed term or from a fixed term to a term for a continuing period of time, R.C. § 5705.199 does not expressly authorize a renewal of a substitute levy. Moreover, given the unique characteristics of a substitute levy, the applicability of the general renewal provision in R.C. § 5705.194 is not immediately obvious, which implies, perhaps, that a renewal of a substitute levy was never intended. Since the first substitute levies started with tax year 2009, it should be a few more years before a renewal of a substitute levy may be proposed. This should provide sufficient time for a legislative clarification.

#### **IV. RENEWAL LEVIES (§ 5705.21) (school district levies other than emergency levies)**

**Single Levy:** The renewal of a single, existing levy may be submitted only at the general election held during the last year the levy may be extended on the tax list and duplicate, or at any election held during the following year. A single levy may be renewed at the same rate as the existing levy, or with an increase or a decrease. For example, a levy that expires in tax year 2012 (last collected in calendar year 2013) may be renewed only at the November 2012 election or at any election in 2013.

**Two or More Levies:** The renewal of two or more existing levies (on a single ballot issue) may be submitted only at a general or primary election held during the last year at least one of the levies may be extended on the tax list and duplicate, or at any election held during the following year. Consequently, the renewal of two or more such levies may be held in May of the last year at least one of the levies may be extended on the tax list and duplicate, only if a primary election of candidates is being held at the same time.

Those levies must all be for the same purpose and may be renewed only for the total of their existing authorized rates. Multiple levies may not be renewed on a single ballot issue with an increase or a decrease. Moreover, the resolution and ballot language must state that the existing levies shall not be levied once the renewal levy is first imposed. A levy is considered to be an "existing levy" through the year following the last year it can be placed on the tax list and duplicate.

For example, assume a school district has the following two levies: (1) a current expense levy for 2.0 mills running from 2009 to 2013, and (2) a current expense levy for 1.0 mill running from 2010 to 2014. The first opportunity to renew both levies for 3.0 mills would be at the May 2013 primary election, if an election of candidates is being held at the same time. The last opportunity to renew both levies with one ballot issue would be at the November 2014 general election, since by May 2015 the first levy for 2.0 mills would no longer be an "existing levy."

**Exception to Same Purpose Rule:** House Bill 362 (effective march 31, 2005) changed the designation of the school district levy for “general, ongoing permanent improvements” to a levy for “general permanent improvements.” An existing levy for “general, ongoing permanent improvements” may be renewed as a levy for “general permanent improvements” because both levies are considered to be levies for the same purpose.

Moreover, one or more existing school district levies imposed for the purpose specified in § 5705.19(F) (specific permanent improvements) may be renewed for the same purpose **or** for the purpose of “general permanent improvements.” In addition, a single existing school district levy imposed for the purpose specified in § 5705.19(F) (specific permanent improvements) may be renewed with an increase or renewed with a decrease for the same purpose **or** for the purpose of “general permanent improvements.”

#### **V. RENEWAL LEVIES (§ 5705.212) (school district incremental rate levies)**

The incremental tax rate levy may consist of up to five tax rates, the original tax rate and four incremental tax rates. The rate of each incremental tax must be identical, but need not be the same as the original tax. The original tax may be levied for any number of years not exceeding ten, or for a continuing period of time. Each incremental tax will be in effect as long as the original tax is in effect.

The renewal of an incremental tax rate levy, levied for a fixed period of time, without exception, follows the general rule for the renewal of nonschool levies, explained above in Part I. For example, an original tax levy that expires in tax year 2012 (last collected in calendar year 2013) may be renewed only at the November 2012 election or at any election in 2013. The rate of the renewal tax is a single rate that cannot exceed the aggregate rate of the original and incremental taxes. The renewal tax may be levied for any number of years not exceeding ten, or for a continuing period of time.

#### **VI. RENEWAL LEVIES (§ 5705.213) (school district incremental amount levies)**

The incremental tax amount levy consists of an amount of money to be raised and may, for years after the first year the levy is made, be expressed as a dollar or percentage increase over the prior year’s amount. This levy may be levied for any number of years not exceeding ten.

The renewal of an incremental tax amount levy, levied for a fixed period of time, without exception, follows the general rule for the renewal of nonschool levies, explained above in Part I. For example, an incremental amount levy that expires in tax year 2012 (last collected in calendar year 2013) may be renewed only at the November 2012 election or at any election in 2013. The amount of the renewal tax cannot exceed the amount of tax levied during the last year the tax being renewed is in effect. The renewal tax may be levied for any number of years not exceeding ten, or for a continuing period of time.

## VII. REPLACEMENT LEVIES (§ 5705.192)

### General Rules:

1. The replacement levy option is available to all levies, except a school district emergency levy (§ 5705.194), a school district substitute levy (§ 5705.199), and a school district incremental amount levy (§ 5705.213).
2. The replacement levy must be for the same purpose as the existing levy.
3. A single existing levy may be replaced at the same rate, or with an increase or a decrease.
4. Two existing levies, or any portion of those levies, may be combined into one replacement levy, provided both the existing levies are for the same purpose and either both are fixed term levies expiring the same year or both are continuing levies. Thus, the combined replacement levy may not be placed on a single ballot issue with a rate that exceeds the total of the rates for the two levies being replaced.

**Fixed Term:** The replacement of any existing levy with a fixed term of years, without exception, follows the general rule for the renewal of nonschool levies, explained above in Part I. For example, a levy that expires in tax year 2012 (last collected in calendar year 2013) may be replaced only at the November 2012 election or at any election in 2013.

**Continuing Term:** The replacement of an existing levy that was imposed for a continuing period of time may be placed on the ballot at any election in any year following the year the existing levy was approved by the electorate. However, only one election to replace an existing continuing levy may be held during any calendar year. For example, a replacement of a continuing fire levy that was approved at the May 2012 election may be first placed on the ballot at the February 2013 election. If a replacement issue is placed on the February 2013 ballot, it may not be placed on the ballot again until February 2014. The failure of the electorate to approve a replacement for a continuing levy does not terminate the existing continuing levy.

**Exception to Same Purpose Rule:** House Bill 362 (effective March 31, 2005) changed the designation of the school district levy for “general, ongoing permanent improvements” to a levy for “general permanent improvements.” An existing levy for “general ongoing permanent improvements” may be replaced as a levy for “general permanent improvements” because both levies are considered to be levies for the same purpose.

Moreover, an existing school district levy imposed for the purpose specified in § 5705.19(F) (specific permanent improvements) may be replaced for the same purpose or for the purpose of “general permanent improvements.” In addition, if that replacement levy is for “general permanent improvements,” it is not limited to a five-year term, but may be for a continuing period of time.