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## MEMORANDUM

**TO: OUR PUBLIC SECTOR CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**DATE: APRIL 18, 2014**

**RE: REAL PROPERTY TAX FREEZE CREDIT - ADOPTION OF A “FREEZE-COMPLIANT BUDGET”**

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The “Real Property Tax Freeze Credit,” a new tax credit available to eligible taxpayers residing in a municipality that adopts a “freeze-compliant budget,” was adopted as part of the 2014-2015 State Budget. Residents will be eligible to receive this tax credit in the first year the credit is available (the specific year depends on the type of municipality) if a municipality (including a school district)<sup>1</sup> adopts a budget that stays within the applicable State tax levy cap requirements. The credit will be available for a second year if the municipality stays within the tax cap and develops a State-approved government efficiency plan.

This memorandum outlines what you need to do to adopt a “freeze-compliant budget” that will allow your eligible residents to claim this new tax credit.<sup>2</sup>

### **I. YEAR 1**

The first year of the program is the fiscal year starting in 2014 for a school district and a

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<sup>1</sup> A “municipality” for the purposes of this memorandum is a city (except a city with a population of 1,000,000 or more), a county (except a county wholly located in a city with a population of 1,000,000 or more) a town, a village, a school district, or a special district that has a separate independent board and the authority to levy a tax or can require another municipal corporation to levy a tax on its behalf.

<sup>2</sup> The requirements for school districts and other municipalities are set forth in newly enacted laws, Education Law § 2023-b and General Municipal Law (“GML”) § 3-d, respectively.

city with a Dependent School District.<sup>3</sup> For any other municipality, the first year is the fiscal year starting in 2015. To have a “freeze-compliant budget” in Year 1, a municipality must:

- Adopt a budget that does not exceed the applicable tax levy limit;
- Certify its compliance with the applicable tax levy limit established by Education Law § 2023-a (school districts) or GML § 3-c (other municipalities) on or before the 21<sup>st</sup> day of the fiscal year; and
- If a local law or resolution was enacted to override the tax levy limit, certify that the local law or resolution was subsequently repealed (this requirement is not applicable to school districts).

The procedural requirements associated with the certification are as follows:

- It must be made by the superintendent of a school district, or the chief executive officer or budget officer of any other municipality;
- It must be submitted on a form created by and pursuant to a procedure that will be established by the Comptroller; and
- It must be submitted to the Comptroller and Commissioner of Taxation and Finance and, for school districts, the Commissioner of Education.

If the certification is made and the tax levy is more than the applicable tax levy limit, then the amount of the tax levy in excess of the limit must be placed in reserve and used pursuant to the requirements of Education Law § 2023-a or GML § 3-c, even if the tax levy limit had been authorized by the school district’s voters or by a duly adopted local law or resolution.

All municipalities, regardless of whether a “freeze-compliant budget” is adopted or whether a certification has or will be made, must report their proposed budget and adopted budget to the Comptroller and, for school districts, to the Commissioner of Education. The timing and the required procedure for submitting this report will be determined by the Comptroller and Commissioner of Education.

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<sup>3</sup> A “Dependent School District” is a city school district with a population between 125,000 and 1,000,000. A Dependent School District is not a “school district” for purposes of this memorandum or pursuant to the applicable laws. The taxpayers of a city with a Dependent School District, unlike those of any other municipality, could receive a property tax credit in each of three years if the city adopts a freeze-compliant budget for two years.

## II. YEAR 2

To establish a “freeze-compliant budget” for Year 2, a municipality must:

- Comply with all of the Year 1 requirements set forth above; and
- Develop a State-approved government efficiency plan (“Efficiency Plan”) that demonstrates a savings of 1% per year for each of three years.

An Efficiency Plan is defined as “a plan that identifies cooperation agreements, shared services and/or mergers or efficiencies to be fully implemented by one or more” municipalities. The terms cooperation agreement, shared services and mergers are all defined as sharing, consolidation, or cooperation between and among only school districts or between and among only other local government units. In other words, a school district cannot enter into a cooperation agreement with a village, town, or county for purposes of developing an Efficiency Plan.

The State anticipates and encourages county governments and Boards of Cooperative Educational Services (“BOCES”) to facilitate the development and submission of a county-wide plan for all local government units in a county or a BOCES-wide plan for all school districts in a BOCES district. Notwithstanding this, a municipality may: (1) sign onto an Efficiency Plan with one or more other municipalities; or (2) develop and submit its own Efficiency Plan, both of which options are discussed in more detail below.

### A. Submission of a Multiple Municipality Efficiency Plan

A school district may develop and implement an Efficiency Plan with one or more other school districts. Other municipalities may develop and implement an Efficiency Plan with one or more non-school district municipalities. In each case, there must be a “Lead District” or “Lead Local Government Unit.” This lead municipality is the one that has elected to submit the Efficiency Plan to the State. The lead municipality and each other individual municipality must comply with procedural requirements in connection with the submission of an Efficiency Plan (in a city with a Dependent School District, the city and its Dependent School District must each comply with these requirements).

- By May 15, 2015, the following certifications must be submitted to the superintendent of the Lead District or the chief executive officer of the Lead Local Government Unit:
  - The superintendent of each school district or the chief executive officer or budget officer of any other municipality must submit a written certification that the municipality “agrees to undertake its best efforts to fully implement ... the cooperation agreements, mergers, efficiencies and/or shared services specified for [the municipality] in [the Efficiency] [P]lan” by the end of the 2016-2017

school year for school districts or by the end of the fiscal year beginning in 2017 for other municipalities.

- The chief financial officer (the chief fiscal officer for a Dependent School District) must submit a written certification “that in his or her professional opinion” full implementation, by the end of the 2016-2017 school year for a school district or by the end of the fiscal year beginning in 2017 for any other municipality, of the cooperation agreements, mergers, efficiencies and/or shared services by the municipality pursuant to the Efficiency Plan will result in savings for the municipality as set forth in the Efficiency Plan.
- The chief financial officer must also submit a written certification “that in his or her professional opinion” full implementation of the cooperation agreements, mergers, efficiencies and/or shared services by all municipalities participating in an Efficiency Plan will result in savings over the combined tax levies for all participating municipalities of at least 1% per year for each of three years. A school district Efficiency Plan must result in savings over the combined 2014-2015 school year tax levies of 1% per year in 2016-2017, 2017-2018, and 2018-2019. The Efficiency Plan of other municipalities must result in savings over the combined tax levies for the fiscal year beginning in 2014 and be at least 1% per year for each of the fiscal years beginning in 2017, 2018, and 2019.
- By June, 1, 2015, each Lead District or Lead Local Government Unit must submit to the State’s Director of the Budget:
  - The Efficiency Plan;
  - A list of the municipalities that are signatories to the Efficiency Plan;
  - The certifications submitted by the signatories (set forth above); and
  - An analysis of the total amount of savings for the municipalities if the Efficiency Plan is fully implemented by: (i) the end of the 2016-2017 school year for school districts; or (ii) the end of the of the fiscal year beginning in 2017 for other municipalities.

**B. Submission of a Single Municipality Efficiency Plan**

To have a “freeze-compliant budget” in Year 2, a municipality that is not participating in an Efficiency Plan with another municipality must submit its own Efficiency Plan to the State’s Director of the Budget by June 1, 2015, along with: (1) an analysis of the savings that will be achieved if the Efficiency Plan is fully implemented by (a) the end of the 2016-2017

school year for school districts; or (b) the end of the of the fiscal year beginning in 2017 for other municipalities; and (2) the following two certifications:

- The superintendent of a school district or the chief executive officer or budget officer of any other municipality must submit a written certification that the municipality “agrees to undertake its best efforts to fully implement ... the cooperation agreements, mergers, efficiencies and/or shared services specified in [the Efficiency] [P]lan” by the end of the 2016-2017 school year for school districts or by the end of the fiscal year beginning in 2017 for other municipalities.
- The chief financial officer must submit a written certification “that in his or her professional opinion” full implementation of the cooperation agreements, mergers, efficiencies and/or shared services set forth in an Efficiency Plan, will result in savings of 1% per year for each of three years. A school district’s Efficiency Plan must result in savings over the 2014-2015 tax levy of 1% per year in 2016-2017, 2017-2018, and 2018-2019. An Efficiency Plan of any other municipality must result in savings over the tax levy for the fiscal year beginning in 2014 of 1% per year for each of the fiscal years beginning in 2017, 2018, and 2019.

In a city with a Dependent School District, both the city and its Dependent School District must comply with the above requirements.

**C. Review of the Proposed Efficiency Plan by the Director of the Budget**

The Director of the Budget will review the proposed Efficiency Plan and other submitted documents and determine whether to approve it for a municipality. During this review, the Director of the Budget is required to “consider past efficiencies, shared services and reforms” enacted or taken by a municipality. While we know past actions must be considered, we do not yet know which past efficiencies, shared services and reforms will be considered and how they will affect the approval process. The Director of the Budget must make his/her determinations by July 31, 2015.

Please contact us if you have questions regarding this memorandum or the development and adoption of a “freeze compliant budget.”

THIS MEMORANDUM IS MEANT TO ASSIST IN THE GENERAL UNDERSTANDING OF CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.