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ERIE COUNTY BLOWS PROPERTY TAX CAP BY AT LEAST \$24 MILLION

Poloncarz administration scheme swaps the word “taxes” with “fees” on sewer bills in order to violate the New York State Property Tax Cap

(Buffalo, New York) – Erie County Comptroller Stefan Mychajliw released a report to the Legislature that details the smoke and mirrors scheme behind the Poloncarz administration’s failure to comply with the popular New York State Property Tax Cap Law. The scheme, used in both the 2016 and proposed 2017 budget is simple. The County Executive changes the word “taxes” in the sewer district budgets to “fees,” and stops counting those revenues toward the state required tax cap.

The deliberate dodge of flipping the words “taxes” to “fees” in sewer bills means Erie County government is way over the popular New York State Property Tax Cap to the tune of over \$24 million: \$7 million in the 2016 budget and \$17 million in the proposed 2017 budget.

Comptroller Mychajliw says not so fast, saying “the county is clearly and deliberately breaking the law. The Poloncarz administration is hoodwinking taxpayers. The County Executive is trying to pull the wool over the eyes of homeowners and state government. Mr. Poloncarz used smoke and mirrors to trick people into believing he is managing the county budget within the parameters of the tax cap law when he is not. In fact, Mark Poloncarz has blown the property tax cap by more than \$24 million.”

Comptroller Mychajliw refers to two years’ worth of sewer district taxes, some of which have already been collected that are identified in the budget lawmakers passed as “fees” but collected by the county as “taxes.”

The law for the New York State Property Tax Cap is crystal clear, in that municipalities cannot legally swap the words “taxes” with “fees” in order to defraud the government to make it appear as though a government is below the tax cap, when in reality, it is not:

LAWS OF NEW YORK, 2011, CHAPTER 97 – PART A – for purposes of the tax cap, taxes shall include: “*special ad valorem levies and special assessments.*”

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*“A tax levy that supports the operations of a special district that is established, administered and governed by the governing body of another local government – such as a tax levy imposed by a town or county board, under its authority, to support an improvement district created, administered and governed by that town or county board – is part of that town or county’s tax levy, and **is to be applied to the tax levy limit of that town or county** – it is not to be separately reported by the special district.”*

"A special district that raises revenue solely through fees based on use is not subject to the to the tax levy limit."

The determining factor between the two is that "taxes" are calculated based on the assessed value of a property owner's home and a "fee" for sewer services would be calculated based on the homeowner's usage of the sewer system. In other sewer districts this amount is determined by flow of water into the home, making the assumption that what comes in must come out.

"At first glance the scheme appears legitimate on paper, but turns to total smoke and mirrors in practice. Sure, the County Executive can say he will change a tax to a fee to avoid the property tax cap and mislead the public. Unfortunately for the administration he has to do a lot more than that for it to be legal. Mr. Poloncarz has to take the next step and legally change the tax to a fee, and that critical step was missed," continued Mychajliw.

According to hundreds of impacted property tax bills reviewed by the Comptroller's Office, the determination has been made that at no point was the formula for collecting sewer taxes changed, and there is no basis to conclude that homeowners are being charged based on their usage.

"This lie is an utter betrayal to the public, which by law are protected from rising property taxes. Taxpayers have been robbed of that security and now their expected state rebates may be in jeopardy," said Mychajliw.

Comptroller Mychajliw is referring to the County Executive's announcement last year that because the county successfully stayed under the tax cap and put in place an approved efficiency plan, homeowners in Erie County would receive millions of dollars in property tax rebates this Fall. It is clear that this is not the case and the state will have to make the determination as to whether or not those rebates are viable.

"Ultimately, the County Executive can't get away with overbilling taxpayers. The property tax cap law very clearly provides for consequences for municipalities that break the law. Those consequences seek to reinstate the tax relief the law required all along," said Comptroller Mychajliw.

The Comptroller concluded his remarks by noting the original intent of the property tax cap. "This law was passed in Albany to protect taxpayers from politicians that spent too much. It was designed to bring real relief to struggling people and families trying to make ends meet in the highest taxed place to live in the country. When County Executive Poloncarz ignores the intent of this law and tries to get cute by changing the name of a budget line from "taxes" to "fees" but never implementing the change in practice, he is insulting every taxpayer he swore an oath to serve. This smoke and mirrors tax scheme is exactly the type of gimmickry and blatant disregard for those who pay the bills of government that Albany was trying to protect."

Comptroller Mychajliw's report is on its way to the Erie County Legislature, which has approximately one month to adopt the final budget for 2017. Copies of the report will also be delivered to New York State Comptroller Thomas DiNapoli, the State's Budget Director, and the New York State Office of Real Property Tax Services.

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