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**A Report on Erie County's Real Property Tax Cap
2015-2017**



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Erie County Legislature
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Dear Honorable Members:

The Erie County Comptroller's Office has completed a report on Erie County's compliance with New York State General Municipal Law section 3-c, frequently referred to as the real property tax cap law.

Our objectives were to:

- Understand the real property tax cap law.
- Determine if Erie County appropriately calculated its tax cap as reported to New York State.

To accomplish these objectives, we examined property tax bills issued to property owners, the Erie County budgets from 2015 – 2017, the Department of Real Property Annual reports for 2014-2015 and 2015-2016 and the spreadsheets used to calculate Erie County's real property tax levy limits.

As a result of our examination, we have determined that Erie County may have illegally exceeded the New York State real property tax cap in 2016, and that its proposed 2017 budget may also exceed the property tax levy limit.

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BACKGROUND

On June 24, 2011, Governor Andrew Cuomo signed a law that limits property tax increases levied by the County to two percent or the rate of inflation, whichever is less. The cap is not directly applicable to property tax rates, or to the assessed value of real property. The cap can be adjusted upward, through the use of a tax base growth factor, for additions of properties with significant improvements to the tax base. The rate of inflation used for the 2017 Erie County Budget is 0.68%, which is significantly less than 2%. Pursuant to state law, if the county wishes to exceed the 0.68% increase, it would require a 60% vote of the Erie County Legislature to do so. In other words, seven out of the eleven legislators would have to affirmatively vote to exceed the tax cap.

On October 14, 2016 the County Executive submitted a budget for 2017 that he acknowledges increases taxes. However, he purports that the budget increases taxes within the limits of New York State's property tax cap law. The proposed budget, as reported in the budget summary, increases taxes from \$257,638,097 in 2016 to \$272,002,597 in 2017. As such, the increase in tax levy, as proposed, is \$14,364,500. Of course, these figures note an increase in gross property tax receipts of over 5.28%, which is significantly higher than 0.68%. For purposes of the New York State property tax cap law, certain adjustments are calculated, which allow the County Executive's proposed tax increase to not exceed increases allowed by New York State law.

For purposes of the real property tax cap law, other taxes, including the Buffalo and Erie County Library real property tax levy and the county's seven sewer districts are included. Incorporating all of these elements into the New York State real property tax cap law, the County Executive purports that the proposed budget as presented is under the maximum allowable tax increase by about \$152,000.

Within the total tax increase, the Library fund levy increases from \$23,474,134 to \$23,943,617. This is an increase of \$469,483 or 2%. As such, it outpaces the allowable levy growth, which has the effect of forcing other levy components to grow by less than the rate of inflation compounded by the tax base growth factor.

Given the requirements of New York State Law, and cognizant of the narrow gap between the real property tax cap and the 2017 proposed budget tax levy, an examination of the real property tax cap as it pertains to Erie County is warranted. It is important for legislators to have the information necessary so that Erie County is in compliance with New York State law. If the proposed budget is indeed over the tax cap, legislators should have the opportunity to take steps to bring the budget under the cap. In the alternative, if there is a desire to exceed the tax cap, certain steps must be taken to allow the cap limit to legally be exceeded. The steps require a certain amount of transparency with the taxpaying public and the timeline for taking these steps must be completed before passing and approving the budget.

TAX BASE GROWTH FACTOR

Most counties in New York State were assigned a tax base growth factor for 2017. The counties of New York City are not subject to the real property tax rate cap, and are therefore not assigned a growth rate factor for purposes of the tax cap law. For 2017, the tax base growth factor for Erie County is 1.0079. This allows the tax levy to grow by a factor greater than the rate of inflation, due to its increasing tax base. Amongst New York State counties, there are ten counties with a higher tax base growth factor. This puts Erie County in the top quarter of counties in New York State allowed to increase their tax cap threshold beyond the rate of inflation.

Within Erie County, each city and town is also assigned a tax base growth factor. These factors are related to the county tax base growth factor in that it provides an indication where growth is occurring in the county, contributing to the county's own growth factor. The seven towns or cities assigned the highest growth factors were Lancaster, Orchard Park, Newstead, Elma, Clarence, Aurora and Eden. Each of these towns were assigned a higher tax base growth factor than Erie County. The City of Buffalo ranked thirteenth of the 28 cities and towns in Erie County. Two towns, Collins and Evans, were assigned a growth factor of 1, which indicates that its tax base did not grow by an amount significant enough to reflect property tax base growth, if at all.

Continued tax base growth allows the tax levy to grow in an amount greater than the rate of inflation. Seventeen of the 28 towns and cities in Erie County, almost two-thirds, achieved a tax base growth factor greater than the average for counties (except for New York City) across New York State. As such, the county has more flexibility to remain under the real property tax cap while assigning its spending priorities than it would if the cap was tied to inflation alone.

CONVERSION OF SEWER TAXES TO FEES

Publication 1000 (10/11), published by the New York State Department of Taxation and Finance and the New York State Department of State, is informative on the subject of the real property tax cap. In particular, it states:

"• Special Districts (including, but not limited to sewer, water, library and fire protection districts). In the case of special districts the tax cap applies as follows:

→ The tax levy of a special district (such as a water or sewer district) that (i) has a separate independent elected board, and (ii) has the authority to levy a tax, or can require a municipality to levy a tax on its behalf, **is subject to the tax levy limit.**

→ The tax levy of a special district that (i) has a separate independent board appointed by the governing body of another local government, and (ii) has the authority to levy a tax, or can require a municipality to levy a tax on its behalf, **is subject to the tax levy limit.**

o To the extent the budget of a special district, such as a library district, is comprised of revenues generated by its own taxing authority, or by a tax levy of another local government that the local government is required to impose on behalf of that special district, those tax revenues fall within the tax levy limit of the special district. To the extent the budget of that special district is comprised of revenues generated by the taxing authority of another local government (such as a town or village), and that local government is not required to impose that tax levy on behalf of the special district, those tax revenues fall within the tax levy limit of the town or village.

→ 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 tax levy limit.**" (emphasis in the cited document)

Stated simplistically, if a county taxes for sewer districts, the revenue counts toward the levy limit. If the sewer districts raise revenue solely through fees based on use, the revenue does not count toward the tax levy limit.

Erie County administers and operates seven sewer districts through its Division of Sewerage Management. The Division of Sewerage Management is part of the Department of Environment and Planning. The sewer districts are governed by Boards of Managers, whose members are appointed by the County Executive. According to the Division, "[t]he Sewer Districts are self-supporting entities with the power to assess appropriate service fees and levy local sewer charges. Their annual revenues, which are sufficient to cover all operating costs and capital debt service, are generally derived from a combination of flat rate charges, parcel charges, footage charges, user charges, and sewer charges based on the assessed value of real property."

The sewer districts cover a large portion of Erie County. The breakdown is as follows:

ERIE COUNTY SEWER DISTRICT NO. 1 This District serves the southern portion of the Town of Cheektowaga and the northern portion of the Town of West Seneca. Infrastructure includes a network of pumping stations, an excess flow management facility, interceptor and collector sewers which transport sanitary sewage for contractual treatment services provided by the Buffalo Sewer Authority.

ERIE COUNTY SEWER DISTRICT NO. 2 This District serves portions of the Towns of Brant, Eden, Evans, Hamburg, and North Collins, including the Villages of Angola, Farnham,

and North Collins. Service is also provided to the Lotus Bay Area Sewer Districts and Evangola State Park by agreement. The District operates and maintains a network of pumping stations, collector and interceptor sewers along with a sewage treatment facility and excess flow management facility adjacent to Big Sister Creek. The Sewage Treatment Facility is staffed and operated 24 hours per day, 365 days per year.

ERIE COUNTY SEWER DISTRICT NO. 3 This District provides full service (collection, transmission, and treatment) to portions of the Towns of Boston, Eden, Hamburg, and Holland, along with the Villages of Blasdell, Hamburg, and Orchard Park. Additionally, the District provides transmission and treatment services to portions of the Town of Orchard Park and the Woodlawn Commissioner District in the Town of Hamburg. Sewer District No. 3 also includes a small portion of the Town of West Seneca. District 3 operates and maintains sewage treatment facilities located in the Town of Hamburg (Southtowns Advanced 90 0123456789 Wastewater Treatment Facility and its excess flow management facility), the Town of Holland (Holland Wastewater Treatment Plant), and the Village of Blasdell (Blasdell Wastewater Treatment Plant). The Southtowns Treatment Facility is staffed 24 hours per day, 365 days per year. The other two treatment plants are staffed everyday 8:00 a.m. - 4:00 p.m. and monitored at all other times via telemetry systems.

ERIE COUNTY SEWER DISTRICT NO. 4 This District directly provides collection and conveyance services for portions of the Towns of Alden and Lancaster and conveyance services for the Villages of Depew and Lancaster. Infrastructure includes a network of pumping stations, an excess flow management facility, collector and interceptor sewers which transport sanitary sewage for contractual treatment services provided by the Buffalo Sewer Authority.

ERIE COUNTY SEWER DISTRICT NO. 5 This District directly provides collection and conveyance services for portions of the Towns of Amherst and Clarence. Infrastructure includes a network of pumping stations and sanitary sewers which transport sanitary sewage for contractual treatment services provided by the Town of Amherst. This District also provides operation and maintenance for the Town of Clarence Sewer Districts by contract and operates one small sewage treatment plant which services the Clarence Research Park area.

ERIE COUNTY SEWER DISTRICT NO. 6 This District operates and maintains the network of sanitary and storm sewers along with several pumping stations in the City of Lackawanna, along with an excess flow management facility and a wastewater treatment facility. The wastewater treatment facility is staffed and operated 24 hours per day, 365 days per year.

ERIE COUNTY SEWER DISTRICT NO. 8 This District serves the Village of East Aurora and portions of the Town of Aurora. Infrastructure includes collector sewers, pumping stations, and an advanced wastewater treatment facility. This treatment facility is staffed everyday 8:00 a.m. -4:00 p.m. and monitored at all other times via a telemetry system. Collection system maintenance is handled by a Memorandum of Understanding with Sewer District No. 3.

In 2016, Erie County Sewer Districts 1 and 4 showed marked changes in budget revenue lines for taxes and user charges. In particular, the tax revenue decreased by almost the amount that user fees increased. For Sewer District 1, this was roughly a \$3.1 million shift. For Sewer District 4, the shift was roughly \$3.5 million.

Below are the budgeted revenues for real property taxes and user charges for all of the sewer districts within the Division of Sewerage Management for 2015-2017:

ECSD 1

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Real Property Taxes	\$6,444,732	\$3,354,062	\$3,408,445
User Charges	\$743,961	\$433,002	\$4,102,748

ECSD 2

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Real Property Taxes	\$6,595,130	\$6,766,075	\$6,895,284
User Charges	\$251,695	\$251,695	\$214,114

ECSD 3

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Real Property Taxes	\$14,279,845	\$14,756,127	\$6,962,207
User Charges	\$1,083,567	\$1,083,567	\$9,182,725

ECSD 4

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Real Property Taxes	\$5,841,510	\$2,313,079	\$2,125,264
User Charges	\$594,707	\$4,082,905	\$4,307,390

ECSD 5

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Real Property Taxes	\$1,512,615	\$1,108,613	\$962,797
User Charges	\$305,154	\$704,954	\$700,829

ECSD 6

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Real Property Taxes	\$2,644,240	\$2,776,198	\$2,784,494
User Charges	\$1,744,508	\$1,763,634	\$1,863,453

ECSD 8

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Real Property Taxes	\$1,316,763	\$1,334,000	\$1,194,127
User Charges	\$633,206	\$633,206	\$766,436

For budget purposes, the shift from revenues called taxes to revenues called fees appears to have been through the addition of a line titled "User Charge – Flat Usage Charge." The budget lines referring tax levy and user charges for Sewer Districts 1 and 4 for the years 2015 are as follows:

ECSD 1

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Total Tax Levy	\$6,450,788	\$3,354,062	\$3,408,445
User Charge	\$1,116,856	\$1,137,002	\$923,948
User Charge – Flat Usage Charge	n/a	\$3,196,000	\$3,178,800

ECSD 4

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Total Tax Levy	\$4,100,538	\$2,313,079	\$2,125,264
User Charge	\$420,557	\$414,503	\$397,950
User Charge – Flat Usage Charge	n/a	\$3,668,402	\$3,909,440

The documentation provided in the budget book does not define "User Charge – Flat Usage Charge." Presumably, a flat charge would impose an equal charge upon each parcel in the district, and not a charge based on assessed value (which would, by definition, be an ad valorem property tax) or on actual usage.

The change in reporting charges in the budget was not transparent to rate payers in ECSD 1 and ECSD 4. For purposes of this report, the tax bills from a sample of twenty properties in ECSD 4 and five properties in ECSD 1 were reviewed. The properties in ECSD 4 were mostly from Lombardy Street in the Town of Lancaster, so that similar properties from a same section of the district could be compared.

The sewer district portion from a typical property tax bill from the sample in ECSD 4 in 2015 reads:

Levy Description	Total Levy	%Change	Taxable	Rate/\$1000	Tax Amount
EC Sewer Dist 4 0		0.00	1	180.000000	\$180.00
EC Sewer Dist 4 5,833,727		4.70	109,000	0.599536	\$65.35
EC Sewer Dist 4 5,833,727		4.70	109,000	0.088942	\$9.69

The sewer district portion from the same property in ECSD 4 in 2016 reads:

Levy Description	Total Levy	%Change	Taxable	Rate/\$1000	Tax Amount
EC Sewer Dist 4 0		0.00	1	180.000000	\$180.00
EC Sewer Dist 4 2,313,079		-60.30	109,000	0.652223	\$71.09
EC Sewer Dist 4 2,313,079		-60.30	109,000	0.096759	\$10.55

Several items from these two bills are notable. In each year, there is a flat charge to the parcel of \$180.00. The charge was the same in 2015, before the shift from taxes to fees, as it was in 2016, after the shift from taxes to fees. The charge appears to be some sort of flat fee that did not change despite the budget changes. The \$180.00 charge was observed in all of the tax bills examined.

Further, for the other two lines, the tax amount can be easily computed by multiplying the rate/\$1000 times the assessed value. This can be done in both 2015 and 2016. It appears that

these two lines are based solely on assessed value, which, again, is the definition of an ad valorem property tax.

The bill in 2016 indicates that the total levy in 2016 decreased 60.3% from 2016. However, the Rate/\$1000 actually increased. As such, a tax payer without reviewing his or her 2015 property tax bill in 2016 would likely be pleased to see that taxes decreased 60.3% and not realize that the actual tax amount increased 8.08%. The rates were the same for each of the twenty properties reviewed. Of course, the taxable values of the property were different. As such, from every property tax bill examined, it appears that the bills in both 2015 and 2016 were based on the same rate applied to the taxable value of a property, resulting not in a 60.3% decrease, but a 8.08% increase in their sewer tax bill.

Of course, it is possible, albeit extremely unlikely, that each and every household and business in the properties sampled in ECSD 4 used exactly the same amount of water which coincided with the assessed value of their property. As such, further review of documents was in order. The Annual Report of the Department of Real Property Tax Services for 2014-2015 and 2015-2016 were considered. The relevant sections of each report, which apply to the properties examined in ECSD 4, are:

2014-2015

SWIS Code	District Description	Taxable Value	Tax Rate	Tax Levy
52700	EC Sewer District 4			
	Capital Value	533,521,912	0.088942	47,451.94
	Maintenance Value	486,197,507	0.599536	291,493.14

2015-2016

SWIS Code	District Description	Taxable Value	Tax Rate	Tax Levy
52700	EC Sewer District 4			
	Capital Value	533,565,790	0.096759	51,627.20
	Maintenance Value	486,241,385	0.652223	317,137.50

There are several items notable in reviewing these sections from the two reports. The rates in these reports correspond to the rates in the lines described above on each and every property tax bill examined in ECSD 4. Perhaps more interestingly, the total tax levies listed above increased 8.08%, the same amount that the sewer tax bills increased on each and every bill reviewed in ECSD 4.

It is clear that the method of calculating sewer tax bills in ECSD 4 did not change from 2015, when the bulk of revenues were called a tax, to 2016, when the bulk of revenues were called a user fee. The flat \$180 charge billed to each property remained the same in 2015 and 2016.

The rest of the bill was still computed based on the assessed value of the property. The limited sample from ECSD 1 shows similar and consistent observations as those in ECSD 4.

The observations are important, because they relate to the New York State real property tax cap. The sewer levy is included in computing Erie County's real property tax cap. For 2015, Erie County has reported the following sewer levies to New York State for purposes of computing the tax cap:

2015	\$38,706,049
2016	\$32,464,716
2017	\$24,332,618

During the same period, fees have increased for all districts as follows:

2015	\$5,356,798
2016	\$12,852,963
2017	\$21,137,695

As discussed above, the reason for the shift in tax levy revenues from 2015 to 2016 were the changes in ECSD 1 and ECSD 4. The reason for the further shift from 2016 to 2017 is that in addition to maintaining the changes in ECSD 1 and ECSD 4, ECSD 3 has also voted to switch from labeling a significant portion of their revenues from taxes to user fees.

As quoted earlier, sewer district taxes are to be applied to the tax levy limit. The exception to that rule is that a sewer district "that raises revenue solely through fees based on use **is not subject to the tax levy limit.**"

The Property Tax Cap Legislation can be found in Laws of New York, 2011, Chapter 97 (Part A). It states that for purposes of the tax cap, taxes shall include "special ad valorem levies and special assessments as defined in subdivisions fourteen and fifteen of section one hundred two of the real property tax law" General Municipal Law s. 3-c(2)(h)(ii).

Real Property Tax Law s. 102 includes the following definitions:

"14. "Special ad valorem levy" means a charge imposed upon benefited real property in the same manner and at the same time as taxes for municipal purposes to defray the cost, including operating and maintenance, of a special district improvement or service, but not including any charge imposed by or on behalf of a city or village.

15. "Special assessment" means a charge imposed upon benefited real property in proportion to the benefit received by such property to defray the cost, including operation and maintenance, of a special district improvement or service or of a special improvement or service, but does include a special ad valorem levy."

Applying the law to sewer districts, fees charged to sewer district users based on their assessed value would be subject to the tax cap. Fees based solely upon individual quantity usage would not be subject to the tax cap. Other fees may or may not be subject to the tax cap.

In the present situation, it seems clear that although the budget indicates taxes were shifted to a line called "User Charge – Flat Usage Charge," the method used to bill the property owners was in the form of a tax. As such, sewer levy for purposes of the property tax cap for 2016 would have been \$39,672,356. It was reported to the state as \$32,464,736. The difference between these two amounts is \$7,207,620. Instead of being \$1,068,079 under the cap in 2016, this would make the county \$6,139,541 over the cap for 2016.

Of course, such an overage would have consequences. Despite the budget passing unanimously, the Erie County legislature did not pass a law prior to the budget vote authorizing them to exceed the real property tax cap. However, intent to exceed the cap should not be presumed in a budget that was described as being under the cap. Even if presented to the body for approval, which it was not, the law would have had to pass the legislature with the votes of seven of the members, and be signed by the County Executive. Because such a law was not passed, and if the cap was illegally exceeded, the county would have to take steps which would have the effect of reducing the property tax cap limit by the amount of the overage for the 2017 budget.

The most recent calculations available indicate that the property tax levy limit for 2017, as reported by Erie County to New York State, is projected to be \$312,642,895. This includes the \$1,068,079 carried forward from 2016. Since that may not be the case, the new limit would be \$311,574,816. Deducting the amount of overage from 2016 would bring the limit to \$305,435,275. This would make the proposed 2017 county budget \$7,049,416 over the tax levy cap.

Unfortunately, that assumes that the "User Charge – Flat Usage Charge" was billed incorrectly and differently than was voted upon by the members of the sewer districts and that the method of computing and allocating bills to property owners can be changed for 2017. If indeed the bills were assessed as agreed upon by the sewer districts, the amount over the tax cap limit as proposed for 2017 is even larger. Using a revised sewer levy of \$41,552,586, the amount over the tax cap as proposed for 2017 will be \$24,269,384.

The proper method as to how to assess fees to the property owners in the sewer district is not the subject of this report. The premise of this report is that it is not proper to base the charges on property value, as seems to be currently done. It seems clear that basing the fees on actual usage, such as flow, would likely be a permissible method of billing to avoid counting toward the property tax cap, despite language in the Guidelines for Implementation of the Property Tax Cap provided by New York State which states that revenue raised "solely through fees based on use" (emphasis added) is not subject to the tax levy limit. It is not entirely clear whether flat fees would be a "charge imposed upon benefited real property in proportion to the benefit received," which would make the amount subject to the tax levy cap.

CONSEQUENCES OF CHANGING FROM TAXES TO FEES

It should be noted that switching to a flat fee for sewer district users would spread the cost equally among property owners. As such, a single elderly individual living alone in a small home, who may not even reside in the home during winter months, would pay the same fee as a family of eight with high water usage, who would pay the same as a business with even higher sewage needs. This would likely have a significant impact on the amounts paid by current sewer district property owners.

Notably, on June 24, 2015, in contemplation of their 2016 sewer budget, ECSD 4 passed a resolution setting the sewer tax levy at \$6,023,129. This is more than the \$2,313,079 noted on the tax bill and is in line with the total sum of taxes and user flat fees noted in the 2016 Erie County budget. On October 7, 2015, the board passed an amendment which "also includes a re-classification of the unit charge that has no bearing on the impact of the typical ratepayer." As stated above, a flat fee would have an impact on a typical ratepayer; continuing to charge based on assessed value would not. The minutes would tend to indicate that the so called user fees indeed intended to be an ad valorem tax based on assessed value.

Similarly, ECSD 1 approved a budget setting a sewer tax levy of \$6,592,004, which is also in line with the total sum of taxes and user flat fees noted in the 2016 Erie County budget. During their discussion, it was stated that user charges were projected to increase approximately \$20,000. There was no specific mention of the increase in "User Charge – flat usage charge" from \$0 to \$3,196,000. It was noted at the meeting that the Board of Managers would be informed if additional coordination was required related to the 2% property tax cap. If modifications to the budget resolution needed modification, it would be done do at their July 17, 2015 meeting. Shortly thereafter, a motion was passed to cancel the July 17, 2015 meeting and the meeting was adjourned. Given this information, there does not seem to be an intention to switch away from calculating sewer tax bills on the assessed value of homes in the district.

In addition to the changing fee structure possibly impacting sewer district users, the resultant exceeding of the property tax levy cap for 2016 may have negative consequences for homeowners throughout the county. On October 21, 2015, the County Executive announced that an efficiency plan was approved pursuant to New York State's Property Tax Freeze Credit. The efficiency plan, which combined the efforts of 38 towns and villages to identify efficiencies in government, allows home owners to receive a rebate of property tax amounts that may increase for two years if certain criteria are met. The County Executive stated that approval of the plan, combined with the 2016 budget which was under the real property tax cap for 2016, "has guaranteed that all home owners will receive a rebate check on at least their county property taxes...." On January 22, 2016, the County Executive announced that the 2016 rebate checks should be sent out in fall, 2016.

If the conditions of the program were met, home owners are due possibly millions of dollars in rebates. If the tax cap was exceeded, will home owners now not receive these checks which

were promised to them? Will the checks be sent out and later reclaimed? Will the county face repercussions for reporting compliance with the tax cap if it is ultimately decided that it did not? Final determination as to whether Erie County met its obligations pursuant to the New York State property tax cap law is needed. Users in the Erie County Sewer Districts need to be assured that they are being billed accurately and appropriately. Qualifying homeowners throughout Erie County need to know whether or not they will be receiving a rebate pursuant to the New York State Property Tax Freeze Credit. Taxpayers in Erie County need to know whether their county government complied with New York State law. Assurance needs to be provided not just at the local level, but at the state level as well.

ERIE COUNTY COMPTROLLER'S OFFICE