

TOWNSHIP PROPERTY TAX LEVY AND COLLECTION OVERVIEW

Presented by:

Rebecca C. Princehorn, Esq.
Paul S. Rutter, Esq.



BRICKER & ECKLER LLP

**100 South Third Street
Columbus, Ohio 43215
(614) 227-2300**

**312 N. Patterson Blvd., Suite 200
Dayton, Ohio 45402
(937) 224-5300**

**1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114
(216) 523-5405**

**258 Front Street
Marietta, Ohio 45750
(740) 374-2248**

**201 East Fifth Street, Suite 1110
Cincinnati, Ohio 45202
(513) 870-6700**

**160 East Main Street
Barnesville, Ohio 43713
(740) 374-2284**

www.bricker.com

Note: These materials are for educational purposes only, and are not intended to provide legal advice.

I. INTRODUCTION

This outline is intended for educational purposes, and should not be construed as legal advice. Because the nuances of statutes and the particulars of Townships dictate the exact language required for a levy alternative, each Township should consult with counsel to select the alternative appropriate for its particular needs.

- A. Constitutional Principles. Two principles from the Ohio Constitution are key in the property tax area:
1. Uniformity of Taxation. This principle is found in Ohio Constitution Article XII, Section 2. This principle is particularly important for Townships which may have Township-wide property tax levies, e.g. fire, as well as levies confined to a particular, typically unincorporated subset, e.g. road districts or police districts. Regardless of the taxing district in question, the tax rate is to be uniform across such taxing district.
 2. Levies in Excess of the Ten-Mill Limitation. Ohio Constitution Article XII, Section 2 also provides that up to ten mills of property tax may be levied on Ohio property on an unvoted basis. This millage, commonly referred to as “inside millage,” is divided among the overlapping political subdivisions pursuant to a statutory formula in Ohio Revised Code (“R.C.”) § 5705.31(D). In most areas of Ohio, the full ten mills is levied annually.

Millage in excess of a Township’s share of the ten mills must be voted.

- B. Statutory Home Rule. Ohio Townships, unlike Ohio municipalities, do not have constitutional “home rule” power. Townships have “limited home rule” under Ohio Revised Code (“R.C.”) Chapter 504, but that authority does not supersede Ohio’s property tax levy laws. In this area, Townships are entirely subject to the control of the state legislature, which strictly limits the ways in which Townships can levy taxes and borrow money.

II. R.C. § 5705.19 – TRADITIONAL PROPERTY TAX LEVY

R.C. § 5705.19 permits the Board of Township Trustees to submit to the voters a property tax levy that specifies a rate of millage. That rate and renewals or replacements thereof are subject to the reduction factor of R.C. § 319.301 (H.B. 920); after approval, Townships will only benefit from new construction, not from the inflationary growth of their tax base over the life of the levy.

- A. Purpose. The levy may serve any of the following purposes:
1. current expenses of the Township;
 2. a public library of or supported by the Township;
 3. for a municipal university, not to exceed two mills over the limitation of one mill prescribed in R.C. § 3349.13;



4. a specific permanent improvement¹ or class of permanent improvements that the Township may include in a single bond issue;
5. for the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges²;
6. parks and recreational purposes³;
7. for providing and maintaining fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, or other fire equipment and appliances, buildings and sites therefor, or sources of water supply and materials therefor, for the establishment and maintenance of lines of fire-alarm communications, for the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under R.C. § 145.48 or R.C. § 742.34, for the purchase of ambulance equipment, for the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company, or for the payment of other related costs⁴ (*see* R.C. § 5705.19(I));
8. for providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, for the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under section R.C. § 145.48 or R.C. § 742.33, *for the payment of the costs incurred by Townships as a result of contracts made with other political subdivisions in order to obtain police protection*, for the provision of ambulance or emergency medical services operated by a police department, or for the payment of other related costs⁴ [emphasis added] (*see* R.C. § 5705.19(J));
9. for any or all of the fire, police and emergency medical purposes set forth in the preceding two subsections 7 and 8 (*see* R.C. § 5705.19(JJ), which authorizes any combination of purposes from R.C. §§ 5705.19(I) and (J));
10. for providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;
11. for maintaining and operating sewage disposal plants and facilities;
12. for the prevention, control, and abatement of air pollution;
13. for maintaining and operating cemeteries;

¹ R.C. § 5705.01 defines “permanent improvement” as any capital asset with a useful life, as determined by the fiscal officer, of five years or more.

² Streets, roads and bridges may be combined with sidewalks, trails and bicycle paths (see Section II(B)(6)).

³ Parks and recreational purposes may be combined with greenspace.

⁴ A Township may place any or all of the purposes in this division on the ballot.



14. for providing ambulance service, emergency medical service, or both;
15. for providing for the collection and disposal of garbage or refuse, including yard waste;
16. for providing or maintaining senior citizens services or facilities as authorized by R.C. §§ 307.694, 307.85, 505.70, 505.706, or subsection (EE) of R.C. § 717.01;
17. for the maintenance and operation of a free public museum of art, science, or history;
18. for the establishment and operation of a 9-1-1 system, as defined in R.C. § 128.01;
19. for the purpose of acquiring, rehabilitating, or developing rail property or rail service (with “rail property” and “rail service” having the same meanings as in R.C. § 4981.01);
20. for the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in R.C. § 755.16;
21. for the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing: a Township airport, landing field, or other air navigation facility pursuant to R.C. § 505.15;
22. for the purpose of costs incurred by a Township as a result of a contract made with a county pursuant to R.C. § 505.263 in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;
23. for a Board of Township Trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving “greenspace” in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a Township for these greenspace purposes may subsequently be used for recreational purposes if the Board of Township Trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a Township that had a population, at the time it passed its first greenspace levy, of more than 38,000 within a county that had a population, at that time, of at least 860,000⁵;

⁵ This greenspace purpose may be combined with other parks and recreational purposes.



24. for constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements⁶;
25. for acquiring agricultural easements, as defined in R.C. § 5301.67, and to supervise and enforce the easements; and
26. for any combination of the following purposes: the acquisition, construction, improvement, or maintenance of buildings, equipment, and supplies for police, firefighting, or emergency medical services; the construction, reconstruction, resurfacing, or repair of streets, roads, and bridges; or for general infrastructure projects (*see* R.C. § 5705.19(ZZ)).

B. Term. Township levies for the following purposes may be for any number of years not exceeding five or for a continuing period of time:

1. fire and/or emergency medical and/or other related costs (*see* R.C. § 5705.19(I));
2. police and/or emergency medical and/or other related costs, including the payment of costs incurred by Townships as a result of contracts made with other political subdivisions in order to obtain police protection (*see* R.C. § 5705.19(J));
3. for any or all of the fire and polices purposes set forth in R.C. § 5705.19(I) and (J) (*see* R.C. § 5705.19(JJ)); and
4. ambulance and/or emergency medical (*see* R.C. § 5705.19(U)).

Township levies for the following purposes may be for any specified number of years or for a continuing period of time:

1. public library;
2. streets, roads and bridges;
3. parks and recreational purposes;
4. cemeteries;
5. rail property or rail service; and
6. (i) streets, roads and bridges, combined with (ii) sidewalks, walkways, trails, bicycle paths, and similar improvements, including acquiring land for such walkways and paths.

All other Township levies may be any number of years not exceeding five, except that a facilities, road or other infrastructure levy under R.C. § 5705.19(ZZ) may be for any number of years not exceeding ten (see Section II(A)(26) herein).

C. Election proceedings. The procedural steps to place a levy under R.C. § 5705.19 on the ballot are as follows:

⁶ Sidewalks, trails and bicycle paths may be combined with streets, roads and bridges (see Section II(B)(6)).

1. Resolution of necessity - The Board of Township Trustees declares the necessity of the levy and the specific purpose; specifies whether the levy is additional, renewal or replacement, or a renewal or replacement with an increase or decrease; states the Revised Code section authorizing submission; specifies the term of years of the levy or that it will be for a continuing period of time; states that the tax will be levied upon the entire territory of the Township or, if authorized by the Revised Code, describes the portion of the territory of the Township in which the tax will be levied; specifies the election date; states that the ballot measure shall be submitted to the entire territory of the Township or, if authorized by the Revised Code, describes the portion of the territory of the Township to which the ballot measure shall be submitted; states the tax year in which the tax will first be levied and the calendar year in which the tax will first be collected; states the millage rate of the levy (expressed in mills for each one dollar of tax valuation); and requests that the County Auditor certify as to the total current tax valuation of the Township and the amount of revenue that would be generated by the specified number of mills. Two-thirds vote of all members of the Board of Township Trustees required.
2. County Auditor's certification – Under R.C. § 5705.03, the County Auditor determines the total current tax valuation and the dollar amount of revenue the levy will generate in the first year of collection.
3. Resolution to proceed – The Board of Township Trustees determines to proceed with the levy; reiterates foregoing information about the levy; and provides ballot form, including specific language if imposed in the current tax year, e.g. “commencing in _____, first due in calendar year _____.” Two-thirds vote of all members of the Board of Township Trustees required.

All three of the foregoing documents must be certified to the Board of Elections not less than ninety (90) days prior to the date of the election.⁷ It is always recommended that this filing be done in person at the office of the Board of Elections.

- D. Anticipatory Notes. R.C. § 5705.191 provides for the issue and sale of tax anticipation notes following voter approval of the new levy. For current expense purposes, the maximum amount available to be borrowed by the Board of Township Trustees is fifty percent of the estimated proceeds of the levy throughout the term of the levy⁸. For a continuing levy, the maximum amount available to be borrowed is fifty percent of the levy's proceeds over a maximum of ten years, less any amount previously anticipated by a borrowing. For a levy for a fixed period not for current expenses, the maximum amount available to be borrowed is fifty percent of the levy's proceeds throughout the remaining life of the levy, less any amount previously anticipated.
- E. Renewals. An existing levy under R.C. § 5705.19 may be renewed in whole or in part, or coupled with an increase⁹, at the general election prior to the last year of collection or at

⁷ R.C. § 3501.01 provides that election dates generally are the first Tuesday after the first Monday in May (Primary), August, and November (General), or March (Primary), August, and November (General) in presidential election years. Note that the May election in an odd-numbered year could be a special rather than a primary election if there are no contested candidate races.

⁸ Such borrowing must be done prior to the time when the first tax collection from the levy can be made.

⁹ *State ex rel. Perry Twp. Bd. of Trustees v. Husted*, 154 Ohio St. 3d 174(2018) held that a renewal with an increase may not commence in the last year of an existing levy.



any election in the last year of collection¹⁰. A time-limited levy may be renewed for a continuing period of time if the original purpose qualified for a continuing term. A renewal levy reimposes the effective rate of the existing levy.

- F. Replacements. Under R.C. § 5705.192, an existing levy may be replaced in whole or in part, or coupled with an increase, (1) for levies with a fixed term of years, at the general election prior to the last year of collection or at any election in the last year of collection, and (2) for continuing levies, at any election in any year after the year in which the levy to be replaced is first approved, provided that only one election on the question of replacing the continuing levy may be held during any calendar year. A time-limited levy may be replaced for a continuing period of time if the original purpose qualified for a continuing term. A replacement levy reimposes the voted rate of the existing levy, subject to the reduction factor of R.C. § 319.301 in the first year just as a new levy would be. Two or more existing levies, or any portion of those levies, may be combined into one replacement levy, so long as all of the existing levies are for the same purpose and either all are due to expire the same year or all are for a continuing period of time. The question of combining all or portions of those existing levies into the replacement levy shall appear as one ballot proposition before the electors. If the electors approve the ballot proposition, all or the stated portions of the existing levies are replaced by one replacement levy.

III. R.C. § 5705.191 – SUPPLEMENTAL PROPERTY TAX LEVY

R.C. § 5705.191 also permits the Board of Township Trustees to submit to the voters a property tax levy that specifies a rate of millage in the same way as R.C. § 5705.19. Such levies are also subject to the reduction factor of R.C. § 319.301 (H.B. 920).

- A. Purpose. The levy may serve any of the following purposes:
1. any of the purposes permitted under R.C. § 5705.19 (see Section II(A));
 2. supplementing the general fund for appropriations for one or more of the following: public assistance; human or social services; relief; welfare; hospitalization; health; and support of general hospitals.
- B. Term: A levy to supplement the general fund may not be for a period longer than ten years. All other levies may not be for longer than five years, unless a longer period is permitted under R.C. § 5705.19.
- C. Election proceedings. The procedural steps are similar to those for a levy under R.C. § 5705.19, except only one special election for the submission of such question may be held in a calendar year and a special election may be held on the same day a primary is held.
- D. Anticipatory Notes. Similar to R.C. § 5705.19.
- E. Renewals. Similar to R.C. § 5705.19.
- F. Replacements. Similar to § R.C. 5705.19.

¹⁰ This limitation does not apply to a levy to renew and increase or to renew part of an existing levy under R.C. § 5705.191 for the purpose of supplementing the general fund for the purpose of making appropriations for one or more of the following purposes: for public assistance; human or social services; relief; welfare; hospitalization; health; and support of general hospitals. (See R.C. § 5705.25(A))

IV. R.C. § 319.302 – “QUALIFYING LEVIES” FOR ROLLBACK REIMBURSEMENT

- A. Rollback Defined. The state reimburses political subdivisions for real property taxes as follows:
1. Non-Business Credit – 10% reduction in tax for residential and agricultural property.
 2. Owner Occupancy Credit – an additional 2 ½% reduction in tax for owner-occupied residential property.
- B. “Qualifying Levies.” The following levies will *not* qualify for rollback reimbursement after *September 29, 2013*:
1. New levies approved by the voters.
 2. Replacement levies.
 3. The increase portion of a renewal levy combined with an increase.

V. R.C. § 321.34 – ADVANCES

A Board of Township Trustees may request advance payment of taxes collected and held by the county treasurer pending final settlement. Such requests must be made by resolution certified to the county auditor.

VI. R.C. CHAPTER 323 – COLLECTIONS AND DELINQUENCIES

- A. Payment of Taxes. R.C. § 323.12 provides that property taxes are to be paid either in full on or before December 31 or one-half of the current taxes (together with all delinquent taxes) by December 31 and the remaining half on or before June 20. The state tax commissioner may delay these dates.
- B. Delinquency Procedures. Property tax delinquency procedures under Ohio law vary in implementation amount Ohio counties. Generally, if real estate taxes and special assessments are not paid in the year in which they are due, they are to be certified by the county auditor’s office as delinquent to the county treasurer and county prosecutor. If the property owner so requests, a payment plan is arranged with the county treasurer. If such a payment plan is not adhered to or none is arranged, foreclosure proceedings may be initiated by the county. Proceeds from foreclosure sales of delinquent property become part of the current collection and are distributed as current collections.

VII. R.C. § 5705.261 - REPEALS

The ability of Township electors to propose change by petition is extremely limited, particularly when viewed in comparison to the myriad of taxpayer-driven municipal proposals permitted by statute or charter. The Ohio Revised Code uses varying terminology in its discussion of taxpayer action by petition, including “initiative,” “referendum” and the descriptive word “repeal.” (*See, e.g.,* R.C. § 5748.04.) However, for clarity and ease of discussion, voter actions to reduce tax levies by petition are classified here as reductions.



- A. Reduction in Property Tax Levy. R.C. §§ 5705.19 and 5705.261 set forth the procedure for initiating a decrease of a property tax levy that was approved for a continuing period of time for the following Township purposes: streets, roads and bridges; fire and/or emergency medical; police and/or emergency medical; and ambulance and/or emergency medical.
1. The petition must propose the question of decreasing (not eliminating) the increased rate of a property tax levy.
 - a) The Ohio Supreme Court held in *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St. 3d 1 (2005), that a referendum under R.C. § 5705.261 cannot completely eliminate a continuing property tax levy. As the dissent noted, the Court’s logic presumably means that voters could petition for a reduction to .000001 mills as long as the levy was not completely eliminated.
 - b) The Ohio Supreme Court held in *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. Of Elections*, 133 Ohio St. 3d 153 (2012), that a replacement levy at the same original rate was not an “increased rate of levy” for purposes of R.C. § 5705.261. Rate of levy refers to the *rate of millage approved by taxpayers*, not the *effective rate*.
 2. The petition must state the amount of the proposed decrease in the property tax levy.
 3. The petition must be signed by “qualified electors”¹¹ equal in number to at least 10% of the votes cast in the Township for the governor at the most recent election for the governor’s office.¹²
 - a) If a county board of elections miscalculates the number of signatures required to meet the 10% requirement and thus refuses to place the petition on the ballot, the petition may still be placed on the ballot of a later election, even if the election at which the petition was originally to be voted on has already occurred. *State ex rel. Citizens for Responsible Taxation v. Scioto County Board of Elections*, 67 Ohio St. 3d 134 (1993). To preserve this option, however, supporters of the petition must file a writ of mandamus prior to the earlier election, and the board of elections must stipulate to its error. *State ex rel. Residents’ Initiative Voting Alliance v. Cuyahoga County Board of Elections*, 108 Ohio St. 3d 125 (2005).
 4. The petition must then be filed with the county board of elections at least 90 days¹³ before the *general election*.¹⁴ If it determines that the petition is valid and proper in all respects, the board of elections must place the issue on the ballot at the next general election.

¹¹ Defined in R.C. § 3501.01(N) as those persons entitled to vote under Ohio law.

¹² R.C. §§ 3501.38 and 3501.39 contain the procedural requirements for a proper petition as well as the method for challenging a petition before a county board of elections.

¹³ The petition must be filed by 4:00 p.m. 90 days before the day of the general election. R.C. § 3501.02(F).

¹⁴ A “general election” is the election held on the first Tuesday after the first Monday of each November. R.C. § 3501.01(A).



5. R.C. § 5705.261 requires the Ohio Secretary of State to prescribe the form of the ballot for a reduction of a property tax levy. In practice, this means that the county board of elections submits a proposed form of the ballot to the Secretary of State, and the form of the ballot is then approved or denied.¹⁵
6. If the reduction in a property tax levy is approved, the county auditor must begin collecting the levy at the reduced rate *after the current tax year*.
 - a) This means that a reduction in a property tax levy will not go into effect until a year after the election where it was reduced. For example, if a property tax levy is passed in November 2006, it may go on the property tax bills for the current tax year (sent out in December 2006) if provided for in the ballot language. However, if the same levy is reduced at the following general election in November 2007, the reduction will not be reflected on tax bills until December 2008. *See* 1986 Ohio Op. Atty Gen. No. 21 (1986).
 - b) Exception: If notes have been issued in anticipation of the collection of a property tax levy that is subsequently reduced by referendum, the County Auditor must continue to levy and collect (under authority of the election authorizing the original levy) such amounts as will be sufficient to pay the principal of and interest on such anticipation notes as they come due. The remainder of the property tax levy is reduced.
7. *Only one such petition to reduce a property tax levy may be filed during each five-year period following the election at which the levy was approved.*
 - a) Because of this restriction, some political subdivisions have initiated levy reductions as a defensive measure. For example, a Township might circulate a petition to reduce a property tax levy by .000001 mills. If the Township can successfully place the issue on the ballot, it will prevent voters from asking for a larger reduction during that same five-year period, even if the reduction fails to win voter approval.
8. The Revised Code provides no exception for the reduction of a levy with proceeds intended for non-operating purposes.

B. Five-year limitation. Under R.C. § 5705.261, only one such petition under each section may be filed with the county board of elections during a five-year period. There is currently no clear guidance in Ohio law on whether this five-year limitation is triggered simply by filing a petition (even if the board of elections rules it to be invalid and refuses to place the petition on the ballot) or if it means that a petition must be valid to be considered “filed.” Each individual county board of elections must decide what to do when faced with this dilemma, and the Ohio Secretary of State’s advice to boards of elections is that they should consult with their county prosecutor and follow his or her advice. It is therefore possible

¹⁵ The Secretary of State’s practice of approving ballot language, as opposed to prescribing ballot language, was permitted in *Youngstown Board of Township Trustees v. Mahoning County Board of Elections*, 1989 Ohio App. LEXIS 4950, 22 (7th Dist. 1989). While not explicitly condoning the practice, the court refused to reject a petition on these grounds.

that a county board of elections would refuse to place a valid petition on the ballot because a defective petition had already been filed in the five-year period.¹⁶

- C. Levies for a Specified Number of Years. R.C. § 5705.19 does not provide for a similar petition process for electors to reduce a non-continuing levy that was approved for a specified period of years.
- D. Termination or Reduction by the Board of Trustees. R.C. § 5705.19 authorizes a Board of Township Trustees to terminate or permanently reduce certain types of levies if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount. This authority applies to the same types of levies (namely levies for streets, roads and bridges; fire and/or emergency medical; police and/or emergency medical; and ambulance and/or emergency medical) that electors have the ability to petition to reduce if such levies are for a continuing period of time. However, a Board has the ability to terminate or permanently reduce levies for the same purpose(s) even if they are for a specified number of years and not just for a continuing period of time.

¹⁶ Note that the county board of elections can only accept petitions that are facially valid. Therefore, a petition that was clearly short of the required number of signatures or that possessed another facially obvious defect could not even be filed with a board of elections. Such a facially invalid petition would not serve to trigger the five-year limitation.

