

**TAX LIMITATION AND  
OPT OUT  
INFORMATION**

**FOR**

**ALL TAXING DISTRICTS  
(except School Districts)**

**For Taxes Payable in Calendar Year 2011**

**INFORMATION PROVIDED BY:**

**DEPARTMENT OF REVENUE AND REGULATION  
PROPERTY & SPECIAL TAX DIVISION  
445 E. CAPITOL  
PIERRE SD 57501-3100**

## **ALL TAXING DISTRICTS EXCEPT SCHOOL DISTRICTS – EFFECTIVE JULY 1, 2002 and after**

10-13-36. Excess tax levy authorized--Vote of governing body--Announcement requirements--Referendum election. The governing body of a taxing district may exceed the limit pursuant to § 10-13-35 through the imposition of an excess tax levy. The governing body of a taxing district may impose an excess tax levy with an affirmative two-thirds vote of the governing body on or before July fifteenth of the year prior to the year the taxes are payable. On any excess tax levy approved after July 1, 2002, the governing body of the taxing district shall specify in the resolution the year or number of years the excess tax levy will be applied.

The requirements for an announcement made pursuant to this section are as follows:

(1) The decision of the governing body to originally impose or subsequently increase an excess tax levy shall be published within ten days of the decision;

(2) Publication shall be made at least twice in the legal newspaper designated by the governing body pursuant to law, with no fewer than five days between publication dates, before the opt out takes effect;

(3) The announcement shall be at least three newspaper columns in width and four inches in length or at least one-sixth of a page in size, whichever size is greater;

(4) The announcement shall be headed with the following statement in a typeface no less than eighteen point type: "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE OF \$(fill in amount)." The remainder of the announcement shall consist of a reproduction of the "Resolution for Opt Out," including the amount that property taxes will be increased annually by the proposed opt out and a statement of the right to refer the decision of the board to a vote of the people as provided in this section. The secretary of revenue and regulation, in rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used by the taxing district for notification of taxpayers as required by this section.

However, the requirements of subdivisions (3) and (4) shall be waived if:

- (A) The opt out is for less than fifteen thousand dollars; or
- (B) A copy of the resolution for opt out is mailed to every property taxpayer in the local governmental unit, by first class mail or bulk mail, within twenty days of the decision to opt out; and
- (C) A copy of the resolution for opt out is printed in each official newspaper in the local governmental unit's boundaries.

For the purposes of subsections (A),(B),and(C), the first publication is not deemed to have occurred until three days after the mailing is sent or the resolution is delivered to the official newspaper.

The opt out decision may be referred to a vote of the people upon a resolution of the governing body of the taxing district or by a petition signed by at least five percent of the registered voters in the taxing district and filed with the respective governing body within twenty days of the first publication of the decision. The referendum election shall be held on or before October first preceding the year the taxes are payable. If the opt out is for the purpose of increasing the secondary road levy pursuant to § 31-12-27, only the registered voters within the area of the county not included in any municipality, organized civil township, or county road district organized pursuant to chapter 31-12 may petition or vote on the referred decision. The taxing districts may not exceed the levy limits provided in chapter 10-12 except for the provisions in § 10-12-36.

**NOTE: This section has been revised to allow all governing bodies the ability to refer their decision to opt out directly to a vote of the people.**

## **OPTING OUT OF THE TAX LIMITATION (For all entities EXCEPT School Districts)**

**FOR ALL ENTITIES** - Opting out - Requires a two-thirds vote of the governing body on or before July 15th. Decision to opt out must be published within ten days of decision. That decision may be referred upon a resolution of the governing body of the taxing district or by a petition signed by at least five percent of the registered voters in the taxing district and filed with the governing body within twenty days of the publication. Election to be held on or before October 1st.

**IMPORTANT** - - Any opt out passed July 1, 2002 or after must specify in the resolution the year or number of years the excess tax levy will be applied. There are also certain requirements concerning the publication of the opt out resolution.

**If an opt out resolution was passed prior to July 1, 2002 the taxing district does not have to opt out again unless they need to exceed that limitation. In which case, that opt out must meet the same requirements of any other passed July 1, 2002 and after.**

For the first year and subsequent years, the taxing entity has up to that opt out amount to use. If the entity decides to use all, some, or none, in years following, that opt out amount is still accessible to the taxing entity. This applies to all opt outs, even those passed July 1, 2002 and after. The only exception is those passed July 1, 2002 and after, the "years following" are the years designated by the opt out resolution.

Example: City A opts out for \$100,000 and asks for that amount. That year the county auditor will levy \$100,000 above the tax limitation for that city. The next year, the city only needs \$30,000 above the limitation. They will request that amount as the opt out amount. County auditor will check to make sure it is within the opt out amount. The following year, the city needs \$55,000 above the tax limitation. The city DOES NOT need to opt out again. As long as they do not exceed \$100,000 above the tax limitation, they do not need to opt out and the county auditor shall levy any such amount requested. If they need more than the \$100,000, it will take an opt out resolution.

At the end of the time specified for any opt outs passed July 1, 2002 and after, the opt out will expire. If a taxing district needs to exceed the tax limitation, that entity will need to opt out.

**If a taxing entity, including a school district, opts out of the tax limitation, they need to send to the County Auditor a copy of the "opt out" resolution along with copies of the minutes of the meeting at which the opt out took place. Also proof of publication / notification needs to be sent to the county auditor. If the opt out is referred to a vote, the finance officer of the taxing district must certify the outcome of the election to the County Auditor.**

### **The calculation of growth, CPI and the opt out amount is as follows:**

The CPI for taxes payable in 2011 is 0.0% (ZERO)

Example: Township receives \$500 in tax.

The following year they can receive the \$500 + growth + CPI. ( $\$500 + 1.2\% \text{ growth} + 0.0\% \text{ CPI} = \$506$ )

Township now needs to gravel some roads and needs a total of \$1,000 for the coming year. Therefore, township opts out of the limitation in the amount of \$494 ( $1,000 - 506$ )

The following year the township's limit is figured as:

$\$506 + \text{growth} + \text{CPI} = \text{new base plus } \$494 \text{ (opt out amount) OR}$

$\$506 + 0\% + 0.0\% = \$506 + \$494 = \$1,000 \text{ (amount may receive from taxes)}$

**Taxing entities EXCEPT SCHOOL DISTRICTS** - Opting out of the tax limitation measure - To opt out, means the taxing entity needs more monies from property taxes than they are allowed by the limitation. The limitation allows for taxes to increase over taxes payable in the preceding year, excluding any excess levy, by the CPI and growth. The CPI to be used for taxes payable in 2011 is 0.0%. Total increase allowed would be 0.0% plus percent increase due to growth. (EX: Growth in 2010 = 3.1% of the 2009 valuations. 0.0% (CPI) + 3.1% (Growth) = 3.1% which tax request may increase). Remember - final growth numbers are not available from County Auditor until AFTER Department of Revenue certifies values to them - this is at the end of August.

**NOTE: Regardless of the percent increase allowed or opt out amount, taxing entities, except school general fund, CANNOT exceed statute levy limitations.**

The resolution must be on a form prescribed by the Secretary of Revenue

**The time period stated in the resolution shall commence with the taxes payable in the year following the year the opt out is passed and run for the consecutive years mentioned in the resolution.**

**Administrative Rule 64:04:01:28. Form required for opt out resolution.** The form for the opt out resolution required by SDCL subdivision 10-12-43(4) and SDCL subdivision 10-13-36(4) is PT 182. The time period specified in the opt out resolution shall commence with the taxes payable in the year following the year the opt out is passed and run for the consecutive years stated in the resolution. The resolution form shall be signed by all members of the governing body voting in favor of such opt out. However the publication of the resolution requires only the signature of the finance officer accompany the notice.

#### **OPT OUT TIMEFRAME**

An opt out should not be done until January 1 or after of the year prior to the year the taxes are payable, but must be done on or before July 15 of the year prior to the year the taxes are payable.

If the opt out decision has been referred to a vote and has been defeated, the governing board may opt out again IF done so prior to July 15 of the year prior to the year the taxes are payable.

The decision to opt out may be rescinded IF done so prior to July 15 of the year prior to the year the taxes are payable. EXCEPT - - If the opt out decision was referred to a vote and withstood the vote, meaning the voters supported the opt out, the governing body CANNOT rescind the opt out. They just do not have to ask for the amount of the opt out.

## **Guideline for “publication”**

### **Opt out - \$15,000 & more**

- 1) Must publish within 10 days of decision
- 2) At least twice in legal newspaper – 5 days between publications
- 3) 3 newspaper columns in width – four inches in length or 1/6 page in size, whichever is greater
- 4) Must be contain the opt out resolution with heading "ATTENTION TAXPAYERS: NOTICE OF

**PROPERTY**

**TAX INCREASE"**

**#3 & 4, and ONLY #3 & #4, may be waived IF**

**a copy of resolution mailed to every property taxpayer**

**AND copy of resolution printed in each official newspaper in the governing units boundary**

### **Opt out – less than \$15,000**

- 1) Must publish decision within 10 days of decision
- 2) At least twice in legal newspaper – 5 days between publications
- 3 & 4 above can also be done, but is not mandatory

**EITHER CASE - - #1 and #2 MUST BE DONE**

**ATTENTION TAXPAYERS:  
NOTICE OF  
PROPERTY TAX INCREASE  
OF \$ \_\_\_\_\_**

**RESOLUTION FOR OPT OUT**

THE GOVERNING BOARD OF \_\_\_\_\_ do state that the above said board is unable to operate under the tax limitation measure currently in statute. We therefore OPT OUT of such tax limitation in the amount of \$ \_\_\_\_\_. starting with calendar year \_\_\_\_\_ taxes payable in the calendar year \_\_\_\_\_. This opt out will be for \_\_\_\_\_ years, which will be through taxes payable in the calendar year \_\_\_\_\_. This action has been taken by the board and approved by at least a two-thirds vote of the board.

This decision may be referred to a vote of the people upon a petition signed by at least five percent of the registered voters in the district and filed with the governing body within twenty days of the first publication of this decision.

Unless this action is referred to a vote of the people and reversed by such vote, this resolution authorizes the county auditor to spread an excess levy to raise tax dollars in the above stated amount.

Signed _____	Board Chairman
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member

DATE \_\_\_\_\_

**ATTENTION TAXPAYERS:  
NOTICE OF  
PROPERTY TAX INCREASE  
OF \$ \_\_\_\_\_**

**RESOLUTION FOR OPT OUT AND VOTE TO BE HELD**

THE GOVERNING BOARD OF \_\_\_\_\_ do state that the above said board is unable to operate under the tax limitation measure currently in statute. We therefore OPT OUT of such tax limitation in the amount of \$ \_\_\_\_\_ starting with calendar year \_\_\_\_\_ taxes payable in the calendar year \_\_\_\_\_. This opt out will be for \_\_\_\_\_ years, which will be through taxes payable in the calendar year \_\_\_\_\_. This action has been taken by the board and approved by at least a two-thirds vote of the board.

Also, be it resolved that the GOVERNING BOARD OF \_\_\_\_\_ will conduct an election to approve or disapprove the tax levy opt out pursuant to SDCL 10-13-36. The election will be held on \_\_\_\_\_.

Signed _____	Board Chairman
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member
_____	Board Member

DATE \_\_\_\_\_