

**TAX LIMITATION AND
OPT OUT
INFORMATION**



**SCHOOL DISTRICTS
ONLY**

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**

OPTING OUT OF THE TAX LIMITATION (For School Districts Only)

For taxes payable 2011, and each year after, the only limitation applicable to school districts are the statute levy limitations. If the school district cannot operate on the revenues generated by the maximum levy for general fund and monies from state aid as determined by the funding formula, then the school district may choose to “opt-out” of the general fund levy limitations.

When preparing tax requests, note that the County Auditor is **REQUIRED** to levy for revenues lost due to *discretionary formulas, abatement of taxes and certain tax increment financing districts*. The Department of Revenue will provide you with all pertinent data prior to your deadline to submit your tax request to the County Auditor.

School districts may opt out for General Fund only. Opting out is to impose an excess levy. The excess levy shall maintain the same proportion represented in the mathematical relationship at the maximum levy.

If a taxing entity (including a school district) opts out of the tax limitation, they need to send the County Auditor the following:

- Copy of the Opt Out Resolution
- Copies of the minutes of the meeting at which the Opt Out took place
- Proof of publication/notification
- 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.

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 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 must 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 at all in years following, the full 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, the “years following” are the years designated by the Opt Out Resolution.

- *Example:* School District “A” opts out for \$100,000 and requests \$100,000 for the Opt Out amount for the first year. That year the County Auditor levies \$100,000 as the Opt Out amount for that school district. The next year, the school district only needs \$30,000 above the maximum levies. They will request that amount as the Opt Out amount. County Auditor will check to make sure it is within the terms of the Opt Out.

The following year, the school district needs \$55,000 above the maximum levies.

Meaning, the school district DOES NOT need to opt out again. As long as they do not exceed \$100,000 above the maximum levies, 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 additional Opt Out Resolution.

For school districts receiving state aid, the calculation of the Opt Out amount is as follows:

- To calculate DISTRICT NEED for general fund by the funding formula:
PER STUDENT ALLOCATION multiplied by STATE AID FALL ENROLLMENT (ADM)
- FY2011 per student allocation = \$4,804.60
- EX: Using a fall enrollment of 560 →

$$\$4,804.60 \times 560 = \$2,690,576$$
 This tells us that the sum of local property taxes and state aid will provide \$2,690,576 per State Aid Fall Enrollment.
- Suppose School District "A" needs \$3,000,000 to fund their budget, the Resolution to Opt Out must state that the board is opting out for a dollar amount above the calculated District Need

$$\$3,000,000 - \$2,690,576 = \$309,424$$
 So the Opt Out needed is \$309,424

To calculate state aid and determine what part of the District Need is state aid and what part is local property taxes you would use the formula:

$$\text{NEED minus EFFORT equals STATE AID}$$

We've already determined (above) that the Need of District "A" is **\$2,690,576**

To determine the amount of Local Effort (amount of property taxes), we would need to take the LAND CLASS VALUATIONS multiplied by MAXIMUM SCHOOL LEVIES (as determined by statute)

EXAMPLE:

2010 VAL @ 85%

AG	\$ 160,750,000	X	2.554	=	\$ 410,556
OO	110,600,000	X	3.965	=	438,529
OTHER	<u>75,100,000</u>	X	8.491	=	<u>637,674</u>
TOTAL			TOTAL		
VAL	\$ 346,450,000		LOCAL EFFORT		\$1,486,759

$$\text{NEED - EFFORT = STATE AID} \rightarrow \$2,690,576 - 1,486,759 = \mathbf{\$1,203,817 \text{ (State Aid)}}$$

NOTE: Keep in mind that FY2011 local effort utilized by the state funding systems is based on one half of taxes generated in 2010 and one half of taxes generated in 2011 (i.e., FY2011 = November payment of payable 2010 taxes and May payment of payable 2011 taxes) The above example is for a calendar year, not fiscal year.

For school districts NOT receiving state aid, the calculation of the Opt Out amount is as follows:

VALUATION times MAXIMUM LEVIES equals LOCAL EFFORT

AMOUNT NEEDED TO OPERATE minus LOCAL EFFORT equals OPT OUT

EXAMPLE:

2010 VAL @ 85%

AG	\$ 160,750,000	X	2.554	=	\$ 410,556
OO	110,600,000	X	3.965	=	438,529
OTHER	<u>75,100,000</u>	X	8.491	=	<u>637,674</u>
TOTAL			TOTAL		
VAL	\$ 346,450,000		LOCAL EFFORT		\$1,486,759

Using an amount needed to operate of 2 million dollars, we would determine the Opt Out amount by
 $\$2,000,000 - \$1,486,759 = \mathbf{\$513,241}$

OPT OUT TIMEFRAME

An Opt Out should not be done until January 1 or after 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. However, the governing body CANNOT rescind if the Opt Out decision was referred to a vote and withstood the vote (meaning the voters supported the Opt Out). Instead, they can simply not ask for the amount of the Opt Out.

MOBILE HOMES

Later in the year, the Department of Revenue will report the following categories to you:

AG - all value classified as agricultural - receives the \$2.554 / thousand levy

OO - all values classified as owner-occupied - will receive the \$3.965 / thousand levy

OTH - all other values that are not AG and not owner occupied - will receive the \$8.491 / thousand levy.

UTIL - all values of utility companies (Railroad, Electric, Water, Pipeline, Telephone) centrally assessed by the Department of Revenue - will receive the \$8.491 / thousand levy.

M - mobile homes placed on real estate July 1, 1999 and after that *do not* have the owner-occupied designation - will receive the \$8.491 / thousand levy.

M-OO - mobile homes placed on real estate July 1, 1999 and after that *do* have the owner-occupied designation - will receive the \$3.965 / thousand levy

PLEASE NOTE: These last two categories will NOT be used in state aid calculations and will NOT be used in determining any property tax levy for school purposes (SDCL 13-13-3.1). However, the levy will be applied and taxes will be payable based on these values.

SCHOOL DISTRICTS TIME LINE

- Board Meeting in May - Proposed budget to be prepared (SDCL 13-11-2)
- No later than July 15th - publish budget & notice of hearing on budget. (SDCL 13-11-2)
- Before August First - budget hearing to be held (SDCL 13-11-2)
- Fourth Monday in August - Dept of Revenue certifies total value to county auditor (SDCL 10-11-51)
- Before October First - approve budget (SDCL 13-11-2)
- Before October First - report budget and levy amount in dollars or dollars per thousand (general, capitol outlay, retirement / pension & special education funds) to county auditor (SDCL 13-11-3)
- On or before November first - county auditor must submit all tax levy paperwork to Department of Revenue (SDCL 10-13-43)
- On or before December first - Department of Revenue shall review approve/reject levies of all taxing districts within the state, ensuring they have not exceeded the maximum levies prescribed in law. (SDCL 10-13-43)

BUDGET STEPS

- (1) Prepare operating budget
- (2) Calculate district need (\$4,804.60 X State Aid Fall Enrollment)
- (3) If district need amount DOES NOT fully fund budget - you may choose to opt out
- (4) If district need amount DOES fully fund budget, proceed to step 5
- (5) Check with County Auditor(s) first week in September for total value, by class, within school district.
- (6) Using values certified by Department of Revenue - calculate what you need from property taxes to fund your budget.
- (7) Submit tax request to county auditor by October 1st. (For general fund, capitol outlay, retirement/pension and special education fund, request may be made in the form of dollars per thousand) (SDCL 13-11-3)

SCHOOL REORGANIZATION

Any reorganization plan for a school district may include an excess levy, if an Opt Out currently exists in one or more of the school districts. This excess levy, if approved by the voters may only be for five years following the date of the reorganization. The statute below concerns the reorganization plan and the inclusion of the Opt Out. A form is included with this brochure specifically for the excess levy and vote to be held in conjunction with the reorganization plan election. **Please note that this Opt Out publication must follow the same publication requirements in SDCL 10-12-43.**

13-6-13. Contents of reorganization plan – Acceptance or rejection of annexed area by receiving board – Excess tax levy. The plan shall contain:

- (1) A map or maps showing the boundaries of the proposed district or districts, the boundaries of the existing districts involved, the location of existing and proposed attendance centers and a description of the facilities, and the proposed school bus routes, if any;
- (2) A legal description of the boundaries of the proposed district or districts;
- (3) Estimates of the school age population within the proposed district or districts;
- (4) The assessed valuation of all taxable property of each existing district and of the proposed district or districts;
- (5) Outstanding general obligation bonds of any component district, funds in all school accounts and estimated receipts in all accounts in process of collection;
- (6) If a joint district, the designation of the county of jurisdiction;
- (7) The official name of the proposed district;
- (8) A statement with regard to a proposed method of adjustment of assets and liabilities;
- (9) The proposed number of school board members if a new entity is to be created;
- (10) A description of the proposed educational program;
- (11) A reasonably detailed budget showing estimated annual receipts and expenditures for the operation of the proposed district or districts;
- (12) A statement recognizing any requests for minor boundary changes;
- (13) Such additional information as may be necessary to show compliance with the standards for school districts as adopted by the South Dakota Board of Education.

If the plan proposes the dissolution and annexation of a school district to one or more school districts, the school board of the receiving district(s) shall by resolution express their acceptance or rejection of all or part of the district to be dissolved as set forth in the proposed plan.

If the school boards of two or more school districts are developing a plan to consolidate, and two-thirds of the members of each affected school board agree, the plan may also include the provisions of an excess tax levy authorized in § 10-12-43 if an excess tax levy currently exists in one or more of the school districts. If the plan is approved by the voters, the proposed excess tax levy may be applied in the new consolidated school district. If a proposed excess tax levy is included in the plan, the plan shall state the amount of the proposed excess tax levy. The proposed excess tax levy may be applied for taxes payable in any of the five years following the date of reorganization. In addition, each school board involved in the development of the plan shall announce the inclusion of the proposed excess tax levy in the plan to the taxpayers in the manner set forth in § 10-12-43.

**RESOLUTION FOR OPT OUT
FOR SCHOOL DISTRICTS - EFFECTIVE JULY 1, 2002**

10-12-43. The governing body of the school district may raise additional revenues for general fund purposes only, from property tax through the imposition of an excess tax levy. The governing body of a school district may impose the 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 first published within ten days of the decision;
- (2) Publication shall be made at least twice in the legal newspaper designated pursuant to § 13-8-10, 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, in rules promulgated pursuant to chapter 1-26, shall prescribe a uniform form to be used by the school 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 upon a resolution of the governing body of the school district or by a petition signed by at least five percent of the registered voters in the school district and filed with the governing body within twenty days of the first publication of the decision. The referendum election shall be held on or before October first of the year prior to the time the taxes are payable.

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 the 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.

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 contain the Opt Out Resolution with heading "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE"**

#3 & 4 may be waived IF

**A copy of the resolution is mailed to every property taxpayer
AND copy of resolution is 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 are 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

**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 10-12-43. 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 _____

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

**RESOLUTION FOR OPT OUT AND VOTE TO BE HELD
IN CONJUNCTION WITH REORGANIZATION PLAN ELECTION**

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 with the election for the reorganization pursuant to SDCL 10-12-43 and 13-6-13. 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 _____