

TAX LIMITATION AND OPT OUTS



**for
ALL TAXING DISTRICTS
(Except School Districts)**

For Taxes Payable in Calendar Year 2020



OPTING OUT OF THE TAX LIMITATION For All Taxing Districts (Except School Districts)

DEFINITIONS

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 by the CPI and growth. **The CPI for taxes payable in 2020 has been set at 2.4%.** Therefore, total increase allowed through the limitation would be 2.4% plus percent increase due to growth. (EX: If growth is 3.1%....then 2.4% (CPI) + 3.1% (growth) would allow a maximum increase of 5.5% to the previous year’s taxes received).

Note: Official growth numbers are not available from the County Auditor until AFTER the Department of Revenue certifies values, which is at the end of August.

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

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The decision to opt out may be rescinded if done so prior to July 15 of the year prior to the year the taxes are payable. HOWEVER, 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 would have the capability to simply not ask for the amount of the Opt Out.

REQUIREMENTS

For all entities, opting out requires a two-thirds vote of the governing body on or before July 15th. The opt out resolution 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 first publication.

****Election must be held on or before October 1st****

Opt Outs passed prior to July 1, 2002 will not expire, unless the taxing district votes to dissolve the Opt Out. The governing entity does not have to opt out again unless they need to exceed the limitation and any outstanding Opt Outs. Any additional Opt Outs must have a number of years specified.

Once an Opt Out is passed, the taxing entity has up to the determined duration to use it. The entity can decide to use all, some, or none of the Opt Out amount available in any given year. This applies to all Opt Outs.

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. 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 their original limit of \$100,000, they do not need to apply for additional opt outs, and the county auditor shall levy any such amount requested.

At the end of the time specified in the resolution, the Opt Out will expire. If a taxing district needs to exceed the tax limitation again, the entity will need to go through the process to start a new one.

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

RESOLUTION

The resolution must be on a form prescribed by the Secretary of Revenue. (See attached documents)

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.

DOCUMENTATION

All taxing entities must send the following to the County Auditor

- a copy of the opt out resolution
- copies of the minutes of the meeting at which the Opt Out took place
- proof of publication/notification
- the outcome of the election (if Opt Out is referred to a vote)

GUIDELINES FOR PUBLICATION

Opt out – \$15,000 or 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"

Steps #3 & #4 ONLY may be waived IF

- A copy of the resolution is mailed to every property taxpayer
- AND a copy of the resolution is printed in each official newspaper in the governing unit's 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

****NOTE: Steps #1 and #2 MUST BE DONE in either of the above scenarios****

SOUTH DAKOTA CODIFIED LAW

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.

**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

DATE _____

PT 182

**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 _____

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