



July 2021

# Opt Outs for School Districts Only



**For Taxes Payable in Calendar Year 2022**

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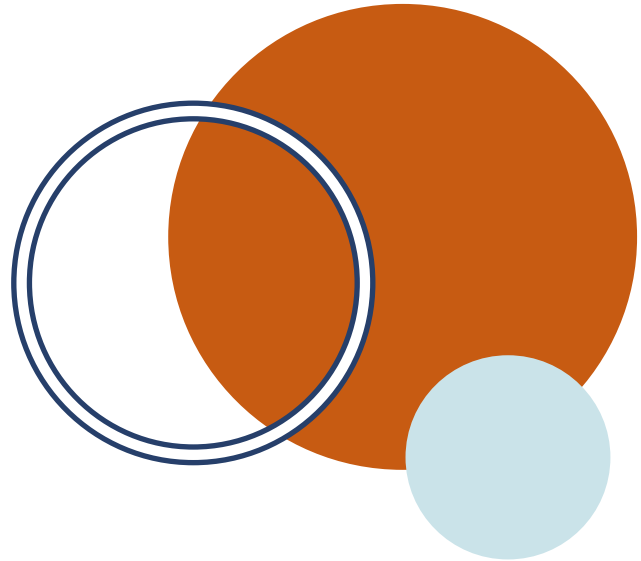
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## CONTACT US

If you have any questions, please contact the **South Dakota Department of Revenue.**

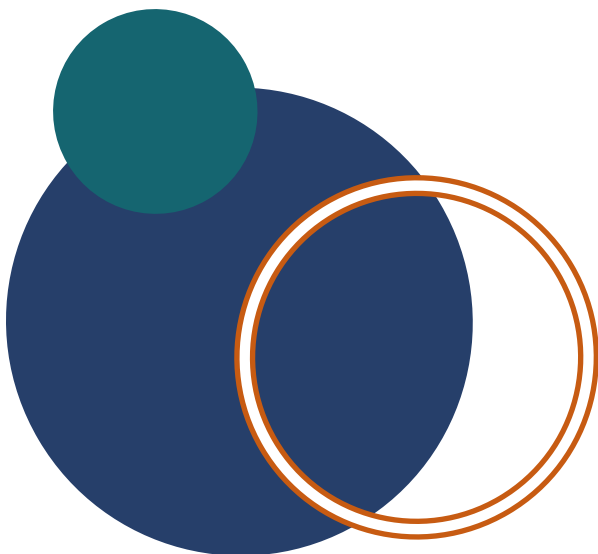
**Call toll-free:** 1-800-829-9188 (Option 2)

**Tax Division Email:** [proptaxin@state.sd.us](mailto:proptaxin@state.sd.us)

**Website:** <https://dor.sd.gov/>

**Mailing address and office location:**

South Dakota Department of Revenue  
445 East Capitol Ave Pierre, SD 57501



## Opting Out of the Tax Limitation

Opting out is to impose an excess levy above any current limitations. If the school district cannot operate on the revenues generated by the maximum allowed for the general or capital outlay funds, then the school district may choose to “opt-out” of the limitations.

### General Fund

The general fund is funded through local effort (levies imposed on property taxes) and monies from state aid as determined by the funding formula. If a school opt outs of the general fund, the excess levy shall maintain the same proportion represented in the mathematical relationship at the maximum levies. Each land class (ag, owner occupied, other/commercial) will have its own levy.

#### Example of how to determine an opt out amount:

School District “A” needs \$7,000,000 to fund their general fund budget. They know they will receive \$6,000,000 through the funding formula\*. They will also receive \$875,000 through other funding outside of the formula. The amount of Opt Out dollars needed is \$125,000.

General Fund Budget - (State Aid Funding Formula + Funding Outside the Formula)  
= Amount of Opt Out Dollars Needed

#### School District “A”:

$\$7,000,000 - \$6,875,000 = \$125,000$

*For a detailed explanation on how the State Aid Formula works, visit the Department of Education website <http://doe.sd.gov/ofm/schoolbudget.aspx>*

### Capital Outlay Fund

A school district that is subject to the \$3400 Per Student Limitation pursuant to SDCL 13-16-7.2 may also authorize an excess levy for the capital outlay fund. Districts that are limited under one of the other capital outlay limitations are not eligible to do an Opt Out for the capital outlay fund.

Any dollars collected through a capital outlay Opt Out must stay within the capital outlay fund. Opt out monies cannot be transferred to the general fund.

The combination of the main capital outlay fund, capital outlay debt payments, and the Opt Out cannot exceed a \$3.00 levy. The levy calculated for the Opt Out will be the same for all land classes.

#### General Fund Maximum Levies

**AG – all value classified as agricultural – receives a \$1.409 / thousand levy**

**OO – all value classified as owner-occupied – receives a \$3.153 / thousand levy**

**OTH – all other values that are not AG and not owner-occupied (includes centrally assessed utility companies) – receives a \$6.525 / thousand levy**

\*The valuations of mobile homes 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 appropriate levy will be applied to these types of property and taxes will be payable.

# Requirements

## Timeframe

An Opt Out should not be done until after January 1 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.
- 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.

## Voting

Opting out **requires a two-thirds vote of the governing body** on or before July 15th. The decision to opt out must be published within ten days of decision. The decision may be referred to a vote 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 first publication.

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

## Resolution

- The resolution must be on a form prescribed by the Secretary of Revenue and must state for which fund. (See pages 7-9)
- 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.
- **An individual opt out resolution must be done for each fund.**
  - A district cannot combine two Opt Outs into one action of the board.

## Term Limitation

The resolution must specify the beginning year and the number of years the Opt Out will be available. The school board does not have to opt out again during that timeframe unless they need to exceed the amount they are currently receiving.

Any general fund Opt Outs passed prior to July 1, 2002 will not expire unless the governing body votes to dissolve the Opt Out.

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.** It is not required that the district use all of the opt out in year one. This applies to all Opt Outs.

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

## Documentation

If a school district opts out of either fund, 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 school finance officer must certify the outcome of the election to the County Auditor.

## Guidelines for Publication (For Both Funds)

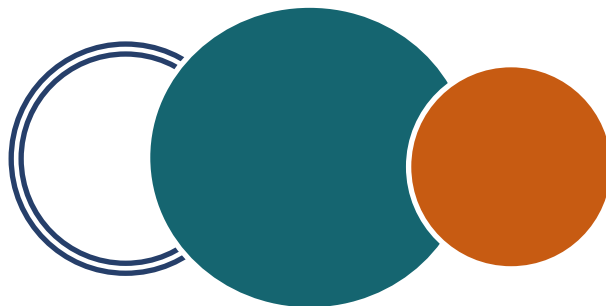
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- 1) Must publish within 10 days of decision
- 2) At least twice in legal newspaper—with 5 days between publications
- 3) Three newspaper columns in width and four inches in length or 1/6 page in size, whichever is greater
- 4) Must contain the Opt Out Resolution with heading "ATTENTION TAXPAYERS: NOTICE OF PROPERTY TAX INCREASE"

**#3 & 4 are not mandatory for Opt Outs less than \$15,000.**

**For Opt Outs of \$15,000 or more #3 and 4 may be waived IF:**

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



## 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 concerning the reorganization plan and the inclusion of the Opt Out can be found in SDCL 13-6-13.

The form on page 11 is to be used 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.

**10-12-43. Excess tax levy authorized for school districts--Vote by governing body--Announcement requirements--Referendum election.** 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 to a vote of the people 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.

**10-12-43.1. Excess tax levy--School district capital outlay fund-- Restrictions.** A school district subject to the tax limitation on each enrolled student pursuant to § 13-16-7.2 may raise additional revenues for capital outlay fund purposes through the imposition of an excess tax levy. A school district seeking to impose an excess tax levy pursuant to this section is subject to the same opt out procedures and requirements as provided in § 10-12-43. The opt out decision may be referred to a vote of the people in the same manner as provided in § 10-12-43.

A school district imposing an excess tax levy pursuant to this section shall exclude any additional revenue generated by the excess tax levy from the total tax revenues deposited in the capital outlay fund when calculating the maximum allowable transfer to the school district's general fund authorized under § 13-16-6. Any additional revenue generated by the excess tax levy may only be used for capital outlay fund purposes pursuant to § 13-16-6.

In no year may the annual tax levy for capital outlay fund purposes exceed the levy authorized under § 13-16-7.

**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 for the \_\_\_\_\_ fund. 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 for the \_\_\_\_\_ fund. 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

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 for the \_\_\_\_\_ fund. 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

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\_\_\_\_\_ Board Member

\_\_\_\_\_ Board Member

\_\_\_\_\_ Board Member

DATE \_\_\_\_\_