



**To: Superintendent, Superintendent Secretary, and Council of School Attorney  
Member Addressed**  
**From: TASB Legal Services**  
**Date: February 23, 2015**  
**Subject: Adoption of Budget and Tax Rates—Early Tax Rate Adoption**

It is time once again for Texas school districts to adopt their budgets and tax rates. This memo provides an overview of the steps school districts using the early tax rate adoption process must take to adopt a tax rate and a budget as governed by Texas Education Code sections 44.001 to 44.006 and Texas Tax Code chapter 26.

### **Where to Start**

Information and assistance, including calculation worksheets, sample notices, and ballot language can be found at the Texas Comptroller’s Website, Truth-in-Taxation (TNT): School Districts.<sup>1</sup> Additionally, the Comptroller’s Property Tax Assistance Division provides [online](#) training videos which explain current and new laws that school districts must follow when adopting property tax rates for that fiscal year.<sup>2</sup>

Region 13 ESC has published [state funding worksheets](#),<sup>3</sup> including a template for calculating effective maintenance and operations (M&O) rates, to assist districts in making the required tax rate calculations.

Board members and district administrators may direct questions concerning truth-in-taxation requirements and tax rate calculations to the Comptroller’s Property Tax Assistance Division at 800-252-9121, option 2, or by e-mail at [ptad.cpa@cpa.state.tx.us](mailto:ptad.cpa@cpa.state.tx.us). Legal questions concerning truth-in-taxation should be directed to your school district’s attorney.

If your district adopts its tax rate using certified estimates of property values, instead of using the certified appraisal roll, then the tax rate must be adopted *before* the budget and the district can order a tax ratification election (TRE) with only 30 days notice. In addition to this memo, more information about early tax rate adoption can be found at Texas Education Code section 44.004(j) and Texas Tax Code section 26.05(g). For information on the timelines associated with conducting a TRE, please refer to TASB Legal Services [Tax Ratification Election Information and Timelines](#).<sup>4</sup>

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<sup>1</sup> [www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html](http://www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html).  
<sup>2</sup> [www.window.state.tx.us/taxinfo/proptax/education/videos.html](http://www.window.state.tx.us/taxinfo/proptax/education/videos.html).  
<sup>3</sup> [www5.esc13.net/finance/](http://www5.esc13.net/finance/).  
<sup>4</sup> [www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax\\_ratification\\_elec\\_info\\_apr14.pdf](http://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax_ratification_elec_info_apr14.pdf).

## **Required Steps**

- 1. Adopt a proposed tax rate:** Appraisal districts are required to prepare and certify an *estimate* of taxable property value to school districts by April 30.<sup>5</sup> Upon receipt of the certified estimate, a school district may adopt a tax rate using the estimate, before receipt of the certified appraisal roll. If a school district adopts a tax rate under this option, the effective tax rate and the rollback tax rate of the district shall be calculated based on the certified estimate of taxable value.
  - **Note:** The Texas Attorney General has recently issued an opinion indicating that a school district may not use the certified estimate to adopt a tax rate *after* adopting its budget. A district that has not elected to operate under the early adoption method would lack authority to depart from the general rule requiring the use of the certified appraisal roll to adopt a tax rate after adoption of the district's budget.<sup>6</sup>
  - The Effective Tax Rate and Rollback Tax Rate sections in the Comptroller's TNT Website provide information and a worksheet for calculating the effective tax rate and the rollback tax rate.
  - **Note:** The Texas Attorney General's Public Finance Division has [guidance](#)<sup>7</sup> regarding a school district's authority to use M&O taxes to pay debt service on existing district bonds. The Texas Attorney General issued a related opinion regarding several tax rate issues in Texas Attorney General Opinion GA-775.<sup>8</sup>
  
- 2. Plan public meetings:** A district using the early tax rate adoption process must hold two public meetings: one for the purpose of discussing the proposed tax rate and a second meeting to discuss the proposed budget.
  
- 3. Publish notice:** At least 10 but not more than 30 days before the public meeting, [notice](#)<sup>9</sup> of the meeting must be published in strict accordance with the requirements of Texas Education Code section 44.004 for the purpose of discussing the proposed tax rate. The language and format of the notice is prescribed by the Comptroller and contained in Texas Education Code section 44.004(c), (c-1).
  - The Region 13 ESC information referenced above includes a section for calculation of the amounts to appear in the notice.
  - The notice must be published in a daily, weekly, or biweekly newspaper published in the district. If no such newspaper is published in the district, the notice(s) must be published in at least one newspaper of general circulation in the county in which the district's central administrative office is located.

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<sup>5</sup> Tex. Tax Code § 26.01(e).

<sup>6</sup> Op. Tex. Att'y Gen. No. KP-0001 (2015) available at: [www.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0001.pdf](http://www.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0001.pdf).

<sup>7</sup> Attorney General To All Bond Counsel Letter (May 2010), available at: [www.oag.state.tx.us/opin/abc\\_letters/20100514abc.pdf](http://www.oag.state.tx.us/opin/abc_letters/20100514abc.pdf).

<sup>8</sup> Op. Tex. Att'y Gen. No. GA-775 (2010) available at: [www.oag.state.tx.us/opinions/opinions/50abbott/op/2010/htm/ga-0775.htm](http://www.oag.state.tx.us/opinions/opinions/50abbott/op/2010/htm/ga-0775.htm).

<sup>9</sup> Notice Requirements, available at: [www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html](http://www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html).

- The notice must be at least one-quarter page of a standard-size or a tabloid-size newspaper in a section other than the legal or classified section, and the headline must be in 18-point or larger type. As the required notice is two pages, most newspaper postings will need to be larger than the quarter-page minimum requirement.
  - All districts must publish the notice and hold the public meeting to hear public comments and discuss the budget and proposed tax rate, regardless of whether the tax rate is increasing, decreasing, or remaining the same.
- 4. Post the notice required under the Open Meetings Act:** At least 72 hours before the public meeting, notice of the public meeting must also be posted in accordance with the Open Meetings Act.
- The board may also conduct any other business properly posted under the Open Meetings Act at the meeting.
- 5. Conduct the public meeting:** After the appropriate amount of time has been given for the notice of the public meeting (see steps 3 &4), the board may convene the public meeting. Any taxpayer in the district may be present and participate in the meeting to discuss the proposed tax rate.
- 6. Adopt the tax rate:** The tax rate will be adopted based on the calculated rate using the certified *estimate* of the taxable value of property. A district must adopt a tax rate through the adoption of a resolution. Sample resolution forms for a tax rate adoption may be found at CCG(EXHIBIT) in the TASB Policy Service Regulations Resource Manual.
- A district that receives an equalized wealth notice from the commissioner of education may not adopt its tax rate until the commissioner certifies that the district has reached its equalized wealth level.
  - Districts that adopt a tax rate above the effective tax rate must use special language in the motion to adopt the tax rate:

“I move that the property tax rate be increased by the adoption of a tax rate of \_\_\_\_, which is effectively a (insert percentage by which the proposed rate exceeds the effective rate) percent increase in the tax rate.”<sup>10</sup>
  - Additionally, if a district adopts a tax rate that will generate more total revenue to fund M&O than last year’s tax rate or that exceeds the effective tax rate, the resolution and district’s website must contain special notice provisions indicating an increase. See Texas Tax Code section 26.05(b), TASB policy CCG(LEGAL), and the TNT website for more information and specific wording.

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<sup>10</sup> Hearing Requirements, Tax Code Required Language, *available at:* [www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html](http://www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html).

- **Note:** The Texas Education Code section 44.004 (g-1) states that an additional publication is not required if the rate calculated for debt service (the “I&S” rate) decreases after the initial publication of notice for the proposed tax rate. Additionally, the district is not required to conduct another meeting to discuss and adopt the budget and the new lower rate.

**7. Order and conduct a tax ratification (rollback) election (TRE) if necessary:** If the district adopts a tax rate above its rollback rate, an election to ratify that rate must be conducted.<sup>11</sup> The district may choose to order this election at the same meeting where the tax rate was adopted. Districts using the early adoption process must order the TRE not later than the 30th day before election day.<sup>12</sup>

- Generally, a TRE must be conducted 30-90 days after the adoption of a tax rate above the rollback rate. A school district using the early adoption process is eligible to order and conduct a TRE within 30 days from adoption of the tax rate, potentially avoiding the November uniform election date; however, if the November uniform election date falls within this time period, the district must hold the TRE on the uniform election date.<sup>13</sup> In this instance all uniform election timeframes and deadlines regarding early voting, ballot preparation, notice, etc., would apply to the TRE process.<sup>14</sup> For more information on the timelines associated with conducting a TRE, please refer to TASB Legal Services [Tax Ratification Election Information and Timelines](#).<sup>15</sup>
- **Note:** In some instances, a higher rate may be adopted without the need to conduct a TRE. For example, a district that has reduced its (M&O) rate one year may be able to raise its M&O rate in the subsequent year without conducting a TRE. If a district’s adopted M&O tax rate for the prior year was less than its effective M&O rate for that preceding year, then the district’s current-year rollback tax rate will be calculated as if its prior-year adopted M&O rate were equal to its prior-year effective M&O rate. Also, as described in detail in the Hearing Requirements and Additional Rollback Protection for Pollution Control sections of the Comptroller’s TNT website, some districts will be eligible for a higher rate due to pollution control efforts as determined by the Texas Commission on Environmental Quality (TCEQ). Finally, in some situations where an increased tax rate is due to disaster recovery expenses, an election may not be required.
- The Comptroller’s TNT website offers additional information about TRE procedures. A sample election ballot can be found in the Rollback Elections section of the website.

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<sup>11</sup> Tex. Tax Code § 26.08(d).

<sup>12</sup> Tex. Elec. Code § 3.005(d).

<sup>13</sup> Tex. Tax Code § 26.08(b).

<sup>14</sup> [www.sos.state.tx.us/elections/voter/2015-important-election-dates.shtml](http://www.sos.state.tx.us/elections/voter/2015-important-election-dates.shtml).

<sup>15</sup> [www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax\\_ratification\\_elec\\_info\\_apr14.pdf](http://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax_ratification_elec_info_apr14.pdf).

- 8. Post second notice for budget adoption:** Following adoption of the tax rate, the district must publish a second [notice](#)<sup>16</sup> before the district may adopt a budget. Refer to step 3 for specific information regarding the posting and wording of the notice. Notice of the public meeting must also comply with the provisions of the Open Meetings Act (step 4) and be posted at least 72 hours before the public meeting.
- 9. Post a summary of the proposed budget:** The district must post a summary of the proposed budget on the district's website or at the central administrative office if the district has no website. This summary of the proposed budget should be posted when the NOTICE OF PUBLIC MEETING TO DISCUSS BUDGET is published.
  - **Note:** For districts with a July 1 fiscal year, the superintendent shall prepare the proposed budget on or before June 19. For districts with a September 1 fiscal year, the superintendent shall prepare the proposed budget on or before August 20.<sup>17</sup>
  - The budget summary must include information relating to per student and aggregate spending on instruction, instructional support, central administration, district operations, debt service, and any other category designated by the commissioner of education. The summary must also compare the previous year's actual spending with the proposed budget.<sup>18</sup>
  - Districts are not required to post the summary in a specific format; however, you may find Region 12 ESC's [template](#)<sup>19</sup> helpful.
- 10. Conduct the public meeting:** After the appropriate amount of time has been given for the notice of the public meeting (see steps 3 &4), the board may convene the public meeting. Any taxpayer in the district may be present and participate in the meeting to discuss the proposed budget.
- 11. Adopt the budget:** The budget will be adopted after the tax rate when using the early adoption process so the budget can be finalized using an adopted tax rate.
  - Texas Education Code section 29.081(b-2) requires school districts to “separately budget” sufficient funds for providing accelerated instruction to students who do not perform satisfactorily on state-mandated end-of-course exams. Districts may not use compensatory education funds for any other purpose until sufficient funds are budgeted for accelerated instruction. Because school district budgets do not typically have a separate line item for accelerated instruction, districts may wish to maintain separate documentation to show how the costs of required accelerated instruction are represented throughout the budget.

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<sup>16</sup> Hearing Requirements, available at: [www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html](http://www.window.state.tx.us/taxinfo/proptax/tnt/school-districts.html).

<sup>17</sup> Financial Accountability System Resource Guide, Module 2, Budgeting, available at: [www.tea.state.tx.us/index4.aspx?id=1222](http://www.tea.state.tx.us/index4.aspx?id=1222).

<sup>18</sup> Tex. Educ. Code § 44.0041.

<sup>19</sup> Region 12 budget summary template, available at: [www.esc12.net/cms/one.aspx?portalId=2954383&pageId=14980676](http://www.esc12.net/cms/one.aspx?portalId=2954383&pageId=14980676).

- The budget must be adopted no later than June 30, if your district has a fiscal year beginning July 1; and no later than August 31, if your district has a fiscal year beginning September 1.<sup>20</sup>

**12. File the budget with TEA:** The budget must be filed with TEA through PEIMS by the date prescribed in the annual guidelines.

**13. Post the adopted budget:** The final adopted budget must be posted on the district’s website. This requirement is in addition to posting the proposed budget. The website must prominently display the electronic link to the adopted budget.

- The adopted budget must be maintained on the website for three years after adoption.<sup>21</sup>
- The statute does not address posting requirements for later amendments to the budget.
- Districts are not required to post the final budget in a specific format; however, you may find it helpful that Region 12 ESC has posted a [template](#)<sup>22</sup> online.

**14. Approve final tax roll:** After the tax rate is adopted, the assessor will calculate the tax imposed on each property included on the appraisal roll, enter the amount of tax in the appraisal roll, and submit it to the school board for approval. The appraisal roll with amounts of tax entered as approved by the school board constitutes the district’s tax roll.<sup>23</sup>

**15. Submit tax information to County Assessor-Collector:** Texas Tax Code section 26.16 requires each taxing located wholly or in part in a county to provide the adopted tax rate, M&O rate, and the rollback rate to the county assessor-collector following the adoption of the tax rate. The county assessor-collector is required to publish this information in the form of a table on the county’s website, if the county maintains a website. The title of the publication to be posted is referred to as “Truth in Taxation Summary.” In addition to the publication of the tax rates, the county assessor-collector will publish the definitions for each of the varying taxes.

If you have additional questions concerning the adoption of a budget or tax rate, please contact TEA, the Texas Comptroller, your district’s attorney, or TASB Legal Services at 800-580-5345.

For more information on this and other school law topics, visit TASB School Law eSource online at [schoollawesource.tasb.org](http://schoollawesource.tasb.org).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

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<sup>20</sup> *Financial Accountability System Resource Guide, Module 2, Budgeting, available at: [www.tea.state.tx.us/index4.aspx?id=1222](http://www.tea.state.tx.us/index4.aspx?id=1222).*

<sup>21</sup> Tex. Educ. Code § 39.084(b).

<sup>22</sup> *Region 12 budget template, available at: [www.esc12.net/cms/one.aspx?portalId=2954383&pageId=14980676](http://www.esc12.net/cms/one.aspx?portalId=2954383&pageId=14980676).*

<sup>23</sup> Tex. Tax Code § 26.09(e).