



**To: Superintendent, Superintendent Secretary, and Council of School Attorney  
Member Addressed**  
**From: TASB Legal Services**  
**Date: March 15, 2017**  
**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 under Texas Education Code sections 44.001 through 44.006 and Texas Tax Code chapter 26. Budget adoption is addressed in TASB Policy CE(LLEGAL) and tax rate adoption is addressed in TASB Policy CCG(LLEGAL).

If your district uses the traditional method of adopting a tax rate based on the certified appraisal roll, please see TASB Legal Services' [Adoption of Budget and Tax Rates—Traditional Method](#).<sup>1</sup>

### **Where to Start**

Information and assistance, including calculation worksheets and sample notices, can be found on the Texas Comptroller's Truth-in-Taxation (TNT) Website for school districts.<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 512-305-9999 or 800-252-9121 (press 2 for menu, then 1 for the Information Services team), 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 the certified estimate of property values, instead of the certified appraisal roll, 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

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<sup>1</sup> [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/adopt\\_budget\\_tax\\_traditional\\_march17.aspx](http://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/adopt_budget_tax_traditional_march17.aspx).

<sup>2</sup> General TNT information may be found at [comptroller.texas.gov/taxes/property-tax/truth-in-taxation/#skip-scroll](http://comptroller.texas.gov/taxes/property-tax/truth-in-taxation/#skip-scroll). Additionally, helpful TNT videos may be found under *Assessment and Collection Videos* at [comptroller.texas.gov/taxes/property-tax/video/](http://comptroller.texas.gov/taxes/property-tax/video/).

<sup>3</sup> [www5.esc13.net/finance/](http://www5.esc13.net/finance/).

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>

### **Required Steps for Early Adoption**

- 1. Propose a tax rate:** The chief appraiser must prepare and certify an *estimate* of taxable property value for a school district by April 30.<sup>5</sup> A school district may adopt its tax rate using this estimate before receipt of the certified appraisal roll. If a school district adopts a tax rate under this option, the district's effective tax rate and rollback tax rate must be calculated based on the certified estimate of taxable value.<sup>6</sup>
  - The Texas Attorney General has concluded 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 use the early tax rate adoption process 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>7</sup>
- 2. Plan public meetings:** A district using the early tax rate adoption process must hold *two* public meetings: one to discuss the proposed tax rate and a second to discuss the proposed budget.<sup>8</sup>
- 3. Publish notice in the newspaper:** At least 10 but not more than 30 days before the public meeting to discuss the proposed tax rate, a district must publish notice of the meeting in strict accordance with the requirements of Texas Education Code section 44.004. The language and format of the notice are prescribed by the comptroller as set out in Texas Education Code section 44.004(c), (c-1), and (j).<sup>9</sup>
  - 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 must be published in at least one newspaper of general circulation in the county in which the district's central administrative office is located.<sup>10</sup>

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<sup>4</sup> [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax\\_ratification\\_elec\\_info.aspx](http://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax_ratification_elec_info.aspx).

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

<sup>6</sup> Tex. Tax Code § 26.05(g). The Comptroller's TNT Website for school districts provides information and worksheets for calculating the effective tax rate and the rollback tax rate.

<sup>7</sup> Op. Tex. Att'y Gen. No. KP-1(2015), [texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0001.pdf](http://texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0001.pdf). The Texas Attorney General's Public Finance Division has guidance regarding a school district's authority to use M&O taxes to pay debt service on existing district bonds. Attorney General, *To All Bond Counsel Letter* (May 2010), [texasattorneygeneral.gov/opin/abc\\_letters/20100514abc.pdf](http://texasattorneygeneral.gov/opin/abc_letters/20100514abc.pdf). The attorney general also issued a related opinion regarding several tax rate issues. Op. Tex. Att'y Gen. No. GA-775 (2010), [texasattorneygeneral.gov/opinions/opinions/50abbott/op/2010/htm/ga-0775.htm](http://texasattorneygeneral.gov/opinions/opinions/50abbott/op/2010/htm/ga-0775.htm).

<sup>8</sup> Tex. Educ. Code § 44.004(j).

<sup>9</sup> Additional information is available on the Comptroller's TNT Website at [comptroller.texas.gov/taxes/property-tax/truth-in-taxation/notices.php](http://comptroller.texas.gov/taxes/property-tax/truth-in-taxation/notices.php). The two Notice forms required under the early tax rate adoption process may be found under the heading *School Districts*.

<sup>10</sup> Tex. Educ. Code § 44.004(b).

- The notice must be at least one-quarter page of a standard-size or a tabloid-size newspaper, and the headline must be in 18-point or larger type. Because the required notice is two pages, most newspaper postings will be larger than the quarter-page minimum requirement.
  - All districts must publish the notices and hold the public meetings to discuss the proposed tax rate and the budget, regardless of whether the tax rate is increasing, decreasing, or remaining the same.
- 4. Post notice as required by the Open Meetings Act (OMA):** At least 72 hours before the public meeting, a district must post notice of the meeting in accordance with the OMA. The board may also conduct any other business properly posted under the OMA at the meeting.
- 5. Conduct the public meeting:** After notice of the public meeting has been given for the required amount of time (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.<sup>11</sup>
- 6. Adopt the tax rate:** By resolution, the board will adopt a tax rate based on the certified estimate of the taxable value of property in the district. Sample resolution forms for 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.<sup>12</sup>
  - The following motion is required to adopt a resolution setting a tax rate that exceeds a district's effective tax rate:

“I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed rate exceeds the effective tax rate) percent increase in the tax rate.”<sup>13</sup>
  - The vote on a resolution setting a tax rate that exceeds the sum of the district's effective M&O tax rate and the current debt rate must be a record vote with at least 60% of board (5 members of a 7 member board) voting in favor of the resolution.<sup>14</sup>
  - If a board 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 the 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 Comptroller's TNT [Website](#) at *Ordinance, Resolution, or Order*, for more information and specific wording.

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<sup>11</sup> Tex. Educ. Code § 44.004(f).

<sup>12</sup> Tex. Educ. Code § 41.004(c).

<sup>13</sup> Tex. Tax Code § 26.05(b).

<sup>14</sup> Tex. Tax Code § 26.05(b).

- If the rate calculated for debt service (the I&S rate) decreases after the initial publication of notice, it is not necessary to publish another notice.<sup>15</sup>
- 7. Order and conduct a tax ratification election (TRE), if required:** If the board adopts a tax rate above the district's rollback rate, it must hold an election to ratify that rate.<sup>16</sup> If a majority of the votes cast in the election favor the proposition, the tax rate for the current year is the rate adopted by the board. If the proposition is not approved, then the board may not adopt a tax rate for the current year that exceeds the rollback rate.<sup>17</sup>
- The board may order a TRE at the same meeting in which the tax rate is adopted if properly posted under the OMA. Boards using the early tax rate adoption process must order the TRE not later than the 30th day before election day.<sup>18</sup> A TRE must be conducted 30 to 90 days after the adoption of a tax rate that exceeds the rollback rate. For more information on tax ratification elections, please refer to TASB Legal Services' [Tax Ratification Election Information and Timelines](#).<sup>19</sup> The Comptroller's TNT Website offers additional information about TRE procedures. A sample ballot can be found in the *Rollback Elections* section of the website.<sup>20</sup>
- 8. Publish second notice for budget adoption:** Following adoption of the tax rate, the board must publish a second notice before the board may adopt a budget.<sup>21</sup> Refer to step 3 for specific information regarding the publication and contents of the notice. Notice of the public meeting must also comply with the provisions of the OMA (step 4) and be posted at least 72 hours before the public meeting.
- 9. Post a summary of the proposed budget:** At the same time the NOTICE OF PUBLIC MEETING TO DISCUSS BUDGET is published, 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.<sup>22</sup>

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<sup>15</sup> Tex. Educ. Code § 44.004(g-1).

<sup>16</sup> Tex. Tax Code § 26.08(a). 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 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. Tex. Tax Code § 26.08(p). Further, some districts will be eligible for a higher rate due to pollution control efforts as determined by the Texas Commission on Environmental Quality (TCEQ). See Comptroller's form 50-859, 2017 Sample Tax Rate Calculation Worksheet School Districts at [comptroller.texas.gov/forms/50-859.pdf](http://comptroller.texas.gov/forms/50-859.pdf). Finally, in some situations where an increased tax rate is due to disaster recovery expenses, an election may not be required. Tex. Tax Code § 26.08(a).

<sup>17</sup> Tex. Tax Code § 26.08(d).

<sup>18</sup> Tex. Elec. Code § 3.005(d).

<sup>19</sup> [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax\\_ratification\\_elec\\_info.aspx](http://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/tax_ratification_elec_info.aspx).

<sup>20</sup> [comptroller.texas.gov/taxes/property-tax/docs/truth-in-taxation/school-district-sample-rollback-ballot.pdf](http://comptroller.texas.gov/taxes/property-tax/docs/truth-in-taxation/school-district-sample-rollback-ballot.pdf).

<sup>21</sup> Tex. Educ. Code § 44.004(j).

<sup>22</sup> Tex. Educ. Code § 44.0041.

- For districts with a July 1 fiscal year, the superintendent prepares the proposed budget on or before June 19. For districts with a September 1 fiscal year, the superintendent prepares the proposed budget on or before August 20.<sup>23</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>24</sup>
- Districts are not required to post the summary in a specific format; however, districts may find Region 12 ESC's [template](#)<sup>25</sup> helpful.

**10. Conduct the public meeting:** After notice of the public meeting has been given for the required amount of time (see steps 3, 4, & 8), 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.<sup>26</sup>

**11. Adopt the budget:** The budget must be adopted after the tax rate under the early tax rate adoption process; thus, the budget will be based on the adopted tax rate.

- The budget must be adopted no later than June 30 in districts with a fiscal year beginning July 1, and no later than August 31 in districts with a fiscal year beginning September 1.<sup>27</sup>
- 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.

**12. File the budget with TEA:** After adoption, the budget must be filed with TEA through PEIMS by the date prescribed in the annual system guidelines.<sup>28</sup>

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<sup>23</sup> *Financial Accountability System Resource Guide, Module 2, Budgeting*, section 2.6.1, [tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/).

<sup>24</sup> Tex. Educ. Code § 44.0041.

<sup>25</sup> [esc12.net/page/bis\\_school\\_finance](http://esc12.net/page/bis_school_finance).

<sup>26</sup> Tex. Educ. Code § 44.004(f).

<sup>27</sup> *Financial Accountability System Resource Guide, Module 2, Budgeting*, section 2.6.1, [tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/).

<sup>28</sup> *Financial Accountability System Resource Guide, Module 2, Budgeting*, section 2.6.2, [tea.texas.gov/Finance\\_and\\_Grants/Financial\\_Accountability/Financial\\_Accountability\\_System\\_Resource\\_Guide/](http://tea.texas.gov/Finance_and_Grants/Financial_Accountability/Financial_Accountability_System_Resource_Guide/).

**13. Post the adopted budget:** The final adopted budget must be posted on the district’s website.<sup>29</sup> 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>30</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, districts may find Region 12 ESC’s [template](#)<sup>31</sup> helpful.

**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 board constitutes the district’s tax roll.<sup>32</sup>

**15. Submit tax information to County Assessor-Collector:** Texas Tax Code section 26.16 requires each taxing unit located wholly or in part in a county to provide the unit’s adopted tax rate, M&O rate, debt rate, effective tax rate, effective M&O rate, and rollback rate to the county assessor-collector for posting on the county’s website, if the county maintains a website, in a “Truth in Taxation Summary” table, which will include definitions for the various 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 [schoolawesource.tasb.org](http://schoolawesource.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>29</sup> Tex. Educ. Code § 44.0051(a).

<sup>30</sup> Tex. Educ. Code § 44.0051(b).

<sup>31</sup> [esc12.net/page/bis\\_school\\_finance](http://esc12.net/page/bis_school_finance).

<sup>32</sup> Tex. Tax Code § 26.09(e).