

Tax Rate Adoptions Opinion and Guidance

Opinion No. GA-0775: Authority of a school district to set property tax rates under section 26.08, Tax Code (RQ-0839-GA) [Response to Rep. Eissler request]

1. Authority to increase adopted M&O tax rate above *rollback* M&O tax rate component [emphasis added]
 - a. Question – What triggers the need for a rollback election? Is it the total tax rate or the M&O component?
 - i. Rollback tax rate is the lesser of:
 1. Sum of the following:
 - a. Compressed tax rate
 - b. \$0.04
 - c. Pennies approved in previous rollback elections
 - d. Debt service tax rate, or
 2. Sum of the following:
 - a. Effective M&O tax rate
 - b. $\$0.06 \times 0.6667$
 - c. Debt service tax rate
 - ii. Effective tax rate – Rate that produces the same amount of local and state funds per student as the preceding year
 - b. Answer – M&O tax rates that exceed the maximum M&O rate produced by the rollback calculation trigger the need for a rollback election.
2. Authority to adopt a tax rate that exceeds the rollback rate two years after a disaster
 - a. Question – Does a district have to have a rollback election in the year following the adoption of a higher M&O rate based on the disaster provision?
 - b. Answer – A district must hold an election in order to adopt an M&O rate that exceeds the rollback limit in a subsequent year.
3. Authority to adopt a tax rate lower than the voter-approved tax rate
 - a. Question – Can a district adopt an M&O rate lower than the rate approved in a rollback election?
 - b. Answer – A district must adopt the M&O rate that is approved in the rollback election.

4. Effect in subsequent years of voter-approved increases above the rollback rate
 - a. Question – If voters approve additional pennies of tax effort in a rollback election, is a district permanently entitled to levy those pennies without another election?
 - b. Answer – The calculation of the maximum M&O rate that can be adopted without an election incorporates the benefit of previously approved pennies *if they have been levied*, which in most cases should have the effect of increasing the maximum M&O ceiling. If previously authorized pennies are not levied, the district may be required to reduce its M&O rate in a subsequent year. The calculation of the effective tax rate will determine whether an election is required.

5. Authority to calculate rollback rate based on district-generated projection of taxable value
 - a. Question – Can a district use its own estimate to calculate its rollback limit in the absence of a certified appraisal?
 - b. Answer – A district may use only estimates certified by the appraisal district for the purposes of the rollback calculation.

**"To All Bond Counsel" letter dated May 14, 2010
[Response to Commissioner Scott's request]**

1. Ability of school district to make payments on bonds from funds other than a tax levied for the payment of debt service
 - a. Question – May a district use current year M&O tax collections to pay debt service on school district bonds?

Answer –

M&O taxes may not be levied to pay bond debt service.

M&O taxes may be used only for maintenance expenses, and bond taxes may be used only to pay bonds.

Taxes levied for maintenance tax purposes but no longer needed for those purposes may be characterized as surplus. Surplus funds may be used for the purpose of erection and equipment of school buildings; therefore, surplus tax monies may be used to pay debt service.

- b. Question – May a school district pay debt service on bonds from the district's unrestricted fund balance, which represents current year M&O taxes, state aid, administrative overhead on federal grants, and other local income, such as rentals and gate receipts?

Answer – The nature of the funds in the fund balance determines the ability of the district to use those funds for debt service. Surplus M&O funds, as discussed in Question 1, may be used to pay bond debt service. Other local funds not earmarked for a particular purpose may be used if using them to pay debt service is determined to be a purpose “necessary in the conduct of public schools determined by the board of trustees.” The allowable uses of federal funds are typically restricted by the terms of the grant.

- c. Question – May school districts pay debt service from unrestricted state assistance under the Texas Education Code, Chapter 42, Subchapters B and C?

Answer –

Subchapter B (basic allotment) – The use of the basic allotment is permitted because it is not allotted for a specific purpose. The board must determine that paying debt service on district bonds is a necessary purpose.

Subchapter C (special allotments) – The indirect cost allotments may be used for any lawful purpose, including the payment of debt service.