

# OSBA

**2008**

## **Board Leadership Institute**

**COLUMBUS, OHIO  
MAY 2, 2008**

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This material is not intended to, and does not, provide legal advice as to particular issues or matters, each of which should be addressed in the specific factual setting in which it arises, and reference to it is not a substitute for consultation with an attorney.

# **TAX LEVY OPTIONS**

**AN OVERVIEW**

**OSBA  
2008 BOARD LEADERSHIP INSTITUTE  
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Squire Sanders & Dempsey L.L.P.

## **CURRENT EXPENSE PROPERTY TAX – Revised Code §§ 5705.21 & 5705.25**

1. Millage rate submitted for voter approval.
2. Length: any number of years from 1 through 5 or for continuing period of time.
3. Submission requirements: two board resolutions with intervening county auditor's certification (on DTE Form 140R) of district total current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution (see Revised Code § 5705.03(B));  $\frac{2}{3}$  affirmative vote required on second one.
4. Filing deadline: both resolutions and county auditor's certifications are to be filed with board of elections at least 75 days before election (see Pages 15-18 for 2008 and 2009 election deadlines).
5. Purpose: "current expenses" - lawful expenses of school district that are not for permanent improvements or debt service (Revised Code § 5705.01(F)).
6. Renewal: same millage rate (unless renewal and increase, or renewal of part of existing levy); any number of authorized years; must be submitted during last collection year or preceding year's November election; can renew multiple levies at one time.
7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see Revised Code § 5705.192) at any election during last year of collection or preceding year's November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year; replacement of two levies (or any portion thereof) at the same time is permitted, but both must be for the same purpose and both must either be for a continuing period of time or must be due to expire in the same year.
8. Attempts: no more than three elections per calendar year (Revised Code § 5705.214), but see directly above.
9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handing the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (Revised Code § 5705.25(B); see Revised Code § 5705.192(B) for replacement levy ballot form).

12. Borrowing: 50% of estimated collections during first year of levy can be borrowed after successful election and before first tax collection can be made.
13. Continuing period of time levies can be decreased by a vote of the people (Revised Code § 5705.261).

#### **EMERGENCY PROPERTY TAX – Revised Code §§ 5705.194 through .197**

1. Annual dollar amount submitted for voter approval - millage fluctuates to produce approved amount; millage that appears on ballot is advisory only.
2. Length: any number of years from 1 through 5.
3. Submission requirements: two board resolutions with intervening county auditor's certification (on DTE Form 140M) of district assessed valuation and rate that would be required to raise the dollar amount specified - majority affirmative vote required for each resolution.
4. Filing deadlines: first resolution filed with county auditor at least 80 days before election (always a Saturday – so (conservatively) file by the Friday before) – county auditor's certifications filed with board no later than 5 days after filing - second resolution filed with board of elections at least 75 days before election (always a Thursday).
5. Purpose: “emergency requirements of the school district” or “to avoid an operating deficit”.
6. Renewal: same dollar amount (unless renewal and increase, or renewal of part of existing levy); must be submitted during last collection year or preceding year's November general election or May/March primary election; can renew multiple levies at once.
7. Combination renewals: two or more existing levies can be included in single renewal levy that are not scheduled to expire in same year, provided that resolution and ballot form state that existing levies to be renewed shall not be levied after year preceding year in which renewal levy is first imposed; must be submitted during last collection year of at least one of levies to be renewed or preceding year's November general election or May/March primary election.
8. Replacement: not permitted (Revised Code § 5705.192), but not pertinent.
9. Attempts: no more than three elections per calendar year (Revised Code § 5705.214).
10. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.

11. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election
12. Ballot: largely specified by statute; purpose clause must be in boldface type of at least 2x size of immediately surrounding type.
13. Borrowing: 100% of estimated collections during first year of levy can be borrowed after successful election and prior to time when first tax collection can be made; must have principal payments during each year after year of issuance over period not to exceed 5 years.

**PERMANENT IMPROVEMENT PROPERTY TAX – Revised Code §§ 5705.21 & 5705.25**

1. Millage rate submitted for approval.
2. Length: any number of years from 1 through 5 or for continuing period of time if for the purpose of “general permanent improvements”.
3. Submission requirements: two board resolutions with intervening county auditor’s certification (on DTE Form 140R) of school district’s total current tax valuation and amount that would be generated by proposed levy - majority affirmative vote required on first resolution (see Revised Code § 5705.03(B));  $\frac{2}{3}$  affirmative vote required on second one.
4. Filing deadline: both resolutions and county auditor’s certifications are to be filed with board of elections at least 75 days before election.
5. Purpose: any “permanent improvements” (items having estimated life or usefulness of five years or longer – see Revised Code § 5705.01(E)) - must either be specific or, if for continuing period of time, for purpose of “general permanent improvements”; purpose may be changed from specific purpose to “general permanent improvements” upon renewal or replacement.
6. Renewal: same millage rate (unless renewal and increase, or renewal of part of existing levy); must be submitted during last collection year or preceding year’s November election; can renew multiple levies at once.
7. Replacement: permitted (including replacement and increase, and replacement of portion of existing levy at lesser rate – see Revised Code § 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (Revised Code § 5705.214).

9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (Revised Code § 5705.25(B); see Revised Code § 5705.192(B) for replacement levy ballot form).
12. Borrowing, (specific permanent improvements): after approval of levy, 50% of estimated remaining collections over 5 years after issuance; must have principal payments during each year after year of issuance over period not to exceed 5 years.
13. Borrowing, (general permanent improvements): after approval of levy, 50% of the estimated collections over period of up to 10 years after issuance; must have principal payments during each year after year of issuance over period not to exceed 10 years.
14. Can serve as the foundation for the issuance of 23-year securities for the purpose of paying the local share of an Ohio School Facilities Commission (OSFC) Classroom Facilities Assistance Program (CFAP) project. Contact your legal advisor.

**DUAL PURPOSE PROPERTY TAX (CURRENT OPERATING EXPENSES AND PERMANENT IMPROVEMENTS) – Revised Code § 5705.217**

1. Millage rate submitted for voter approval.
2. Length: any number of years from 1 through 5 or for continuing period of time (if applicable).
3. Submission requirements: two board resolutions with intervening county auditor's certification (on DTE Form 140R) of district total current tax valuation and amount that would be generated by proposed levy - majority affirmative vote required on first resolution (see Revised Code § 5705.03(B));  $\frac{2}{3}$  affirmative vote required on second one.
4. Filing deadline: both resolutions and county auditor's certifications filed with board of elections at least 75 days before election.
5. Purpose: current operating expenses (lawful expenses of school district that are not for permanent improvements or debt service) and permanent improvements (items having estimated life or usefulness of five years or longer); if levy is for continuing period of time, permanent improvement purpose must be for "general, on-going permanent improvements" [sic]; proceedings placing levy on ballot must apportion

the annual rate between current expenses and permanent improvements, which apportionment may but need not be same for each year of tax.

6. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see Revised Code § 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
7. Attempts: no more than three elections per calendar year (Revised Code § 5705.214), but see directly above.
8. Boards of education: city, local, and exempted village school district boards are authorized to pursue this type of levy (see also Revised Code § 3311.21 for boards of vocational and cooperative education school districts).
9. Notice of election: once a week for two consecutive weeks in a newspaper of general circulation in the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
10. Ballot: Revised Code § 5705.25 generally governs form, but precise language not specified.
11. Borrowing, (current expenses): 50% of estimated collections during first year of levy can be borrowed after successful election and before first tax collection can be made; must have principal payments during each year after year of issuance over period not to exceed 5 years.
12. Borrowing, (specific permanent improvements): after approval of levy, 50% of estimated remaining collections over 5 years after issuance; must have principal payments during each year after year of issuance over period not to exceed 5 years.
13. Borrowing, (general, on-going permanent improvements): after approval of levy, 50% of estimated collections over period of up to 10 years after issuance; must have principal payments during each year after year of issuance over period not to exceed 10 years.

**COMBINATION BOND ISSUE-PROPERTY TAX LEVY/LEVIES – Revised Code § 5705.218**

1. Combined question of (a) bond issue, and (b) tax levy for current operating expenses and/or tax levy for permanent improvements.
2. Process: two board resolutions (both adopted by  $\frac{2}{3}$  majority) and intervening county auditor’s certification; latter resolution must apportion the annual tax rate between current expenses and permanent improvements if property taxes for both purposes are proposed, which allocation need not be same for each year of proposed tax.

3. Filing deadline: both resolutions and county auditor's certifications are to be filed with board of elections at least 75 days before election; additional deadlines may be applicable if the bond issue exceeds a certain size.
4. Attempts: no more than three elections per calendar year (Revised Code § 5705.214).
5. Boards of education: city, local, and exempted village school districts are authorized to pursue this type of ballot question.
6. Notice of election: once a week for two consecutive weeks in newspaper of general circulation in school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
7. Ballot: largely specified by statute (see Revised Code § 5705.218(D)).
8. Borrowing against tax levies: permitted (see Revised Code § 5705.218(F)).
9. Renewals and replacements of tax levies: permitted in the same manner as taxes levied under Revised Code § 5705.21.
10. May be combined with OSFC ballot questions (see below) and may effectively constitute an OSFC ballot issue.
11. Can serve as the foundation for the issuance of 23-year securities for the purpose of paying the local share of an OSFC CFAP project. Contact your legal advisor.

**EDUCATION TECHNOLOGY OR CULTURAL CENTER OPERATIONS PROPERTY TAX - Revised Code §§ 5705.21 & 5705.25**

1. Millage rate submitted for voter approval.
2. Length: any number of years from 1 through 5.
3. Submission requirements: two board resolutions with intervening county auditor's certification (on DTE Form 140R) of district's total current tax valuation and amount that would be generated by proposed levy – majority affirmative vote required on first resolution (see Revised Code § 5705.03(B));  $\frac{2}{3}$  affirmative vote required on second one.
4. Filing deadline: both resolutions and county auditor's certifications are to be filed with board of elections at least 75 days before election.
5. Purpose: (a) providing "education technology", which is defined as including, but not limited to, "computer hardware, equipment, materials, and accessories, equipment used for two-way audio or video, and software" or (b) operating "cultural center", which is defined as "a free standing building, separate from a public school

building, that is open to the public for educational, musical, artistic, and cultural purposes.”

6. Renewal: same millage rate (unless renewal and increase or renewal of part of existing levy); must be submitted during last collection year or preceding year’s November election.
7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see Revised Code § 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (Revised Code § 5705.214), but see directly above.
9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (Revised Code § 5705.25(B); see Revised Code § 5705.192(B) for replacement levy ballot form).

**LIBRARY SUPPORT, RECREATION, COMMUNITY CENTER PROPERTY TAX –  
Revised Code §§ 5705.21 & 5705.25**

1. Millage rate submitted for voter approval.
2. Length: any number of years from 1 through 5.
3. Submission requirements: two board resolutions with intervening county auditor’s certification (on DTE Form 140R) of school district’s total current tax valuation and amount that would be generated by proposed levy - majority affirmative vote required on first resolution (see Revised Code § 5705.03(B));  $\frac{2}{3}$  affirmative vote required on second one.
4. Filing deadline: both resolutions and county auditor’s certifications are to be filed with board of elections at least 75 days before election.
5. Purpose: set by statute (see Revised Code §§ 5705.19(D) (“[f]or a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported”), (H) (“[f]or parks and recreation purposes”) and (DD) (“[f]or the

purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code”).

6. Renewal: same millage rate (unless renewal and increase or renewal of part of existing levy); must be submitted during last collection year or preceding year’s November election.
7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see Revised Code § 5705.192) at any election during last year of collection or preceding year’s November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (Revised Code § 5705.214), but see directly above.
9. Boards of education: city, local, exempted village, cooperative education and (joint) vocational school district boards are authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in one or more newspapers of general circulation in the county (handling the election) and the school district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: largely specified by statute (Revised Code § 5705.25(B); see Revised Code § 5705.192(B) for replacement levy ballot form).

#### **MILLAGE INCREMENTAL PROPERTY TAX – Revised Code § 5705.212**

1. Up to five separate millage rates submitted for approval to be first levied in specified years; “original tax” in first year; up to four “incremental taxes” (all same rate but may be different than original tax rate) in subsequent specified years.
2. Length: any number of years from 1 through 10 or for continuing period of time.
3. Submission requirements: two board resolutions with intervening county auditor’s certification of district’s total current tax valuation and amount that would be generated by the proposed levy – majority affirmative vote required for first resolution one (see Revised Code § 5705.03(B));  $\frac{2}{3}$  affirmative vote required for second.
4. Filing deadline: both resolutions and county auditor’s certifications are to be filed with board of elections at least 75 days before election.
5. Purpose: “current expenses” - lawful expenses of school district that are not for permanent improvements or debt service.

6. Renewal: single rate combining rate of original tax and each incremental tax; must be submitted during last collection year or preceding year's November election.
7. Replacement: permitted (including replacement and increase, or replacement of portion of existing levy at lesser rate – see Revised Code § 5705.192) at any election during last year of collection or preceding year's November election; replacements of continuing levies permitted at any election after year in which originally approved, but limited to one election per year.
8. Attempts: no more than three elections per calendar year (Revised Code § 5705.214), but see directly above.
9. Boards of education: "any school district" board is authorized to pursue this type of levy.
10. Notice of election: once a week for two consecutive weeks in newspaper of general circulation in district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
11. Ballot: Revised Code § 5705.251(B) generally governs form for additional and renewal levies of this sort.
12. Borrowing: permitted (see Revised Code § 5705.212(B)).

**DOLLAR INCREMENTAL PROPERTY TAX – Revised Code § 5705.213**

1. Annual dollar amounts or percentage increases submitted for voter approval.
2. Original dollar amount in first year; dollar amount increases or percentage increases (all same amount or same percentage but may be different than original amount) in succeeding years.
3. Length: any number of years from 1 through 10 (but see below regarding renewals).
4. Submission requirements: two board resolutions with intervening county auditor's certification of district's total current tax valuation and the tax rates required to raise the amounts specified - majority affirmative vote required on first resolution;  $\frac{2}{3}$  affirmative vote required on second resolution.
5. Filing deadline: first resolution is to be filed with county auditor at least 80 days before election (always a Saturday, so (conservatively) file by Friday before) - county auditor's calculations filed with board at least 5 days after filing - second resolution filed with board of elections at least 75 days before election.

6. Purpose: “current expenses” - lawful expenses of Board that are not for permanent improvements or debt service.
7. Renewal: no more than amount of tax levied during last year tax is authorized to be in effect; for any number of authorized years or for a continuing period of time; must be submitted during last collection year or preceding year’s November election.
8. Notice of election: once a week for two consecutive weeks in newspaper of general circulation in district and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.

**“HB 530 LEVY” – Revised Code § 5705.211**

1. Purpose: “current operating expenses”.
2. Length: any number of years (but not fewer than 5) or for a continuing period of time.
3. Rate: according to the ballot – “sufficient to offset any reduction in basic state funding caused by appreciation in real estate values”; under § 5705.211(B) – at such a rate each tax year that the total taxes charged and payable from a tax levy extended on the real and public utility property tax list and the general list of personal property before any reduction under §§ 319.302, 323.152, or 323.158 equals the adjusted charge-off increase (which is 2.3% of the cumulative carryover property value increase (which, in turn, is the sum of the increases in carryover value certified under § 3317.015(B)(2) and included in a school district’s total taxable value in the computation of recognized valuation under § 3317.015(B) for all fiscal years from the fiscal year that ends in the first tax year a levy under § 5705.211 is extended on the tax list of real and public utility property until and including the fiscal year that ends in the current tax year)).
  - The goal appears to be to permit school boards to levy a tax, at varying rates each year, designed to counterbalance the loss of basic State revenue that is due to appreciation of real property. This loss is experienced through operation of a “chargeoff” against such basic aid. The chargeoff is basically 23 mills times recognized valuation. As recognized valuation increases through appreciation, the chargeoff amount increases, and the amount of basic State aid decreases.
4. Cap: “After the first year a tax is levied under this section, the rate of the tax in any year shall not exceed the rate, estimated by the county auditor, that would cause the sums levied from the tax against carryover property to exceed one hundred four percent of the sums levied from the tax against carryover property in the preceding year.”
5. Contact your legal advisor.

## SCHOOL DISTRICT INCOME TAX – Revised Code §§ 5748.01 through .06

1. Income tax rate submitted for approval (integral increments of 0.25%). Under prior law, the income tax rate would remain intact until its expiration or repeal by voters (under Revised Code § 5748.04). Under current law (*effective in June 2007*), a school board may adopt a simple resolution reducing the rate of the school district income tax by a multiple of 0.25% (Revised Code § 5748.022).
2. At board's option, levied on either (1) taxable income of district residents and estates, *or* (2) earned income of individuals residing in the school district. *A school district cannot impose both types of school district income tax simultaneously.*
3. Length: any number of years or for continuing period of time.
4. Submission requirements: two board resolutions with intervening State Tax Commissioner certification of income tax rate and property tax rate required to generate the proposed amount – majority affirmative vote required for each resolution.
5. Filing deadlines: first resolution filed with State Tax Commissioner at least 85 days prior to election - Commissioner's calculation filed with board no later than 10 days after filing - second resolution filed with board of elections at least 75 days before election.
6. Attempts: no more than twice in any calendar year and, if twice, one attempt must be made at general election (Revised Code § 5748.02(D)).
7. Purpose: any purpose for which property tax can be submitted (including the combined purposes authorized by Revised Code § 5705.217, namely, current operating expenses and permanent improvements – *new*).
8. Coupled with property tax reduction: permitted if income tax is for current expenses and for continuing period of time and property taxes to be reduced are also for current expenses and for continuing period of time; many technical requirements for filing with Tax Commissioner.
9. Notice of election: published in one or more newspapers of general circulation in the county (handling the election) once a week for two consecutive weeks prior to the election and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
10. *Relatively New Replacement Option* (Revised Code §§ 5748.021 and 5748.081)
  - a. Tax levied on taxable income of district residents and estates (i.e., the traditional base) can be replaced with a tax levied on the earned income of individuals residing in the school district.

- b. Amount to be generated from replacement tax can be increased or decreased.
- c. If election fails, board continues to levy tax on traditional base.

**SHARED MUNICIPAL INCOME TAX – Revised Code § 718.09 *et seq.***

1. Municipal corporation (provided, generally, not more than 5% of its territory is outside school district, and vice versa – NB: exception exists) may pass municipal income tax (*on resident individuals only*) and share revenue with school district occupying same territory.
2. Agreement required between district and municipal corporation specifying (1) tax rate, (2) percentage of tax and revenue to be paid to district (which must not be less than 25%), (3) purpose for which tax revenue is to be used, (4) first year tax will be levied, (5) date of election on question of tax, and (6) method and schedule of payment from municipal corporation to district.
3. Process: statute requires passage of ordinance and adoption or resolution by municipal corporation, with specific requirements; tax proposed to voters generally in same manner as other municipal income taxes.
4. Filing deadline: certified copies of both ordinance and resolution are to be filed with board of elections at least 75 days before election.
5. Shared municipal income tax option also exists where group of two or more municipal corporations, taken together, share the same territory as single school district (with essentially same 5% limitation as described above); majority of voters in each municipal corporation must approve identical tax.

**COMBINATION BOND ISSUE-SCHOOL DISTRICT INCOME TAX LEVY – Revised Code § 5748.08**

1. Combined question of (a) bond issue, and (b) school district income tax levy.
2. Process: board adopts first resolution (by  $\frac{2}{3}$  vote) and submits it, at least 90 days before election, to state tax commissioner and county auditor, who then have 10 days to make certain certifications; upon receipt of such certifications, board adopts second resolution (among other things, specifying duration and purpose of income tax levy – also by  $\frac{2}{3}$  vote).
3. Filing deadline: both resolutions and county auditor’s certification are to be filed with board of elections at least 75 days before election; additional deadlines may be applicable if the bond issue exceeds a certain size.
4. Attempts: no more than twice in any calendar year and, if twice, one attempt must be made at general election (Revised Code § 5748.08(H)).

5. Boards of education: city, local, and exempted village school districts are authorized to pursue this type of ballot question.
6. Notice of election: published in one or more newspapers of general circulation in the school district once a week for two consecutive weeks prior to the election and, if the board of elections operates and maintains a web site, posted to that site for 30 days prior to the election.
7. Ballot: largely specified by statute (see Revised Code § 5748.08(D)).
8. Borrowing against income tax: permitted (see Revised Code § 5748.08(F)).
9. May serve as the foundation for a voted, general obligation bond issue ultimately paid by school district income tax proceeds only. Contact your legal advisor.

**TAXES WITHIN THE TEN-MILL LIMITATION – Ohio Constitution Article XII, §2; Revised Code §§ 5705.02 & 5705.03**

1. Levied without a vote of electors.
2. Generally levy statutory share of millage – Revised Code § 5705.31(D).
3. Purpose: any proper school district purpose – current expenses, permanent improvements, debt service; levy for debt service on unvoted debt mandatory and comes first.
4. Moving inside millage from a current expense purpose to any other purpose under circumstances where the result would be an unvoted increase in property taxes (because a school district has reached the 20-mill floor) requires a public hearing (see Revised Code § 5705.314). Contact your legal advisor.

**COMBINING TAX LEVIES WITH OSFC PROJECTS – Revised Code § 3318.056**

1. OSFC ballot questions can be combined with any of the following:
  - (a) bond issue (under Revised Code § 133.18);
  - (b) tax levy (under Revised Code § 5705.21);
  - (c) combined bond issue/tax levy (under Revised Code § 5705.218);
  - (d) school district income tax (under Revised Code § 5748.08).
2. Caveat: add-ons must be for the purpose of either paying for any “permanent improvement” (as defined in Revised Code § 133.01), or “generating operating revenue specifically for the facilities acquired under the school district’s project under Chapter 3318 of the Revised Code”, or for both.

### Certificate of Estimated Property Tax Revenue

(Use this form when a taxing authority certifies a millage rate and requests the revenue produced by that rate.)

The County Auditor of \_\_\_\_\_ County, Ohio, does hereby certify the following:

1. On \_\_\_\_\_, \_\_\_\_\_, the taxing authority of the \_\_\_\_\_ (political subdivision name) certified a copy of its resolution or ordinance adopted \_\_\_\_\_, \_\_\_\_\_, requesting the county auditor to certify the current tax valuation of the subdivision and the amount of revenue that would be produced by \_\_\_\_\_ ( . ) mills, to levy a tax outside the ten-mill limitation for \_\_\_\_\_ purposes pursuant to Revised Code § \_\_\_\_\_, to be placed on the ballot at the \_\_\_\_\_, \_\_\_\_\_, election. The levy type is \_\_\_\_\_.
2. The estimated property tax revenue that will be produced by the stated millage, assuming the tax valuation of the subdivision remains constant throughout the life of the levy, is calculated to be \$ \_\_\_\_\_.
3. The total tax valuation of the subdivision used in calculating the estimated property tax revenue is \$ \_\_\_\_\_.

\_\_\_\_\_  
auditor's signature

\_\_\_\_\_  
date

### INSTRUCTIONS

1. "Total tax valuation" includes the taxable value of all real property in the subdivision as indicated on the tax list most recently certified for collection and estimates of the taxable value of personal and public utility personal property for the first year the levy will be collected as set forth on the worksheets prescribed in conjunction with this form. If the subdivision is located in more than one county, the home county auditor (where the greatest taxable value of the subdivision is located) shall obtain the assistance of the other county auditors to establish the total tax valuation of the subdivision.
2. For purposes of this certification, "subdivision" includes any agency, board, commission, or other authority authorized to request a taxing authority to submit a tax levy on its behalf.
3. "Levy type" includes the following: (1) additional, (2) renewal, (3) renewal with an increase, (4) renewal with a decrease, (5) replacement, (6) replacement with an increase, and (7) replacement with a decrease levies.
4. Please file this certificate with the subdivision as soon as possible, so the taxing authority can pass a resolution to proceed not later than 75 days before the election.

**Worksheet to Calculate Revenue for DTE Form 140R  
When a Taxing Authority Certifies a Rate and Requests the Revenue Produced by  
that Rate for Additional, Replacement, Replacement With an Increase,  
and Replacement With a Decrease Levies and for the ½-mill Classroom Facility Levy.**

Calculation of Revenue

1. Tax valuation on the tax list most recently certified for collection
- |                             |          |
|-----------------------------|----------|
| 1a. Class I Real – Res/Ag   | \$ _____ |
| 1b. Class II Real – Other   | \$ _____ |
| 1c. Public Utility Personal | \$ _____ |
| 1d. General Personal        | \$ _____ |
2. Total Valuation \$ \_\_\_\_\_
3. Millage Rate \_\_\_\_\_ . \_\_\_\_\_
4. Projected Revenue from Tax Collections \$ \_\_\_\_\_
5. Personal Property Phase-out Reimbursement Payment \$ \_\_\_\_\_
6. Total Revenue \$ \_\_\_\_\_

**INSTRUCTIONS**

Line 1a. Enter tax valuation of all class I real property (residential and agricultural property) as indicated on the tax list most recently certified for collection.

Line 1b. Enter tax valuation of all class II real property (all other real property) as indicated on the tax list most recently certified for collection.

Line 1c. Enter the estimated valuation of public utility personal property for the first tax year the levy will be assessed against public utility personal property. To determine the public utility valuation, please refer to the values in the appropriate spreadsheet available at:

[www.tax.ohio.gov/channels/government/services\\_for\\_local\\_govts.stm](http://www.tax.ohio.gov/channels/government/services_for_local_govts.stm)

Note: public utility personal property taxes are assessed at the same time as real property taxes, except, beginning in 2007, telecommunications property. The public utility values in the spreadsheets reflect the shift of telecommunications property to general business property.

Line 1d. Using the chart below, enter the estimated general personal property value for the first general personal property tax year the levy will be collected. (Note: if the first year the proposed levy will be assessed against real property is tax year 2006, then the first year that levy will be assessed against personal property will be 2007.)

Calculate the estimated general personal property value by multiplying the appropriate percentage by the value from the most recent general personal property tax list certified for collection.

TPP Year Forecasted	Using TY 2005 Data	Using TY 2006 Data	Using TY 2007 Data
2007	50%	67%	N/A
2008	25%	33%	50%
2009 and thereafter	0%	0%	0%

Line 2. Add lines 1a through 1d and place total here.

Line 3. Enter the tax rate in mills certified to the county auditor by the subdivision.

Line 4. Multiply line 2 times line 3 and divide by 1000 to get tax revenue in dollars.

Line 5. Enter the amount of the reimbursement payment (if any) the subdivision will receive for qualified replacement levies for the first general personal property tax year the proposed levy will be or would be in effect. (Note: if the first year the proposed levy will be assessed against real property is tax year 2006, then the first year that levy will be assessed against personal property will be 2007.)

For tax years 2007-2010, reimbursement amounts for qualifying levies are posted on the Department of Taxation's website. Full reimbursement payments will be made for these levies for these years even if the levy is replaced with a decrease. For tax years 2011-2017, potential reimbursement amounts will be posted as those tax years are imminent, but reimbursement payments for replacements of qualified levies for those tax years will only be made to the extent the original qualifying levy is replaced. Therefore, if a qualifying levy is replaced with a decrease, the replaced levy will only receive its proportionate share of the potential reimbursement payment, and only that proportionate share should be entered on line 5.

Line 6. Add lines 4 and 5 to get total revenue in dollars and enter the amount. Place this amount on the line provided in Item 2 on DTE Form 140R.

**Worksheet to Calculate Revenue for DTE Form 140R  
 When a Taxing Authority Certifies a Rate and Requests the Revenue  
 Produced by that Rate for Renewal Levies.**

Calculation of Revenue

	<u>Tax Value</u>		<u>Millage Rate</u>		<u>Revenue</u>
1. Class I Real – Res/Ag	\$ _____	X	_____ . _____	÷ 1000 = \$	_____
2. Class II Real – Other	\$ _____	X	_____ . _____	÷ 1000 = \$	_____
3. Public Utility Personal	\$ _____	X	_____ . _____	÷ 1000 = \$	_____
4. General Personal	\$ _____	X	_____ . _____	÷ 1000 = \$	_____
5. Personal Property Phase-out Reimbursement Payment					\$ _____
6. Total Revenue					\$ _____

**INSTRUCTIONS**

Line 1. Enter tax valuation of all class I real property (residential and agricultural property) included on the tax list most recently certified for collection. Enter the existing effective tax rate in mills for class I. Multiply the tax value times the rate and divide by 1000 to get tax revenue in dollars.

Line 2. Enter tax valuation of all class II real property (all other real property) included on the tax list most recently certified for collection. Enter the existing effective tax rate in mills for class II. Multiply the tax value times the rate and divide by 1000 to get tax revenue in dollars.

Line 3. Enter the estimated valuation of public utility personal property for the first tax year the levy will be assessed against public utility personal property. To determine the public utility valuation, please refer to the values in the appropriate spreadsheet available at:

[www.tax.ohio.gov/channels/government/services\\_for\\_local\\_govts.stm](http://www.tax.ohio.gov/channels/government/services_for_local_govts.stm)

Note: public utility personal property taxes are assessed at the same time as real property taxes, except, beginning in 2007, telecommunications property. The public utility values in the spreadsheets reflect the shift of telecommunications property to general business property.

Enter the gross tax rate requested in mills. Multiply the tax value times the rate and divide by 1000 to get tax revenue in dollars.

Line 4. Using the chart below, enter the estimated general personal property value for the first general personal property tax year the levy will be collected. (Note: if the first year the proposed levy will be assessed against real property is tax year 2006, then the first year that levy will be assessed against personal property will be 2007.)

Calculate the estimated general personal property value by multiplying the appropriate percentage by the value from the most recent general personal property tax list certified for collection.

TPP Year Forecasted	Using TY 2005 Data	Using TY 2006 Data	Using TY 2007 Data
2007	50%	67%	N/A
2008	25%	33%	50%
2009 and thereafter	0%	0%	0%

Enter the gross tax rate requested in mills. Multiply the tax value times the rate and divide by 1000 to get tax revenue in dollars.

Line 5. Enter the amount of the reimbursement payment (if any) the subdivision will receive for a qualified renewal levy for the first general personal property tax year the proposed levy will be or would be in effect. (Note: if the first year the proposed levy will be assessed against real property is tax year 2006, then the first year that levy will be assessed against personal property will be 2007.)

For personal property tax years 2007-2010, reimbursement amounts for qualifying levies are posted on the Department of Taxation's website. For tax years 2011-2017, potential reimbursement amounts will be posted as those tax years are imminent.

Line 6. Add the revenue amounts in lines 1 through 5 and enter total here. Place this amount on the line provided in Item 2 on DTE Form 140R.

### Certificate of Estimated Property Tax Millage Rate

(Use this form when a taxing authority certifies an amount of revenue and requests the millage rate required to produce that revenue. Do not use this form for bond levies. Use DTE Form 130 for all bonds.)

The County Auditor of \_\_\_\_\_ County, Ohio, does hereby certify the following:

1. On \_\_\_\_\_, \_\_\_\_\_, the taxing authority of the \_\_\_\_\_ (political subdivision name) certified a copy of its resolution or ordinance adopted \_\_\_\_\_, \_\_\_\_\_, requesting the county auditor to certify the current tax valuation of the subdivision and the number of mills necessary to produce \$ \_\_\_\_\_ of revenue, to levy a tax outside the ten-mill limitation for \_\_\_\_\_ purposes pursuant to Revised Code § \_\_\_\_\_, to be placed on the ballot at the \_\_\_\_\_, \_\_\_\_\_, election. The levy type is \_\_\_\_\_.

2. The estimated property tax millage required to produce the stated revenue, assuming the tax valuation of the subdivision remains constant throughout the life of the levy, is calculated to be \_\_\_\_\_ ( . ) mills for each one dollar of tax valuation, which is \_\_\_\_\_ cents (\$ \_\_\_\_\_) for each one hundred dollars of tax valuation.

3. The total tax valuation of the subdivision used in calculating the estimated property tax millage rate is \$ \_\_\_\_\_.

\_\_\_\_\_  
auditor's signature

\_\_\_\_\_  
date

### INSTRUCTIONS

1. "Total tax valuation" includes the taxable value of all real property in the subdivision as indicated on the tax list most recently certified for collection and estimates of the taxable value of personal and public utility personal property for the first year the levy will be collected as set forth on the worksheets prescribed in conjunction with this form. If the subdivision is located in more than one county, the home county auditor (where the greatest taxable value of the subdivision is located) shall obtain the assistance of the other county auditors to establish the total tax valuation of the subdivision.
2. For purposes of this certification, "subdivision" includes any agency, board, commission, or other authority authorized to request a taxing authority to submit a tax levy on its behalf.
3. "Levy type" includes the following: (1) additional, (2) renewal, (3) renewal with an increase, (4) renewal with a decrease, (5) replacement, (6) replacement with an increase, and (7) replacement with a decrease levies.
4. For purposes of this certification, we suggest you round the millage to the nearest tenth (0.1) of a mill. This insures that whole cents will be presented here and on the ballot.
5. Please file this certificate with the subdivision as soon as possible, so the taxing authority can pass a resolution to proceed not later than 75 days before the election.

**Worksheet to Calculate Tax Rate for DTE Form 140M  
When a Taxing Authority Certifies an Amount of Revenue and Requests  
a Rate for All School Emergency Levies**

Calculation of Millage Rate

1. Tax valuation on the tax list most recently certified for collection:
- |                             |          |
|-----------------------------|----------|
| 1a. Class I real – res/ag   | \$ _____ |
| 1b. Class II real – other   | \$ _____ |
| 1c. Public utility personal | \$ _____ |
| 1d. General personal        | \$ _____ |
2. Total valuation \$ \_\_\_\_\_
3. Revenue requested \$ \_\_\_\_\_
4. Personal property phase-out reimbursement payment \$ \_\_\_\_\_
5. Revenue to be charged as tax \$ \_\_\_\_\_
6. Millage rate \_\_\_\_\_ . \_\_\_\_\_

**Line Instructions**

Line 1a. Enter tax valuation of all class I real property (residential and agricultural property) as indicated on the tax list most recently certified for collection.

Line 1b. Enter tax valuation of all class II real property (all other real property) as indicated on the tax list most recently certified for collection.

Line 1c. Enter the average estimated valuation of public utility personal property for the years the levy will be charged. To determine the public utility valuation, please refer to the values in the school district spreadsheet available at:

[tax.ohio.gov/channels/government/services\\_for\\_local\\_govts.stm](http://tax.ohio.gov/channels/government/services_for_local_govts.stm)

**Note:** Public utility personal property taxes are assessed at the same time as real property taxes, except, beginning in 2007, telecommunications property. The public utility values in the spreadsheets reflect the shift of telecommunications property to general business property.

Line 1d. Enter the average estimated valuation of all general personal property for the years the levy will be charged (the maximum term for an emergency levy is five years). The average estimated value should be determined using the chart below to project tangible personal property values for each tax year the

proposed levy will be in effect, adding those values, and then dividing that sum by the number of years the proposed levy will be in effect. (**Note:** If the first year for which the levy will be assessed against real property is tax year 2006, then the first year the levy will apply to general personal property is 2007.)

Calculate the estimated general personal property value for each year by multiplying the appropriate percentage by the value from the most recent general personal property tax list certified for collection.

TPP Year Forecasted	Using TY 2005 Data	Using TY 2006 Data	Using TY 2007 Data
2007	50%	67%	N/A
2008	25%	33%	50%
2009 and thereafter	0%	0%	0%

**Example:** A school district proposes an emergency levy for a five-year term, to begin with the real property taxes assessed for 2006 and collected in 2007. The most recent tangible personal property values in the school district were certified for collection for tax year 2005 (collected in 2005) and were \$10 million. The average estimated value for tangible property should be determined as follows:

YEAR	RP TY	TPP TY	%	EST. TPP VALUE
1	2006	2007	50%	\$5,000,000
2	2007	2008	25%	\$2,500,000
3	2008	2009	0%	\$ 0
4	2009	2010	0%	\$ 0
5	2010	2011	0%	\$ 0
Total				\$7,500,000
Average (\$7,500,000 / 5)				\$1,500,000

Line 2. Add lines 1a through 1d and place total here.

Line 3. Enter the requested revenue certified to the county auditor by the subdivision.

Line 4. Enter the amount of the reimbursement payment (if any) the subdivision will receive for renewal of a qualified emergency levy for the first general personal property tax year the proposed levy will be or would be in effect. (**Note:** If the first year the proposed levy will be assessed against real property is tax year 2006, then the first year that levy will be assessed against personal property will be 2007.)

Renewed emergency levies will qualify for reimbursement payments for any such levy renewed for personal property tax years 2007-2010. For personal property tax years 2011-2017, renewed emergency levies will continue to receive a reimbursement payment if the original levy qualified for reimbursement (i.e., it is listed on the Department of Taxation's Web site), and the renewal levy generates at least the same amount of annual revenue as the original qualifying emergency levy.

Line 5. Subtract the amount on line 4 from the amount on line 3 and enter the difference here. This is the amount that will be collected as taxes.

Line 6. Divide line 5 by line 2 and multiply by 1,000 to get the tax rate in mills. Place this rate on the line provided in Item 2 on DTE form 140M.

## **General Instruction**

Use this worksheet for all school emergency levies, whether for a renewal of the same amount as originally authorized or for a renewal with an amount that is lesser or greater than that original amount.

**Note:** You may also have to inform the subdivision of the correct levy type to be used on the ballot.

**Certificate of Estimated Average Annual Property Tax Levy  
for Bonds of Subdivisions of the State**

The county auditor of \_\_\_\_\_ County, Ohio, does hereby certify the following:

1. On \_\_\_\_\_, \_\_\_\_\_, the taxing authority of the \_\_\_\_\_ (political subdivision name) certified a copy of its resolution adopted \_\_\_\_\_, \_\_\_\_\_, declaring the necessity of issuing bonds in the aggregate principal amount of \$\_\_\_\_\_, and levying a tax outside the 10-mill limitation for the purposes set forth in that resolution to be placed on the ballot at the \_\_\_\_\_, \_\_\_\_\_, election.
2. The estimated average annual property tax levy required throughout the stated maximum maturity of the bonds to pay the interest on the bonds and retire the principal over \_\_\_\_\_ years is calculated to be \_\_\_\_\_ ( . ) mills for each one dollar of tax valuation, which is \_\_\_\_\_ cents (\$\_\_\_\_\_) for each \$100 of tax valuation.
3. The total tax valuation of the subdivision used in calculating the average annual property tax levy is \$\_\_\_\_\_.

\_\_\_\_\_  
Auditor's signature

\_\_\_\_\_  
Date

**Instructions**

1. "Total tax valuation" should include the taxable value of all real property and certain public utility personal property in the subdivision. Because of the rapid phase-out of the tangible personal property tax, including certain public utility personal property, and the long term of a bond issue, the taxable value of such property should not be included in "total tax valuation." See Bulletin 8 for a more detailed explanation of the exclusions from tax valuation and how to obtain them. If the subdivision is located in more than one county, the home county auditor (where the greatest taxable value of the subdivision is located) shall obtain the assistance of the other county auditors to establish the total tax valuation of the subdivision.
2. For purposes of this certification, "subdivision" includes any agency, board, commission or other authority authorized to request a taxing authority to submit a tax levy on its behalf.
3. In calculating the estimated average annual property tax levy, the auditor shall assume that the bonds are issued in one series bearing interest and maturing in equal principal amounts in each year over the maximum maturity of the bonds, and that the subdivision's tax valuation for the **current year** remains the same throughout that period. If the tax valuation for the current year (the year in which you are making this certification) is not yet determined, the auditor shall estimate that valuation. In other words, the total tax valuation used for this purpose may differ from the tax valuations on the tax lists that were most recently certified for collection.
4. For purposes of this certification, we suggest you round the millage to the nearest tenth (0.1) of a mill. This ensures that whole cents will be presented here and on the ballot.
5. Please file this certificate with the subdivision as soon as possible, so the taxing authority can pass a resolution to proceed not later than 105 days before the election.

# REPORT TO OHIO SCHOOL DISTRICTS

## 2008 ELECTION DEADLINES

Set forth below are the deadlines for the submission of most ballot issues, including property tax levies, bond issues and school district income taxes, for the three election dates in 2008: March 4, August 5 and November 4. For most school district election proceedings, except those for school district income taxes, emergency tax levies and certain bond issues discussed below, the only specific deadline is the requirement that all the proper materials be completed and filed with the Board of Elections at least 75 days before the date of the election.

In the case of emergency tax levies, the first resolution must be adopted and submitted to the County Auditor no later than the 80<sup>th</sup> day prior to the election; the remaining proceedings must then be taken and the filings made with the Board of Elections no later than the 75<sup>th</sup> day prior to the election. The 80<sup>th</sup> day is always a Saturday, so the filing should be made no later than Friday, the 81<sup>st</sup> day.

In the case of school district income taxes, the first resolution must be adopted and filed with the State Tax Commissioner no later than the 85<sup>th</sup> day prior to the election. The remaining proceedings must be taken and the filings made with the Board of Elections no later than the 75<sup>th</sup> day prior to the election.

In the case of school districts intending to submit a bond issue to the ballot requiring the consents of the State Superintendent of Public Instruction and the State Tax Commissioner because, after the issuance of those bonds, the school district's net indebtedness would exceed 4% of its tax valuation, the following must be filed with the Department of Education and Department of Taxation no later than the 105<sup>th</sup> day prior to the election: (i) a letter requesting the 4% consents, (ii) a statement of net bonded indebtedness on DTE Form 131 (if the school board has not yet adopted its resolution of necessity for the bond issue as of that date, a draft DTE Form 131 may be submitted) and (iii) a "general certificate" setting forth certain specific information about the school district. The balance of the items necessary to apply for 4% consents must be filed with the Department of Education and Department of Taxation no later than the 80<sup>th</sup> day before the election. The resolution of necessity, county auditor millage certifications and resolution to proceed must be filed with the Board of Elections no later than the 75<sup>th</sup> day prior to the election.

The purpose of this Report is to provide general information. Please call us prior to undertaking any election proceedings so that we can assist in making certain that all of the proper steps are taken and deadlines are met.

**PRIMARY ELECTION – MARCH 4, 2008**

105<sup>th</sup> day prior to election is November 20, 2007 (Tues.)  
85<sup>th</sup> day prior to election is December 10, 2007 (Mon.)  
80<sup>th</sup> day prior to election is December 15, 2007 (Sat.)  
75<sup>th</sup> day prior to election is December 20, 2007 (Thurs.)

Last day to commence publication of election notice to have four full weeks is February 5, 2008; two full weeks is February 19, 2008; 10 days is February 23, 2008.

**SPECIAL ELECTION – AUGUST 5, 2008**

105<sup>th</sup> day prior to election is April 22, 2008 (Tues.)  
85<sup>th</sup> day prior to election is May 12, 2008 (Mon.)  
80<sup>th</sup> day prior to election is May 17, 2008 (Sat.)  
75<sup>th</sup> day prior to election is May 22, 2008 (Thurs.)

Last day to commence publication of election notice to have four full weeks is July 8, 2008; two full weeks is July 22, 2008; 10 days is July 26, 2008.

**GENERAL ELECTION – NOVEMBER 4, 2008**

105<sup>th</sup> day prior to election is July 22, 2008 (Tues.)  
85<sup>th</sup> day prior to election is August 11, 2008 (Mon.)  
80<sup>th</sup> day prior to election is August 16, 2008 (Sat.)  
75<sup>th</sup> day prior to election is August 21, 2008 (Thurs.)

Last day to commence publication of election notice to have four full weeks is October 7, 2008; two full weeks is October 21, 2008; 10 days is October 25, 2008.

**SQUIRE, SANDERS & DEMPSEY L.L.P.**

This material is not intended to, and does not, provide legal advice as to particular issues or matters, each of which should be addressed in the specific factual setting in which it arises, and reference to it is not a substitute for consultation with an attorney.

# REPORT TO OHIO SCHOOL DISTRICTS

## 2009 ELECTION DEADLINES

Set forth below are the deadlines for the submission of most ballot issues, including property tax levies, bond issues and school district income taxes, for the four election dates in 2009: February 3, May 5, August 4 and November 3. For most school district election proceedings, except those for school district income taxes, emergency tax levies and certain bond issues discussed below, the only specific deadline is the requirement that all the proper materials be completed and filed with the Board of Elections at least 75 days before the date of the election.

In the case of emergency tax levies, the first resolution must be adopted and submitted to the County Auditor no later than the 80<sup>th</sup> day prior to the election; the remaining proceedings must then be taken and the filings made with the Board of Elections no later than the 75<sup>th</sup> day prior to the election. The 80<sup>th</sup> day is always a Saturday, and thus the filing should be made no later than Friday, the 81<sup>st</sup> day.

In the case of school district income taxes, the first resolution must be adopted and filed with the State Tax Commissioner no later than the 85<sup>th</sup> day prior to the election. The remaining proceedings must be taken and the filings made with the Board of Elections no later than the 75<sup>th</sup> day prior to the election.

In the case of school districts intending to submit a bond issue to the ballot requiring the consents of the State Superintendent of Public Instruction and the State Tax Commissioner because, after the issuance of those bonds, the school district's net indebtedness would exceed 4% of its tax valuation, the following must be filed with the Department of Education and Department of Taxation no later than the 105<sup>th</sup> day prior to the election: (i) a letter requesting the 4% consents, (ii) a statement of net bonded indebtedness on DTE Form 131 (if the school board has not yet adopted its resolution of necessity for the bond issue as of that date, a draft DTE Form 131 may be submitted) and (iii) a "general certificate" setting forth certain specific information about the school district. The balance of the items necessary to apply for 4% consents must be filed with the Department of Education and Department of Taxation no later than the 80<sup>th</sup> day before the election. The resolution of necessity, County Auditor millage certifications and resolution to proceed must be filed with the Board of Elections no later than the 75<sup>th</sup> day prior to the election.

The purpose of this Report is to provide general information. Please call us prior to undertaking any election proceedings so that we can assist in making certain that all of the proper steps are taken and deadlines are met.

**SPECIAL ELECTION – FEBRUARY 3, 2009**

105<sup>th</sup> day prior to election is October 21, 2008 (Tues.)  
85<sup>th</sup> day prior to election is November 10, 2008 (Mon.)  
80<sup>th</sup> day prior to election is November 15, 2008 (Sat.)  
75<sup>th</sup> day prior to election is November 20, 2008 (Thurs.)

Last day to commence publication of election notice to have four full weeks is January 6, 2009; two full weeks is January 20, 2009; 10 days is January 24, 2009.

**PRIMARY ELECTION – MAY 5, 2009**

105<sup>th</sup> day prior to election is January 20, 2009 (Tues.)  
85<sup>th</sup> day prior to election is February 9, 2009 (Mon.)  
80<sup>th</sup> day prior to election is February 14, 2009 (Sat.)  
75<sup>th</sup> day prior to election is February 19, 2009 (Thurs.)

Last day to commence publication of election notice to have four full weeks is April 7, 2009; two full weeks is April 21, 2009; 10 days is April 25, 2009.

**SPECIAL ELECTION – AUGUST 4, 2009**

105<sup>th</sup> day prior to election is April 21, 2009 (Tues.)  
85<sup>th</sup> day prior to election is May 11, 2009 (Mon.)  
80<sup>th</sup> day prior to election is May 16, 2009 (Sat.)  
75<sup>th</sup> day prior to election is May 21, 2009 (Thurs.)

Last day to commence publication of election notice to have four full weeks is July 7, 2009; two full weeks is July 21, 2009; 10 days is July 25, 2009.

**GENERAL ELECTION – NOVEMBER 3, 2009**

105<sup>th</sup> day prior to election is July 21, 2009 (Tues.)  
85<sup>th</sup> day prior to election is August 10, 2009 (Mon.)  
80<sup>th</sup> day prior to election is August 15, 2009 (Sat.)  
75<sup>th</sup> day prior to election is August 20, 2009 (Thurs.)

Last day to commence publication of election notice to have four full weeks is October 6, 2009; two full weeks is October 20, 2009; 10 days is October 24, 2009.

# **CAPITAL FUNDING**

## **AN OVERVIEW**

**OSBA  
2008 BOARD LEADERSHIP INSTITUTE  
COLUMBUS, OHIO  
MAY 2, 2008**

Squire Sanders & Dempsey L.L.P.

## **I. DEBT LIMITS**

### **A. Direct Debt Limits**

1. “Exempt” debt examples:
  - a. Current tax revenue notes
  - b. Tax anticipation notes
  - c. School bus notes and bonds
2. Unvoted
  - a. One-Tenth of One Percent (1/10%) of assessed value for general capital purposes
  - b. Nine-Tenths of One Percent (9/10%) for energy conservation purposes (Revised Code § 133.06)
3. Voted 9% Limit
  - a. OSFC Program Exceptions for School District Portion of Basic Project Cost (and Required LFIs and Site Acquisition) under Revised Code Chapter 3318
  - b. Special Needs Exception

**B. Ten-Mill “Indirect” Debt Limit**

1. Based on the following provisions of the Ohio Constitution:

a. *Article XII, Section 11*

“No bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation in amounts sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.”

b. *Article XII, Section 2*

“No property, taxed according to value, shall be so taxed in excess of 1% of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation either when approved by at least a majority of the electors of the taxing district voting on that proposition, or when provided for by the charter of a municipal corporation.”

c. *Article XII, Section 5*

“No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.”

2. Supplemental Financial Statement Evidencing Compliance with Ten-Mill Limit (see following page)



**II. GENERAL OBLIGATION BONDS AND NOTES**

**A. VOTED BONDS**

1. May be submitted at any election.
  - a. Three election dates in presidential primary year; four election dates in other years.
  - b. Bond issue may be combined with a tax levy (see, e.g., Revised Code §§ 5705.218, 5748.08).
2. Maximum maturity cannot exceed estimated or statutory life of items being acquired or constructed.
  - a. Basic concept: Don't pay for something over a longer period of time than its useful life.
  - b. Sample weighted average useful life calculation for \$5 million bond issue:

Expenditure Category	Amount	R.C. 133.20 Useful Life	=	Total
Land	\$ 500,000	30 years		\$ 15,000,000
Building	3,750,000	30 years		112,500,000
Furnishings/Equipment	500,000	10 years		5,000,000
Site Improvements/ Landscaping	250,000	10 years		2,500,000
		Total		\$135,000,000

$\$135,000,000 \div \$5,000,000 = 27$  year weighted average useful life  
and maximum bond maturity

3. Proceeds must be used for stated purpose and for items having a usefulness of five years or more.
4. Non-exempt principal amount of all permanent improvement debt outstanding cannot exceed direct debt limits.
5. Voter approval means:
  - a. Bonds may be issued (money may be borrowed) up to amount approved; and

- b. Taxes may be levied at whatever rate is necessary to pay debt service (principal and interest) on the bonds and any notes issued in anticipation of the bonds.
- 6. Advantage is that a new source of revenue is available to retire debt (including interest) – no effect on other funds.
- 7. Requires two Board resolutions (majority vote on each), intervening certification by County Auditor and delivery to Board of Elections at least 75 days prior to election.
- 8. Notice of election must be published at least ten days prior to date of election (under Revised Code §133.18).
- 9. If amount proposed would make total non-exempt debt of District exceed 4% of total assessed valuation, then (generally) consents of the State Superintendent of Public Instruction and State Tax Commissioner must be obtained prior to election.
  - a. Exception for certain CFAP-related bond issues (Revised Code §133.06(I)).
  - b. Deadlines for submittal = 105 and 80 days before election.
- 10. If amount proposed would make total (non-exempt) debt of District exceed the 9% direct debt limitation, then (generally) special needs status approval must also be obtained.
  - a. Exception for certain CFAP-related bond issues (Revised Code §133.06(I)).
  - b. Deadlines for submittal (to State Superintendent of Public Instruction) = 105 and 80 days before election.

## **BOND ISSUE ELECTION DECISIONS AND PROCEDURES**

In connection with the submission of a bond issue to the electors, there are a number of decisions that a board of education will need to make within certain prescribed time periods.

When a bond issue is submitted, the electors are asked to authorize: (1) that the District may borrow up to the principal amount proposed on the ballot; and (2) that the Board may levy an additional tax at whatever rate is necessary to pay the principal of and interest on that borrowing.

The relevant election procedures and requirements, which are set forth in the Ohio Revised Code, generally authorize the Board of Education to submit the question of a bond issue in any amount which does not exceed the Board's borrowing "leeway", which is generally 9% of the School District's assessed valuation less the amount of any outstanding debt.

The first formal step in the required bond issue election procedure is the adoption of a resolution (commonly referred to as the "*resolution of necessity*") which declares that it is necessary to submit the bond issue and fixes five important pieces of information with regard to that issue. Those five pieces of information are:

- The election at which the bond issue is to be submitted
- The principal amount of the bond issue
- The number of years over which the bonds will be retired
- The estimated interest rate which the bonds will bear
- The "purpose" for which the bonds will be issued

Upon adoption of this resolution by the affirmative vote of at least three members of the Board of Education, a copy must be filed with the County Auditor's office.

Using certain information contained in that resolution (bullet nos. 2, 3 and 4 above), the County Auditor will calculate the "average annual millage" estimated to be required to retire the bond issue. This millage rate is an estimate of the average tax rate which would be levied to retire the principal of and interest on the proposed bonds and is based upon certain legally required assumptions which probably will not be correct when the bonds are issued. The calculation assumes, among other things, that the debt will be retired in equal annual principal installments.

The estimate of average annual millage that appears on the ballot is a function of the principal amount of the bond issue, the number of years over which the bonds will be retired, the estimated interest rate on the bonds and the School District's assessed valuation (as calculated for this particular purpose under Revised Code Section 133.18(C)). As indicated above, the principal amount of the bond issue, the number of years over which the bonds will be retired, and the estimated interest rate are all within the control of and set by the School District in the resolution of necessity.

The estimated interest rate can be set as low as possible in light of current and foreseeable interest rate conditions in the bond market, and the useful life of the bond issue can be set as long as possible based on information obtained from the project architect. While there is some risk in being overly aggressive in this area (if one is too aggressive one may have difficulty keeping one's actual annual bond issue millage at or under the estimate that appears on the ballot), that risk is moderated if one has experienced consistent assessed valuation growth and expects that growth to continue.

The actual tax which will be levied in any year the bonds are outstanding will be that rate which is required to raise the number of dollars which a board of education is committed to pay during that year. It may be higher or lower than the average millage, which appears on the ballot. The actual retirement schedule for the bonds can also be adjusted to try to minimize significant swings in the tax rate.

Following receipt of the County Auditor's calculations, the Board must then consider and adopt a second resolution (called the "*resolution to proceed*") and file it, together with the resolution of necessity and the County Auditor's calculations, with the County Board of Elections on or before the 75th day prior to the election. Because two resolutions must be adopted and an intervening certification received from the County Auditor prior to filing with the Board of Elections, sufficient lead time must be scheduled to complete all of these actions within the time prescribed by law. If statutory consents are required (as discussed above in this outline), even more lead time is needed to meet those deadlines.

To assist the Board in determining the information to be included in the resolution of necessity, the following is a formula providing an estimate of the millage rate, which the County Auditor will calculate. Some County Auditors use a slightly different formula than this one so it is possible the result may differ slightly from that which will be obtained from using this formula, but this formula should provide a reasonable estimate.

The formula is as follows:

$$M = \frac{[(N+1)(P)(I) + (2)(P)] \times 1000}{(2)(N)(A)}$$

**Where:**

- M = Average annual millage;**
- P = Principal amount of bond issue;**
- I = Estimated interest rate (expressed as a decimal, i.e. 4 3/4% = .0475);**
- N = Number of years over which the bonds will be retired; and**
- A = Assessed valuation of the District (which should be obtained from the County Auditor for this particular purpose).**

In considering the "purpose" for which the bonds will be submitted, care should be taken to make certain that two criteria are satisfied. First, the purpose clause cannot be misleading, although it may be possible to "fit" the purpose to particular circumstances by either specifically naming or describing the project which is to be constructed or by phrasing that project description in general terms. The Board may be the best judge of exactly how the purpose clause should be worded to obtain a maximum number of votes. Second, the purpose clause must include all of the items for

which the Board intends to spend the proceeds of the bonds, since expenditure of the bond proceeds will be limited to those items and areas described.

**B. OSFC BOND ISSUES – Chapter 3318**

1. Classroom Facilities Assistance Program (CFAP – Revised Code §§3318.01-.20)
  - a. Equity list (adjusted per pupil valuation)
  - b. ½-mill maintenance levy, or permitted equivalent, required
  - c. “LFIs” – can be required or not required
  - d. Immediate co-funding
  - e. Fund 010/Fund 034
  - f. Investment income ( Revised Code § 3318.12)
    - i. Recent amendments to Revised Code § 3318.12 provide a variety of options for deposit of investment earnings on the portion of the project fund attributable to the district’s local share – contact your legal advisor.
  - g. Unvoted general obligation securities options (Revised Code § 3318.052(E)).
2. Expedited Local Partnership Program (ELPP – Revised Code § 3318.36)
  - a. At least two fiscal years away from CFAP
  - b. District-wide master facilities plan developed; discrete portion pursued; qualifying expenditures deducted from local share
  - c. ½-mill maintenance levy may be delayed
  - d. Delayed co-funding
3. Exceptional Needs Program (ENP – Revised Code § 3318.37)
  - a. To protect health and safety of students
  - b. Generally at least fiscal three years away from CFAP
  - c. Equity list ranking at or lower than 75th percentile (low wealth) or with a territory greater than 300 square miles (large land area)

- d. Single-building orientation (as opposed to district-wide)
- e. Immediate co-funding
- f. Later participation in CFAP

**C. UNVOTED BONDS – Revised Code § 133.06**

- 1. Principal amount outstanding at any one time cannot exceed direct debt limits.
- 2. No new tax authorized - must be retired from existing resources.
- 3. Requires at least one Board resolution (majority vote).

**D. BOND ANTICIPATION NOTES – Revised Code § 133.22**

- 1. Maximum maturity - 20 years from date of original issuance (if permanent improvements to be constructed or acquired will last at least 15 years).
- 2. If notes are outstanding longer than five years from date of original issue, then must subtract each year over five years from maximum maturity of bonds and must pay down principal:
  - a. No later than if bonds had been issued at end of five years; and
  - b. No less in amount than if bonds had been issued at end of five years.
- 3. If anticipating voted bonds, then Board can use voter-approved tax levy to support and retire.
- 4. If anticipating unvoted bonds, then must use existing sources to retire.
- 5. Often less expensive than vendor financing.
- 6. Requires at least one Board resolution (majority vote).

**E. ENERGY CONSERVATION (“HB 264”) BORROWING – Revised Code §§ 133.06(G) and 3313.372**

1. Board must contract with an “architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures”.
2. That person reports to the Board recommending those measures which the person believes will significantly reduce energy consumption in buildings owned by the Board, with estimates of the costs of the proposed project and energy savings.
3. If the Board determines savings are likely to exceed the cost of pursuing energy conservation measures over next *fifteen* years, the Board can submit its findings to OSFC for approval.
4. If OSFC gives approval the Board can issue unvoted general obligation debt not to exceed 9/10 of 1% of total assessed valuation (see “Unvoted Bonds” above) or obligations subject to the 1% debt limit.
5. Board must annually monitor energy savings.

**F. PERMANENT IMPROVEMENT TAX ANTICIPATION NOTES – Revised Code §§ 133.24 & 5705.21, § 5705.216**

1. Anticipates a voted tax.
2. Maturity: generally up to number of years tax to be levied or five whichever is less, except can be for up to 10 years for “general permanent improvements”; level principal or level debt service; can be across fiscal year-end.
3. Maximum Amount:
  - Special Permanent Improvement – ½ estimated collections over 5 years
  - General Permanent Improvements – ½ estimated collections over 10 years
  - Income Tax – ½ first year’s estimated collection
4. Debt service paid from portion of the anticipated levy annually diverted to the Bond Retirement Fund.
5. Prerequisites to borrowing: voter-approved tax levy and proceedings relating thereto, together with at least one additional Board resolution (majority vote required).

### **III. LEASE-PURCHASE FINANCING OF EQUIPMENT AND SCHOOL BUILDINGS (Revised Code §§ 3313.37, .371 & .375)**

#### **A. Subject-to-Appropriation Financing**

1. Essentiality
2. Less secure
3. Higher cost

#### **B. No New Tax Levy as Source of Payment**

#### **C. Eligible Improvements**

1. Office Equipment & Hardware and Software for Instructional Purposes
  - a. Five-year limit
2. Land
  - a. Five-year limit
3. Lease-Purchase Financing of School Buildings and Building Improvements

Lease-purchasing is a financing tool that has been available to public sector borrowers for many years. Properly structured, lease-purchase agreements permit governmental bodies to pay for capital improvements over time, at tax-exempt interest rates, without being subject to statutory and constitutional debt restrictions. Ohio school districts are accustomed to using lease-purchasing as a means for financing computer systems, office and maintenance equipment and motor vehicles. In recent years, following the General Assembly's enactment of a series of legislative amendments, Ohio school districts and educational service centers have used lease-purchasing to finance building improvements. As used in this section of the outline, the term "school" includes Ohio school districts and educational service centers, and the term "board" includes boards of education of school districts and governing boards of educational service centers.

A lease-purchase arrangement is in substance an installment sale agreement. The school makes installment payments that have a principal and interest component, and, at the end of the lease term, title to the leased property transfers to the school. In order to satisfy certain statutory requirements and avoid characterization as a debt, a lease-purchase for school buildings or building improvements must be structured as a series of one-year obligations, renewable for up to 30 years. The annual renewal

must be conditioned upon the appropriation of funds by the board for that fiscal year's lease payments.

The primary advantage to an Ohio school district of lease-purchasing over a traditional note or bond issue is that lease financing does not require voter approval and is not subject to the very restrictive 1/10<sup>th</sup> of 1% limit on unvoted school district general obligation debt. The other side of this coin, however, is that the school district may not levy additional taxes to cover the rent installments. Thus, the first consideration in lease-purchasing is to identify a predictable and secure source of funds that will not be needed for other purposes during the lease term. This task is particularly difficult in light of the uncertainties regarding school funding in Ohio. However, some school districts do have resources and opportunities for generating revenue for this purpose.

Another advantage is that lease-purchase financing can usually be completed in a shorter time frame than voted general obligation financing. This is an important consideration for school districts hoping to take advantage of current interest rates. However, school districts should be aware that lease-purchasing may result in somewhat higher interest and transactional costs than bond financing. The interest rate is likely to be somewhat higher because of the greater credit risk involved in a lease-purchase. Unlike general obligation bonds, payment of a lease-purchase is subject to the school district's right not to appropriate funds and not to renew the agreement. Transactional costs may be higher because the structure of a lease-purchase arrangement is typically more complex and involves more parties than a general obligation bond issue. The extent to which interest rate and transactional costs exceed those for bonds may vary depending on factors such as (1) the essentiality of the facility to the school district's operations, (2) community support for the project and (3) the school district's financial condition. A financial advisor or investment banker can assist the board in analyzing the cost differential for a particular project.

Lease-purchase financing is an essential financing tool for educational service centers, which are not authorized to incur general obligation debt.

Lease-purchase arrangements are marketable securities that may be directly purchased by financial institutions, privately placed with a limited number of investors, or sold in a public offering. Short-term leases are sometimes purchased by one institution, often with provision for an interest rate adjustment after three to five years. However, for larger financings, and where the principal component is to be amortized over more than ten years, the lease may be marketed in the form of "certificates of participation" (or "COPs") to multiple investors. The "lessor" (often a shell corporation established solely for this purpose) assigns its right to the rent to a corporate trustee and directs the trustee to issue the participation certificates. The school district pays rent to the trustee, and the trustee distributes the rent to the certificate holders. The sale of the certificates provides the funds for construction of the building.

Revised Code Section 3313.375 authorizes schools to enter into lease-purchase agreements "for the construction, enlarging or other improvement, furnishing and equipping, lease, and eventual acquisition of

a building or improvements to a building for any school district, educational service center or community school purpose.”

In spite of its limitations, costs and complexities, lease-purchasing has been done successfully by many Ohio school districts. The leased facilities have included new school buildings, community centers and administration buildings for educational service centers, major renovations or additions to existing buildings, telecommunications systems, media centers, athletic facilities and bus garages. Each of these transactions has involved unique circumstances relating to the facilities or revenue sources of the schools, and for those schools lease-purchasing has provided a flexible, efficient means for financing building construction over a period of years without asking the voters to raise taxes.

**V. FEDERAL TAX MATTERS**

**A. Tax Exemption Matters**

1. Exclusion of Interest from Gross Income for Federal Income Tax
2. Qualified Tax-Exempt Obligations (QTEOs)
  - a. Attractiveness to Financial Institutions
    - i. Deductibility of Interest Carrying Cost (in addition to exclusion of interest from gross income)
  - b. \$10,000,000 per year and per issue limitation
    - i. Compare rebate exception below
3. State Tax Exemption
4. Municipal and School District Tax Exemptions

**B. Arbitrage and Rebate Matters**

1. Arbitrage is basically investing the proceeds of tax-exempt securities at a taxable yield in excess of the yield on those securities
  - a. School districts are not taxpayers
  - b. Requirement is to “rebate” positive arbitrage to federal treasury, subject to exceptions below
  - c. Negative arbitrage environment
2. Reasonable Expectations Test at Time of Issuance
  - a. Within 6 months of the issuance date, the school district will incur substantial binding obligations to third parties to expend at least 5% of the net sale proceeds on the project costs;
  - b. At least 85% of the net sale proceeds will be allocated to expenditures on the project by the end of three years; and
  - c. Completion of the project and allocation of the Net Sale Proceeds to expenditures on the project will proceed with due diligence to completion.

3. Exceptions to Requirement to Pay Rebate

- a. Aggregate \$15,000,000 “Small Issuer Exception” for capital expenditures for the construction of public school facilities
- b. 24-Month Spend-Down Exception:

<u>From Issuance Date to the Close of the Following</u>	<u>Cumulative Available Construction Proceeds Required to be Spent</u>
6 months	10%
12 months	45%
18 months	75%
24 months	100%

**C. Refundings under Federal Tax Law**

- 1. Current refundings
  - a. Pay off “refunded securities” within 90 days of issuance of “refunding securities”
    - i. Examples: BANs to BANs, BANs to Bonds and Bonds subject to current redemption.
  - b. Unlimited as to number.
- 2. Advance refundings
  - a. Refunding securities issued more than 90 days in advance of payment of refunded securities.
    - i. Favorable market conditions but outstanding bonds not subject to redemption.
    - ii. Customary escrow arrangements.
  - b. Limit of one tax-exempt advance refunding