OPTING OUT OF THE TAX LIMITATION

Opting out - Requires a two-thirds vote of the governing body on or before July 15th. Decision to opt out must be published within ten days of decision. That decision may be referred upon a petition signed by at least five percent of the registered voters in the taxing district and filed with the governing body within twenty days of the publication. Election to be held on or before October 1st. (SDCL 10-12-43)

IMPORTANT - - SB 182 has passed the 2002 legislature and has been signed by the Governor. This becomes law July 1, 2002. What this law does is - any opt out passed July 1, 2002 or after must specify in the resolution the year or number of years the excess tax levy will be applied. It also has certain requirements concerning the publication of the opt out resolution.

If an opt out resolution was passed prior to July 1, 2002 the taxing district does not have to opt out again unless they need to exceed that limitation.

<u>In the first year of the opt out, the amount for which the board opted out is the amount above the tax limitation that the auditor will levy on the tax rolls.</u>

In subsequent years, the taxing entity has up to that opt out amount to use. If the entity decides to use less of the opt out amount or none at all, in years following, that opt out amount is still accessible by the taxing entity.

Example: City A opts out for $100,000. That year the county auditor will levy $100,000 above the tax limitation for that city. The next year, the city only needs $30,000 above the limitation. They will request that amount as the opt out amount. County auditor will check to make sure it is within the opt out amount. The following year, the city needs $55,000 above the tax limitation. The city DOES NOT need to opt out again. As long as they do not exceed $100,000 above the tax limitation, they do not need to opt out and the county auditor shall levy any such amount requested. If they need more than the $100,000, it will take an opt out resolution.

If a municipality, opts out of the tax limitation, they need to send to the County Auditor a copy of the “opt out” resolution along with copies of the minutes of the meeting at which the opt out took place. IF the opt out is referred to a vote, the finance officer of the taxing district must certify the outcome of the election to the County Auditor. Copy of opt out resolution is shown as Illustration 7.

<u>The calculation of growth, CPI and the opt out amount is as follows</u>:

The CPI for taxes payable in 2003 is 2.8%

Example: Township receives $500 in tax.

The following year they can receive the $500 + growth + CPI. ($500 + 1.6% growth + 2.8% CPI = $522)

Township now needs to gravel some roads and needs a total of $1,000 for the coming year. Therefore, township opts out of the limitation in the amount of $478 (1,000 - 522)

The following year the township’s limit is figured as:

$522 + growth + CPI = new base plus $478 (opt out amount) OR

$522 + 0% + 2.8% = $537 + $477 = $1,014 (amount may receive from taxes)

SECTION VI--BUDGET AND APPROPRIATIONS

Opting out of the tax limitation measure - To opt out, means the taxing entity needs more monies from property taxes than they are allowed by the limitation. The limitation allows for taxes payable in 1997 and each year thereafter to increase over taxes payable in the preceding year by the CPI and growth. The CPI to be used for taxes payable in 2003 is 2.8%. Total increase allowed would be 2.8% plus percent increase due to growth. (EX: Growth in 2003 = 3.5% of the 2002 valuations. 2.8% (CPI) + 3.5% (Growth) = 6.3% which tax request may increase). Remember - final growth numbers are not available from County Auditor until AFTER Department of Revenue certifies values to them - this is at the end of August.

NOTE: Regardless of the percent increase allowed or opt out amount, taxing entities, CANNOT exceed statute levy limitations.