

The language of Tax Code 26.08(a).

(a) If the governing body of a school district adopts a tax rate that exceeds the district's rollback tax rate, the registered voters of the district at an election held for that purpose must determine whether to approve the adopted tax rate. **When increased expenditure of money by a school district is necessary to respond to a disaster**, including a tornado, hurricane, flood, or other calamity, but not including a drought, that has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, an election is not required under this section to approve the tax rate adopted by the governing body **for the year following the year in which the disaster occurs**. (emphasis supplied)

Three Issues:

Is the district limited to recovering the amount of increased expenditure caused by the disaster?

Moak Casey opinion: Although an increased expenditure is required, the law does not establish a direct link between the increased expenditure and the increased revenue generated by the increase in tax rate. However, it is possible that others will find that such a linkage is implied by the wording of the statute.

Elizabeth Neally/Judy Brown of Walsh Anderson opinion: Any legal challenge regarding the meaning of the language of Tax Code Section 26.08 (a) will involve a determination of legislative intent. The limitation applied to the "increased expenditure of money by a school district" is the amount "necessary to respond to a disaster that has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located". The implied intent is to limit the additional revenue to an amount which will cover the unexpected expenditure for costs resulting from the disaster. It is likely that any attempt to tax at a rate which would produce more M&O revenue than is necessary to recover the "increased expenditure of money" by the school district for such a disaster could be challenged as exceeding the school district's authority set out in the statute. There is no language in the rest of Section 26.08, which would lead to a different conclusion. Likewise there is no express authority stated in the statute to tax at a rate which would produce excess revenue beyond what is needed to cover the "increased expenditure of money" resulting from the disaster without holding a TRE and obtaining voter approval. **Until this issue has been sufficiently resolved by legal challenge or interpretation by the Attorney General**, we would not recommend using the disaster exception to tax at a rate engineered to produce more revenue than is needed to cover the unexpected expenditures caused by the disaster.

Is the increase in tax rate for the current tax year (coming school year) or the following tax year (future school year)?

Moak Casey opinion: A reading of this section alone permits an interpretation which permits the tax rate increase to apply to the coming school year because the word "year" is not specifically defined. However, the word "year" in the Tax Code (Chapter 26 and other chapters) consistently means tax year which is defined as the calendar year. Under this interpretation, the tax rate increase would be postponed until next year. The latter opinion is also supported by an historical review of the statute. In the opinion of Moak, Casey & Associates, the correct technical view is that the wording of the statute is meant to apply to the subsequent year, not the current year.

Elizabeth Neally/Judy Brown of Walsh Anderson opinion: The use of the word "year" in Tax Code Section 26.08(a) will be governed by the statutory context. Chapter 26 deals exclusively with appraisal and assessment of ad valorem property taxes. There are multiple references to "current year", "previous year" or "tax year". All of these terms are understood to apply to a calendar year. Accordingly, that usual meaning of the word "year" would likely be determined to be the intended meaning in the statement "for the year following the year in which the disaster occurs." Consequently, the tax increase assessed by a school district as a result of a qualifying disaster would be adopted in the calendar year after the calendar year in which the disaster occurred. If the disaster occurred in 2009, the increase to cover the expenditures from that disaster could be assessed in 2010.

Who can challenge district interpretations of this statute?

Moak Casey opinion: No state agency is directly charged with administering or interpreting this statute. Legal challenges would come in the form of a taxpayer challenge in district court. A request for an Attorney General opinion would be a possibility as well as question from legislative committee. Overall, there is a very low risk that the district will be successfully challenged.

Elizabeth Neally/Judy Brown of Walsh Anderson opinion: Challenges by tax payers to a taxing entity's interpretation of its taxing authority under Texas statutes are generally the province of the Texas district courts. Certain authorized persons, including the Commissioner of Education, may also request an opinion from the Texas Attorney General regarding interpretation of statutory provisions.

What are the school finance consequences of taking action under this statute?

Moak Casey opinion: For districts with M&O tax rates of less than \$1.17, additional revenue will flow from state and local sources under Tier II of the Foundation Program for one year. Districts using less than the full six cents of "golden pennies" would gain an additional two such pennies while the remainder would be from "copper pennies" with a guaranteed yield of \$31.95 per cent per WADA. Additional funding would flow for one year only. Continuation of the higher tax rate would require an election. If a district also chooses to reduce debt service rates so as to minimize the impact on total taxes, state aid for IFA and EDA could be reduced depending on a number of factors including the second year of the biennium tax limit of EDA and the availability of "excess funds" for use in the IFA and EDA programs. If the EDA analysis indicates problems, the delay of a year could help the district avoid the EDA concern.

Elizabeth Neally/Judy Brown of Walsh Anderson opinion: We defer to the expertise of school finance experts on this question since it does not raise an issue of law. However, we do agree that in order to continue assessment of the higher M&O rate assessed in the previous tax/calendar year under the disaster exception, a school district would have to hold a TRE and receive voter approval before taxing at that rate for the succeeding tax/calendar year. In other words, if a district assesses a tax rate for 2010 which would ordinarily require a TRE but which is adopted and assessed without voter approval under the disaster exception, the district will need to hold a TRE and secure voter approval in 2011 in order to continue to tax at that rate.