



The ESD Tax Rate Process

A BRIEF EXPLANATION (WITH EXAMPLES)

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Disclaimer

Nothing in this presentation should be construed as legal advice or relied upon as such

Always check with your own legal counsel in determining the best course of action for your ESD

We're all just doing our best...

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What this presentation will cover



Tax rate setting as changed by Senate Bill 2 (86th Legislative Session)

- Definitions
- Examples

Notice requirements

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What this presentation will **NOT** cover



Other transparency issues (Special District reporting)

Disaster declaration and the option to proceed as a “Special Taxing Unit” – ALTERED BY 2021 LEGISLATION (HB 1438)

Issues not germane to Emergency Services Districts

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Special Taxing Units

Special Taxing Unit

- Taxing at less than .025 per \$100
- Junior College District
- Hospital District

Only a few ESDs fit in this category. Many of the rates discussed in this presentation do not apply to STUs

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Property Tax Calendar

January-April: Appraisal Process

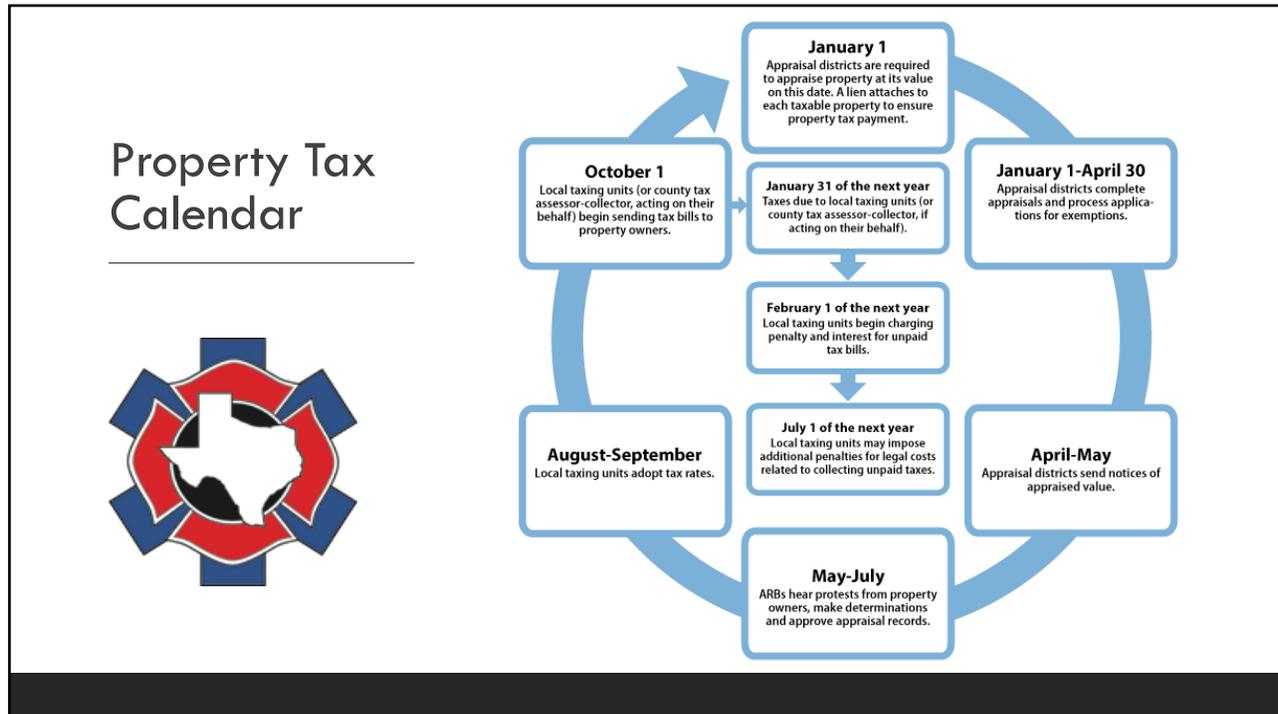
May-June: Appraisal Protest Process

July: Finalization of Appraisal Rolls

August-September: Tax Rate Setting by Gov't Units

October and beyond: Tax Collections

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Budgeting

The first step in an ESD's tax rate adoption process should be THE BUDGET!!

- Assess current fiscal year's budget progress
- Refer to strategic plan
- Begin discussions on needs for the ESD in the coming year
- Hold Budget Workshops (April-June timeframe)

AN ESD CANNOT ADOPT A TAX RATE WITHOUT FIRST ADOPTING A BUDGET!! (Health & Safety Code CH. 775.074(d-1))

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Where are we now?

Certification of Appraisal Rolls

- By July 25 – Chief Appraiser must certify rolls to the assessor
- IF no ARB approval by July 20 – estimate by July 25
- Must include estimates on properties under protest and properties not included on the rolls (Tax Code Sec. 26.01(a) and (a-1))

Can you get this information earlier? No April 30 estimate for ESDs (Tax Code Sec. 26.01(e))

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Information Incoming

Rolls are submitted to taxing unit (ESD) by **August 1** (or as soon thereafter as practicable) (Tax Code Sec. 26.04 (b))

- Includes appraised, assessed, taxable property, as well as new property, for your District
- These are the values YOU need to calculate the necessary publishable rates

“An officer or employee designated by the governing body shall calculate...” (Tax Code Sec. 26.04 (c))

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Calculating the Rates

“Designated officer of employee SHALL use the tax rate calculation forms...” (Tax Code Sec. 26.04 (d-1))



2023 Tax Rate Calculation Worksheet

Taxing Units Other Than School Districts or Water Districts

Form 50-856

Taxing Unit Name	Phone (area code and number)
Taxing Unit's Address, City, State, ZIP Code	Taxing Unit's Website Address

GENERAL INFORMATION: Tax Code Section 26.04(c) requires an officer or employee designated by the governing body to calculate the no-new-revenue (NNR) tax rate and voter-approval tax rate for the taxing unit. These tax rates are expressed in dollars per \$100 of taxable value calculated. The calculation process starts after the chief appraiser delivers to the taxing unit the certified appraisal roll and the estimated values of properties under protest. The designated officer or employee shall certify that the officer or employee has accurately calculated the tax rates and used values shown for the certified appraisal roll or certified estimate. The officer or employee submits the rates to the governing body by Aug. 7 or as soon thereafter as practicable.

School districts do not use this form, but instead use Comptroller Form 50-859 Tax Rate Calculation Worksheet, School District without Chapter 313 Agreements or Comptroller Form 50-860 Tax Rate Calculation Worksheet, School District with Chapter 313 Agreements.

Water districts as defined under Water Code Section 49.001(1) do not use this form, but instead use Comptroller Form 50-858 Water District Voter-Approval Tax Rate Worksheet for Low Tax Rate and Developing Districts or Comptroller Form 50-860 Developed Water District Voter-Approval Tax Rate Worksheet.

The Comptroller's office provides this worksheet to assist taxing units in determining tax rates. The information provided in this worksheet is offered as technical assistance and not legal advice. Taxing units should consult legal counsel for interpretations of law regarding tax rate preparation and adoption.

SECTION 1: No-New-Revenue Tax Rate

The NNR tax rate enables the public to evaluate the relationship between taxes for the prior year and for the current year based on a tax rate that would produce the same amount of taxes (no new taxes) if applied to the same properties that are taxed in both years. When appraisal values increase, the NNR tax rate should decrease.

The NNR tax rate for a county is the sum of the NNR tax rates calculated for each type of tax the county levies.

While uncommon, it is possible for a taxing unit to provide an exemption for only maintenance and operations taxes. In this case, the taxing unit will need to calculate the NNR tax rate separately for the maintenance and operations tax and the debt tax, then add the two components together.

Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
1.	2022 total taxable value. Enter the amount of 2022 taxable value on the 2022 tax roll today. Include any adjustments since last year's certification; exclude Tax Code Section 25.25(d) one-fourth and one-third over-appraisal corrections from these adjustments. Exclude any property value subject to an appeal under Chapter 42 as of July 25 (will add undisputed value in Line 6). This total includes the taxable value of homesteads with tax ceilings (will deduct in Line 2) and the captured value for tax increment financing (adjustment is made by deducting TIP taxes, as reflected in Line 17).	\$
2.	2022 tax ceilings. Counties, cities and junior college districts. Enter 2022 total taxable value of homesteads with tax ceilings. These include the	

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Calculating the Rates...Deadline?

“By **August 7**, or ASTAP, the designated officer or employee shall submit the rates to the governing body” AND

Post on the homepage of the website

- NNR and VAR and how they were calculated (getting there)
- Fund balances
- Debt obligations (Tax Code Sec. 26.04 (e))

Important: Can't adopt a tax rate until forms are signed and certified for accuracy (Tax Code Sec. 26.04 (d-2)). **Must also send the forms to the tax assessor-collector and append to budget document** (Tax Code Sec. 26.04 (d-3) and (e-5)).



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Outside of the District

Appraisal District must send notice about property tax database to taxpayers by August 7th. (Tax Code Sec. 26.04 (e-2))

Injunctive relief available if taxing unit does not comply with the steps in the process. (Tax Code Sec. 26.04 (g))

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Rates

NNR

NNRMO

VAR (aka the 3.5% rate)

VARSTU (aka the 8% rate)

De Minimis (DMR)

Debt Rate?

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The No-New-Revenue Rate (NNR)



Formerly known as the “Effective Rate”

Basic Concept: The rate that gives you the same amount of tax revenue you received last year from the same property that you taxed last year, when applied to this year’s values.

Expressed as a formula (Tax Code Sec. 26.04):

$$\frac{\text{(LAST YEAR'S LEVY - LOST PROPERTY LEVY)}}{\text{DIVIDED BY}} \\ \text{(CURRENT TOTAL VALUE - NEW PROPERTY VALUE)}$$

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The No-New-Revenue Rate (NNR), Defined



Last Year’s Levy (Tax Code Sec. 26.012(13))

- Basic Concept: Last year’s total tax rate multiplied by the total property value on last year’s appraisal roll
- Last year’s value is subject to some adjustments
- Plus taxes refunded last year for prior years

Lost Property Levy (Tax Code Sec. 26.012(15))

- Basic Concept: Amount of taxes levied last year on property that is no longer on the tax rolls
- Examples: De-annexed property, Property qualifying for exemptions for the first time

Appraisal District will have these numbers

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The No-New-Revenue Rate (NNR), Defined



Current Total Value (Tax Code Sec. 26.012(6))

- Basic Concept: Total taxable property value listed on the appraisal roll for the current year
- Subject to some adjustments
- Includes property on certified roll PLUS property under protest or not otherwise included on certified roll

New Property Value (Tax Code Sec. 26.012(15))

- Basic Concept: Value of property that was not on the appraisal roll in the preceding year
- Examples: Annexed property, New improvements on property, personal property in new improvements

Again, the Appraisal District will have these numbers

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The No-New-Revenue Rate (NNR)



Formerly known as the “Effective Rate”

Basic Concept: The rate that gives you the same amount of tax revenue you received last year from the same property as last year, when applied to this year’s values.

Expressed as a formula (Tax Code Sec. 26.04):

$$\frac{\text{(LAST YEAR'S LEVY - LOST PROPERTY LEVY)}}{\text{DIVIDED BY}} \\ \text{(CURRENT TOTAL VALUE - NEW PROPERTY VALUE)}$$

BUT...

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The No-New-Revenue Rate from Maintenance & Operations (NNRMO)



Different from NNR

Basic Concept: The rate that gives you the same amount of tax revenue from Maintenance & Operations you received last year from the same property you taxed last year, when applied to this year's values.

Expressed as a formula: (Tax Code Sec. 26.012(18))

(LAST YEAR'S LEVY – LAST YEAR'S DEBT LEVY)

DIVIDED BY

(CURRENT TOTAL VALUE – NEW PROPERTY VALUE)

Last Year's Debt Levy: (Tax Code Sec. 26.012(11)) Last year's debt rate multiplied by last year's total value (does not omit lost property levy)

NNRMO is the foundation for all other rates

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The Voter Approval Rate (VAR)



Basic Concept: The rate that gives you a 3.5% increase in **Maintenance & Operations** tax revenue from the preceding year

Expressed as a formula: (Tax Code Sec. 26.04(c)(2))

(**NNRMO** x 1.035) + (Current Debt Rate + Unused Increment Rate)

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The Voter Approval Rate for a Special Taxing Unit (VARSTU)



Basic Concept: The rate that gives you an 8% increase in **Maintenance & Operations** tax revenue from the preceding year

Expressed as a formula: (Tax Code Sec. 26.04(c)(2))

$$(\text{NNRMO} \times 1.08) + (\text{Current Debt Rate})$$

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The De Minimis Rate (DMR)



Basic Concept: The rate that gives you a \$500,000 increase in **Maintenance & Operations** tax revenue from the preceding year

\$500,000 Rate: Rate, when applied to this year's value, that would give you \$500,000 in revenue

- Formula: $500,000 / \text{Current Total Value} * 100$
- Example 1: \$5 Billion in taxable value – would take \$.01/\$100 to raise \$500,000
- Example 2: \$500 Million in taxable value – would take \$.10/\$100 to raise \$500,000

DMR Expressed as a formula: (Tax Code Sec. 26.012(8-a))

$$\text{NNRMO} + \text{Current Debt Rate} + \$500,000 \text{ Rate}$$

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Rates, Revisited



NNR

NNRMO

VAR (aka the 3.5% rate)

VARSTU (aka the 8% rate)

De Minimis (DMR)

Debt Rate?

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A brief note on debt and debt rates...



“Debt” and “Debt Service” have specific definitions in the Tax Code (Tax Code Sec. 26.012(7) & (Tax Code Sec. 26.012(8))

◦ **ALTERED BY 2021 LEGISLATION (HB 1869)**

Not an arbitrary number – statute has a formula for

determining current debt rate (Tax Code Sec. 26.012(4)). See also: Steps 42-48 on Form 50-856 (Tax Rate Calculation Worksheet).

CONSULT AN ATTORNEY REGARDING YOUR DEBT RATE

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Rates, Revisited

NNR

NNRMO

VAR (aka the 3.5% rate)

VARSTU (aka the 8% rate)

De Minimis (DMR)

Debt Rate (consult counsel)

Unused Increment Rate?

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The Unused Increment Rate

Basic Concept: If you adopted a tax rate lower than the Voter Approval Rate in the last three years, you're allowed to use that difference to enhance your current VAR

It's compulsory, cumulative...and confusing

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The Unused Increment Rate (UIR)



The Formula: (Tax Code Sec. 26.013) Unused Increment Rate =

(Year 1 Voter-approval Tax Rate - Year 1 Actual Tax Rate) + (Year 2 Voter-approval Tax Rate - Year 2 Actual Tax Rate) + (Year 3 Voter-approval Tax Rate - Year 3 Actual Tax Rate)

Where:

"Voter-approval Tax Rate" is the VAR WITHOUT the UIR

"Year 1" means the third tax year preceding the current tax year.

"Year 2" means the second tax year preceding the current tax year.

"Year 3" means the tax year preceding the current tax year.

*Any year before tax year 2020 = 0

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The Unused Increment Rate



So for this year:

Year 1 (2020) = VAR – Adopted Rate

Year 2 (2021) = VAR (w/o UIR) – Adopted Rate

Year 3 (2022) = VAR (w/o UIR) – Adopted Rate

Add those together (can't be lower than zero). That total gets added to this year's VAR.

Altered by SB 2350 and (next year) SB 1999

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Outcomes – Automatic Election



If your ESD adopts a rate that is **greater than the greater** of the VAR or the DMR, then you must hold a tax rate approval election on the next uniform election date in November (Tax Code Sec. 26.07)

Because you are exceeding the VAR, your budget and tax rate must be adopted by the **71st day** before the uniform election date: August 28th, 2023 (Tax Code Sec. 26.05)

However, the Election Code (which supersedes in case of conflict) mandates that the election actually be ordered by the **78th day** before the uniform election date : August 21st, 2023 (Election Code Sec. 3.005)

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Outcomes – Petition for election



If your ESD adopts a rate that is **greater than the VAR and the VARSTU (the 8% rate) but less than the DMR**, then the voters of your ESD may file a petition for an election to reduce the tax rate to the VAR (Tax Code Sec. 26.075)

Because you are exceeding the VAR, your budget and tax rate must be adopted by the **71st day** before the uniform election date: August 28th, 2023 (Tax Code Sec. 26.05)

Consult counsel on petition qualifications and timing

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Outcomes – Using the De Minimis



If your ESD adopts a rate that is **greater than the VAR but less than both the VARSTU (the 8% rate) and the DMR**, then there will be no automatic election and no possibility of petition for election (Tax Code Sec. 26.07)

However, because you are exceeding the VAR, your budget and tax rate *still* must be adopted by the **71st day** before the uniform election date: August 28th, 2023 (Tax Code Sec. 26.05)

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Outcomes – Staying below the VAR



If your ESD adopts a rate that is **at or below the VAR**, then there will be no automatic election and no possibility of petition for election (Tax Code Sec. 26.07)

You have until September 30th to adopt your budget and tax rate

May be able to accumulate Unused Increment Rate for future use

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EXAMPLES

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Rates, Revisited

NNR

NNRMO

VAR (aka the 3.5% rate)

VARSTU (aka the 8% rate)

De Minimis (DMR)

Debt Rate (consult counsel)

Unused Increment (UIR) – not employed in examples

NOTE: Use Comptroller's Form in Determining Rates (50-856)

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Example #1 – Under the VAR

Current Total Value: \$550,000,000

Last Year's Levy: \$544,000

Proposed Total Tax Rate: \$.10/100

Current Debt Rate: N/A

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Example #2 – Over the VAR, Under the VARSTU and DMR

Current Total Value: \$830,000,000

Last Year's Levy: \$800,000

Proposed Total Tax Rate: \$.10/100

Current Debt Rate: N/A

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Example #3 – Over the VAR & VARSTU, under the DMR



Current Total Value: \$1,043,000,000

Last Year's Levy: \$786,000

Proposed Total Tax Rate: \$.085/100

Current Debt Rate: N/A

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Example #4 – Over the VAR & VARSTU, AND over the DMR



Current Total Value: \$7,000,000,000

Last Year's Levy: \$6,250,000

Proposed Total Tax Rate: \$.10/100

Current Debt Rate: N/A

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Examples with Debt

Current Total Value: \$1,010,000,000

Last Year's Levy: \$1,000,000

Last Year's Debt Levy: \$250,000

Proposed Total Tax Rate: \$.10/100

Current Debt Rate: a) .025 OR b) 0

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Rate Setting Process – Timeline*

By **August 1** – valuation numbers should be in

August 7 – Rates (NNR/VAR/DMR - from 50-856 worksheet) must be submitted to Board and posted on website, along with additional info.

This does not apply to low tax levy entities (under \$500,000) (Tax Code Sec. 26.04 (e))

At this point, your ESD should be discussing (in an open meeting) and settling on your proposed budget and tax rate.

*Additional slide added after recorded presentation

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Rate Setting Process – Timeline*



If you are proposing a rate that exceeds the lower of the lower of the NNR or the VAR, you must hold a public hearing on the tax rate. (Tax Code Sec. 26.05 (a))

- Has to be at least 5 days after Chief Appraiser has delivered their required notice and set up the tax database
- Notice of hearing must be given at least 5 days before hearing
- Must give “supplemental notice” - notice of hearing must be on website for 7 continuous days immediately before hearing and vote (if those are different) (Tax Code Sec. 26.062)

*Additional slide added after recorded presentation

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Rate Setting Process – Hearing*



Requirements (Tax Code Sec. 26.05 (d))

- Must be held in boundaries of ESD
- In public building or building public has access to
- Must afford opportunities for proponents and opponents to present their views

Can vote on **both** budget and rate at hearing (votes must be separate)

- Must be a record vote (roll call)
- Must be 60 percent of the Board in favor
- Must include specific language in verbal motion to adopt (and documentation of) a order, resolution, or ordinance adopting a tax rate. (Tax Code Sec. 26.05 (b))

*Additional slide added after recorded presentation

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A Few Notes on Notice

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General Notice Issues

COMPTROLLER HAS THE FORMS!!!

<https://comptroller.texas.gov/taxes/property-tax/forms/>

(Under Truth-In-Taxation Forms for Tax Rate Adoption)

ALWAYS CHECK WITH COUNSEL ON POSTING, NOTICE,
AND HEARING ISSUES

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Taxing Unit with Low Tax Levies

Tax Code Section 26.052 has a simplified posting/notice process for a taxing unit:

- With a current rate < \$0.50/\$100
- That would levy \$500,000 or less in taxes

Exempt from August 7 posting, public hearing/notice requirements

Must still notify public by (at least 7 days before adoption):

- Mailing each property owner notice OR
- Publishing in legal notices section of newspaper with general circulation AND website

Comptroller Form **50-757** lays out notice language

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Notice Examples: Election Required

Tax Code Sec. 26.06 (b-1) and (b-3): For when you've exceeded the VAR and are required to hold a tax rate approval election

Depends on whether you exceed the NNR

Special Taxing Units (under \$0.025/\$100) over the 8% limit:
Comptroller Forms **50-873** (over NNR) or **50-877** (under the NNR)

ESDs with a De Minimis but getting no help from it: Comptroller Forms **50-874** (over NNR) or **50-880** (under the NNR). Adds language from Tax Code 26.063(b)

Wording indicates that you will hold the election

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Notice Examples: Under the VAR



Tax Code Sec. 26.06 (b-2): For when you've exceeded the NNR but not the VAR

Comptroller Form **50-876**

Wording indicates that an election is not required

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Notice Examples: Under it all



Tax Code Sec. 26.061: For when your adopted rate is lower than the NNR and the VAR

Comptroller Form **50-883**

Everything is fine, nothing to see here (not really).

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Notice Examples: Open to Petition



Tax Code Sec. 26.063(c): For when your adopted rate is exceeds both the VAR and the VARSTU (8%) but not the De Minimis Rate (DMR)

Depends on whether you exceed the NNR

Comptroller Forms **50-875** (over NNR) or **50-879** (under the NNR). Adds language from Tax Code 26.063(c)

Wording indicates that voters may petition for an election to reduce the tax rate to the VAR

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Notice Examples: DM Safe Harbor



FINALLY!! – Tax Code Sec. 26.063(d) ADDED BY HB 2429 in 2021. For when your adopted rate is exceeds the VAR but NOT the VARSTU OR the De Minimis Rate (DMR)

Depends on whether you exceed the NNR

Comptroller Forms **50-878** (over NNR) or **50-887** (under the NNR). Adds language from Tax Code 26.063(d)

Wording indicates that there is no automatic election and voters may not petition for an election to reduce the tax rate to the VAR

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Other Notice Information

Table with additional information included with notice (Tax Code Sec. 26.062) – On Comptroller Form



The following table compares the taxes imposed on the average residence homestead by _____ last year to the taxes proposed to be imposed on the average residence homestead by _____ this year.

	2022	2023	Change
Total tax rate (per \$100 of value)	2022 adopted tax rate	2023 proposed tax rate	(Increase/Decrease) of (nominal difference between tax rate for preceding year and proposed tax rate for current year) per \$100, or (percentage difference between tax rate for preceding year and proposed tax rate for current year)%
Average homestead taxable value	2022 average taxable value of residence homestead	2023 average taxable value of residence homestead	(Increase/Decrease) of (percentage difference between average taxable value of residence homestead for preceding year and current year)%
Tax on average homestead	2022 amount of taxes on average taxable value of residence homestead	2023 amount of taxes on average taxable value of residence homestead	(Increase/Decrease) of (nominal difference between amount of taxes imposed on the average taxable value of a residence homestead in the preceding year and the amount of taxes proposed on the average taxable value of a residence homestead in the current year), or (percentage difference between taxes imposed for preceding year and taxes proposed for current year)%
Total tax levy on all properties	2022 levy	(2023 proposed rate x current total value)/100	(Increase/Decrease) of (nominal difference between preceding year levy and proposed levy for current year), or (percentage difference between preceding year levy and proposed levy for current year)%

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Website Posting



Website information (Tax Code Sec. 26.18): “Each taxing unit shall maintain an Internet website or have access to a generally accessible Internet website that may be used for the purposes of this section.”

Must post: (1) the name of each member of the governing body of the taxing unit; (2) the mailing address, e-mail address, and telephone number of the taxing unit; (3) the official contact information for each member of the governing body of the taxing unit, if that information is different from the information described by Subdivision (2); (4) the taxing unit’s budget for the preceding two years; (5) the taxing unit’s proposed or adopted budget for the current year; (6) the change in the amount of the taxing unit’s budget from the preceding year to the current year, by dollar amount and percentage; (7) the amount of property tax revenue budgeted for maintenance and operations for: (A) the preceding two years; and (B) the current year; (8) the amount of property tax revenue budgeted for debt service for: (A) the preceding two years; and (B) the current year; (9) the tax rate for maintenance and operations adopted by the taxing unit for the preceding two years; (10) the tax rate for debt service adopted by the taxing unit for the preceding two years; (12) the tax rate for maintenance and operations proposed by the taxing unit for the current year; (13) the tax rate for debt service proposed by the taxing unit for the current year; and (15) the most recent financial audit of the taxing unit

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Changes afoot...?

SB 1998 – must include hyperlink to a document that evidences the accuracy of entries on tax rate calculation form

HB 3273 – affects Appraisal District notice process

These, along with SB 1999 (UIR), take affect Jan. 1 , 2024

...and the Legislature is always one bill away from changing everything.