

## **Does the governor's recent COVID-19 disaster declaration potentially impact some cities' tax rate setting procedures in 2020 and 2021 due to new language passed in Senate Bill 2?**

Yes. The following questions and answers address only the disaster-related provisions of the bill. The League has also prepared a detailed explanation of S.B. 2 in general.

### **Does S.B. 2 make any adjustments to the voter-approval tax rate calculation in a city located in a disaster area?**

Yes. Under a statute added by S.B. 2, a city council may direct its designated officer or employee to calculate the voter-approval tax rate in the manner provided for a special taxing unit (an 8 percent rate, instead of a 3.5 percent rate) if any part of the city is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States. Tex. Tax Code § 26.04(c-1). The designated officer or employee shall continue calculating the voter-approval tax rate using 8 percent instead of 3.5 percent until the earlier of:

1. the second tax year in which the total taxable value of property in the city exceeds the total taxable value of property taxable by the city on January 1st of the tax year in which the disaster occurred; or
2. the third tax year after the tax year in which the disaster occurred

### **How does the governor's recent COVID-19 disaster declaration affect the property tax rate adoption process for cities?**

The governor's March 13 proclamation declaring a state of disaster in every Texas county due to COVID-19, likely along with the president's proclamation issued the same day, triggered the ability of a city council to calculate its voter-approval property tax rate using an 8 percent multiplier instead of the 3.5 percent multiplier generally required under S.B. 2. Essentially, this means that a city using this disaster exemption to calculate the voter-approval tax rate will be using the same basic formula as the city used for the rollback tax rate prior to S.B. 2's passage and effective date. As mentioned above, a city using this disaster provision will calculate an 8 percent voter-approval rate for at least two years, and possibly three, depending on how the taxable value of property in the city compares to the taxable value prior to the COVID-19 pandemic on January 1, 2020.

### **Is a city's ability to use an 8 percent voter-approval rate mandatory?**

No, the new voter-approval rate calculation is not mandatory. S.B. 2 gives a city council located in a disaster area the discretion to direct its designated officer or employee to calculate an 8 percent voter-approval tax rate. As always, the city council retains the ability to adopt a rate different than the voter-approval tax rate, whether lower or higher. If the city adopts a rate exceeding the 8 percent voter-approval tax rate, the city will be required to go to the voters at the November election for approval. A city council wishing to direct the designated officer or employee to calculate an 8 percent voter-approval tax rate should take formal action to do so in order to ensure a record of the council's decision on the matter and to limit any confusion on the part of the person making the calculation.

To be clear, the League takes no position on whether a city should or should not use the higher voter-approval rate calculation allowable in a disaster. Each city is different and will need to make that decision based upon any number of factors, such as the impact of the COVID-19 virus on other sources of local revenue, like sales taxes, the amount of city expenditures made in response to the emergency, as well as the ability and willingness of local taxpayers to potentially pay a higher tax rate.

**If a city uses the 8 percent voter-approval rate calculation, when must it adopt its tax rate?**

Following the passage of S.B. 2, a city adopting a tax rate exceeding the voter-approval tax rate is required to adopt that tax rate by no later than the 71st day before the November uniform election date. Tex. Tax Code § 26.05(a). In 2020, this date is August 24th.

This statute applies the same to a city that has elected to direct the designated officer or employee to calculate an 8 percent tax rate. Therefore, if a city uses the disaster exemption for calculating the 8 percent voter-approval rate, it must only adopt its tax rate by the August 24th deadline if the city is adopting a rate exceeding the 8 percent voter-approval tax rate. Any rate equal to or less than the 8 percent voter-approval rate may be adopted before the later of September 30th or the 60th day after the certified appraisal roll is received by the city.

**In what other ways might the governor's disaster declaration impact tax rate adoption?**

Another provision imposed by S.B. 2 pertaining to disasters gives cities the ability to avoid an automatic tax rate approval election following certain disasters. When an increased expenditure of money by a city is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, that impacted the city and the governor has declared any part of the city as a disaster area, an automatic election is not required to approve the tax rate adopted by the governing body for the year following the year in which the disaster occurs. Tax Code § 26.07(b).

This provision was also triggered by the governor's recent disaster declaration. However, it will not impact a city's tax rate setting process this year because it is only effective in the "year following the year in which the disaster occurs." When cities set their 2021 property tax rates next year, this statute will eliminate the automatic election requirement if tax rates exceed the voter-approval tax rate (or the de minimis tax rate for most cities under 30,000 population). Note, however, that this exception only applies if the city makes an increased expenditure of money necessary to respond to the disaster.

**Do the disaster exemptions adopted in S.B. 2 impact the new notice and transparency requirements?**

No. All of the new notice provisions in S.B. 2 apply the same to cities regardless of the disaster declaration. This includes the applicable requirements related to the property tax database maintained by the county appraisal district, posting requirements for the city website, and requirements to provide new notices related to the tax rate hearing and adoption of the tax rate.

**What happens if our appraisal district is late submitting our certified appraisal rolls this year?**

State law generally requires a chief appraiser to submit the certified appraisal rolls to cities by July 25th. Tex. Tax Code § 26.01(a). The certified roll is then used to calculate the city's no new-revenue tax rate and voter-approval tax rates, among others.

Senate Bill 2 (2019) amends the Tax Code to provide that, if the appraisal review board has not approved the appraisal records by July 20th, the chief appraiser shall prepare and certify to the assessor for each taxing unit an estimate of the taxable value by not later than July 25th. Id. § 26.01(a-1). If a certified estimate is provided instead of a certified appraisal roll, the officer or employee designated by the city council shall calculate the no-new-revenue tax rate and voter-approval tax rate using the certified estimate of taxable value. Id. § 26.04(c-2).

Because the coronavirus will undoubtedly impact the efficiency of appraisal districts to handle property tax protests statewide, many cities should expect to calculate rates based off of the certified estimate instead of the certified appraisal roll. Ideally, either the certified roll or the certified estimate of values is submitted by July 25th to ensure the city has adequate time to calculate rates and comply with the increased transparency requirements under S.B. 2.

Any delay in the submission of the certified roll or certified estimate of value would push back the amount of time the city has to adopt a tax rate that does not exceed the voter-approval tax rate until the 60th day after receipt of the document. Id. § 26.05(a). However, adopting a property tax rate exceeding the city's voter-approval tax rate could be rendered a legal impossibility if the city receives the certified appraisal roll or certified estimate of values late. That's because a city must adopt a rate exceeding the voter-approval rate by no later than the 71st day before the November uniform election date. In 2020, that deadline will be August 24th. Pursuant to his emergency powers, the governor may suspend a deadline imposed by state law related to budget or tax rate adoption. See Tex. Gov't Code § 418.016(e). At this point, the governor has not suspended any budget or tax deadlines.

As mentioned in a previous TML Coronavirus Update, the statewide disaster declaration related to the coronavirus gives cities the option of calculating their voter-approval rates at 8 percent beyond a city's maintenance and operations rate instead of at 3.5 percent beyond the city's maintenance and operations rate. A city that receives its certified appraisal roll or certified estimate of values late might consider opting into the 8 percent voter-approval rate calculation, if for no other reason than to potentially buy enough time to legally comply with the notice and transparency requirements in the Tax Code.

### **Are businesses still required to remit sales taxes despite the economic hardship caused by the coronavirus?**

Yes. However, the comptroller has acknowledged the difficulty many businesses have in complying with remitting sales taxes. The comptroller recently announced that his office will be offering assistance to businesses struggling to pay the full amount of sales taxes collected in February, which were due to the comptroller on March 20, 2020. This assistance includes offering short-term payment agreements to businesses, and potentially waiving penalties and interest for late remittances.

Businesses struggling to make their February sales tax payments are encouraged to call the comptroller's enforcement hotline at (800) 252-8880 to learn about their payment options.

**If a city moves a sales tax reauthorization election to the November uniform election date, does the dedicated sales tax expire even though the city initially planned to have the voters reauthorize the tax prior to its expiration on the May uniform election date?**

The answer depends, in large part, on which dedicated sales tax is being reauthorized, and when the expiration will occur. Sales tax reauthorization elections are required for two types of dedicated city sales taxes: the street maintenance sales tax, and the sales tax for crime control and prevention districts.

For the street maintenance sales tax, state law authorizes the comptroller to delay the expiration date of tax to not later than the last day of the first calendar quarter occurring after the city sends notice to the comptroller of the scheduled expiration. See Tex. Tax Code § 327.007(d). Most cities that have their street maintenance sales tax expiring in 2020 have a scheduled expiration date of September 30, 2020. In accordance with the authority in Section 327.007(d) of the Tax Code, the comptroller has advised that these cities may request that the comptroller delay the expiration of their street maintenance sales tax to December 31, 2020. Doing so would allow the city to hold the reauthorization election on the November uniform election date without having the sales tax expire.

The comptroller's office has advised TML that a city with a September 30, 2020 street maintenance sales tax expiration date that wishes to delay the expiration of the tax must send a copy of the resolution postponing the city's election to November to [Taxalloc.RevAcct@cpa.texas.gov](mailto:Taxalloc.RevAcct@cpa.texas.gov). Once received, the comptroller's office will notify the city in writing that the new expiration date of the street maintenance tax is December 31, 2020. This city is also required to submit the November election results to the comptroller's Tax Allocation Section no later than November 20, 2020.

A few Texas cities have street maintenance sales taxes that are set to expire on June 30, 2020, unless reauthorized. The comptroller's authority to delay the expiration date under Tax Code Sec. 327.007(d) only delays the expiration of these cities' street maintenance sales taxes until September, still before the November uniform election date. Consequently, these cities would see their street maintenance sales taxes expire prior to a reauthorization election in November.

In addition to these cities, a small handful of Texas cities have crime control and prevention district sales taxes that will expire in 2020 unless reauthorized. The crime control and prevention district statute does not contain a provision similar to Tax Code Sec. 327.007(d), so the comptroller lacks the same authority to delay the expiration date of the crime control and prevention district sales taxes.

Cities that either have an expiring crime control and prevention district sales tax, or a street maintenance sales tax that expires in June 2020, are encouraged to continue working with their legislative delegations to request the governor to either extend the expiration dates or set a special emergency election for the reauthorization of those sales taxes prior to their expiration. These cities are also encouraged to reach out to Russell Gallahan with the comptroller's office to discuss their options at [Russell.Gallahan@cpa.texas.gov](mailto:Russell.Gallahan@cpa.texas.gov).