



EDUCATION PRACTICE

# ALERT

## PA “TAXPAYER RELIEF ACT” AMENDED TO REMOVE MOST EXCEPTIONS

By A. Kyle Berman

On June 30, 2011, Governor Tom Corbett signed **Act 25 of 2011**, which amended the Taxpayer Relief Act, Special Session Act 1 of 2006 (Act 1). The amendment’s primary focus was to remove most of the referendum exceptions in the old law. It also modified how to treat some of the remaining exceptions and allowed small businesses to pay taxes in installments.

For those not already familiar with Act 1, every year the Pennsylvania Department of Education (PDE) calculates for each school district the base percentage that the district is permitted to raise taxes. This figure, the “index,” is supposed to roughly approximate inflation. To tax above the index requires permission from voters through a referendum, except where a “referendum exception” applies. Those exceptions allow a district to tax above its index in certain particular categories where the legislature felt the financial impact was not controlled by the district.

Where necessary to raise taxes above the index, few if any districts utilized the Act 1 referendum option and instead relied upon whatever available exceptions they had. To make it more difficult to avoid referenda when exceeding the index, the legislature and governor worked out a deal to reduce the number of exceptions available – from 10 to 3 – and modified those that remained.

### Remaining Exceptions

The exceptions that remain are limited to those that relate to indebtedness, special education and pension payments.

Indebtedness used to cover various sub-categories. Now, the only remaining pieces are for old

grandfathered debt and any new electoral debt (debt approved by voters at a referendum on just that issue). For grandfathered debt, a district may continue to raise taxes to pay for all debt (principal and interest) that it incurred prior to the passage of Act 1. Other than that, if a district proposed a tax increase over the index to pay for newer debt, it would either have to hold a general referendum on its budget or a focused referendum on the sole issue of assuming electoral debt. The process of such a focused referendum is spelled out in the Local Government Unit Debt Act, generally known by its initials LGUDA.

The special education exception continues to cover all special education expenses above the index. However, the legislature amended the exception to clarify that it will only cover such expenses above the index that are paid using non-state money. Since this exception is intended to allow a district to raise taxes to cover its own increased costs for providing special education, it make sense that a district would not get “credit” for money the state gave it. Interestingly, by excluding the state special education monies, which have been fairly flat over the last few years, this could mathematically increase the percentage that will be considered “above the index” and eligible for this exception.

Finally, the last referendum exception left to districts is the pension exception. This exception has the largest change of those that remain. By law, districts have to contribute a calculated amount to the pension fund for each of their employees. That calculation is based upon the amount the employee is paid and the state assigned employer contribution rate. As an

employee's pay rises or as the employer contribution rate rises, the cost to the district for such an employee will go up. The former language in Act 1 gave an exception for both of these possibilities.

Although districts' payrolls will likely continue to increase, the amendment will not give a referendum exception based upon any growth beyond the total payroll paid in the 2011-2012 school year. Therefore, in practice, the new language will likely only give an exception based upon rising employer contribution rates. Of course, it is possible that a district will have a year where its total cumulative salary paid to all employees will decline year over year. If that happened, any growth in subsequent years would be part of the calculation again.

Therefore, if the contribution rate continues to climb as scheduled, this final exception will continue to be utilized, but at a lower level than in the past.

### Eliminated Exceptions

While the legislature modified the above referendum exceptions, it totally eliminated the following:

- **Costs to respond to an emergency:** In responding to an emergency, school districts now must use existing funds or reduce funding to another program.
- **Costs to implement a court order:** Where a court orders a district to take certain actions – even where such an order greatly expands the services a school district must provide – such a district is no longer permitted to raise taxes by more than the index to pay for that service.
- **Costs for limited debt to build a new school and Costs for debt to build a district non-school building:** Under very limited circumstances school districts were permitted to raise taxes by more than the index to build

new structures. That ability is gone.

- **Costs to respond to potentially dangerous conditions:** As above, to remedy a potentially dangerous condition, school districts will have to pay for it using other funds, but in no event tax for it more than the index.
- **Costs to implement a mandated school improvement plan:** Although the statute requires that school districts follow improvement plans when they are found to be in need, paying for that plan must be within the index.
- **Costs to maintain per pupil revenue (due to student population growth):** This exception had allowed school districts to raise taxes when student population grew substantially, draining existing resources. Now, this is no longer a good enough reason to raise taxes over the index level.
- **Costs to maintain actual instructional expense levels:** Similar to the above, this is no longer permitted.
- **Costs to deal with falling tax revenues:** School districts could ignore falling revenues previously as they could increase taxes to compensate. That power was removed with this exception.
- **Costs to pay for pre-Act 1 negotiated health benefits:** This exception was dependant on benefits under five-year-old employment contracts, and expired with the expiration of the contracts. Therefore it was fairly defunct, anyway.

If you have any questions about the information in this alert, please contact A. Kyle Berman at 610.397.7980 or [aberman@foxrothschild.com](mailto:aberman@foxrothschild.com), or any member of the Fox Rothschild [Education Law Group](#).



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