



A CITIZEN'S GUIDE TO REDUCING YOUR SCHOOL DISTRICT TAX BURDEN

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December 20, 2011

OVERVIEW

Ohio school districts continue to surrender to political pressure at the collective bargaining table, failing to curtail school employees' lucrative compensation packages. And while this undisciplined spending could manifest itself in the form of reasonable lay-offs or pay-cuts, history demonstrates it to be more likely that Ohioans across the state will soon confront a flurry of school district levy elections, oriented towards raising their property or income taxes.

So long as local taxpayers apply less pressure than public sector unions, this trend will continue. This guide is intended to teach you how to apply much-needed political pressure, and induce fiscal *restraint*, rather than profligacy, through the ballot box.

Warning: if you follow the advice in this guide, proponents of higher spending and taxation will assert, as always, that children will suffer unless new levies are enacted, while current revenue sources are maintained. However, if you've read this far, you and your neighbors (1) have likely already heard and dispelled this argument; (2) are aware that your local school district has a spending problem, not a revenue problem; and (3) simply want to keep more of what you have rightfully earned, and want to this seemingly endless cycle of tax hikes to stop.

Unbeknownst to many, R.C. 5705 and R.C. 5748 allow Ohioans to place on the ballot, through gathering a modest amount of signatures, measures to reduce or eliminate most types of school district property and income taxes enacted through local levy elections.

The Guide below is a tutorial on how to use heretofore obscure parts of the law to, alongside the initiative process, to roll back either a recently-enacted, or even a not-so-recently-enacted school levy tax. Steps 1 and 2 show you how to work through your County Auditor and Board of Elections to identify the relevant information you need to reduce your tax burden. Step 3 and the attached petition forms cover the requirements for your petition, collecting signatures, and submitting your petition to your county board of elections.

Note that the information reflects the law as of December 1, 2011: please consult the 1851 Center before finalizing your plans.

Step 1: Gather Information about the Levies that Comprise your Existing Tax Burden.

School districts utilize a vast array of taxes that include property and income taxes, most of which have, at one time, been approved by voters. R.C. 5705.261 permits Ohioans to use local initiatives to win the **reduction** of certain types of levies¹ and the **repeal** of some school district income taxes.² Note: this distinction is crucial - - the Ohio Supreme Court has ruled that voters may *not* reduce a property tax levy to *zero*,³ unlike income taxes, which may *only* be repealed.⁴

Start by locating detailed information about the individual components of your school district's total tax. This total tax rate is usually made up of distinct levies.

First, contact your county auditor's office and county board of elections to obtain the details on each existing individual levy that makes up your tax rate. Your county auditor will have a summary of individual levies including their amount and duration. Your local board of elections will have detailed information about previous elections that will include the specific ballot language you need to draft your petition.

Next, ascertain out the details regarding each levy in effect, and any former levy reduction proposals (regardless of whether they succeeded). This will require contacting your county's auditor and your county's board of elections. Through information they supply, you can quickly determine the following:

For Property Tax Levies:

- (1) **How each levy was passed**, i.e. by voters or by the board of education. The board can levy taxes on the inside millage (up to ten mils) without voter approval. Only levies passed by voters can be reduced.⁵
- (2) **The election dates of prior voter-initiated attempts to reduce levies, if any.** Voters can only propose a levy reduction once every five years.⁶
- (3) **When each levy expires.** Some levies are enacted "for a continuing period of time," which means they never expire.⁷ You can only reduce the levies that don't expire - - to be reduced a levy must have been enacted "for a continuing period of time."⁸
- (4) **The number of mils imposed by each levy.** You need this information to draft the ballot language with precision.
- (5) **The expressed purpose of each levy.** These include "operating expenses" "improvements" etc. This information is required for the petition language.

For School District Income Tax Levies:

- (1) **Determine whether your school district imposes an income tax.** Also determine its rate.

- (2) **Determine when the tax expires.** Only income taxes lasting longer than five years may be repealed.⁹
- (3) **Determine the expressed purpose of the levy imposing the income tax.** You will need this language for your petition.
- (4) **Determine when the tax was approved by voters, and whether its repeal has previously been proposed.** Voters can only propose a repeal once every five years.¹⁰

The following example illustrates what you are looking for when you call your County Auditor and Board of Elections:

Taxpayer Tom wanted to know about each individual tax levy imposed on taxpayers in the Westerville City School District (WCSD). So Tom called the main line at the Franklin County Auditor's Office. Tom knew that the total school district millage rate was 72.95, so he asked how he could find out about the individual levies that add up to the total rate. The operator transferred Tom to one of the auditor's employees. The employee emailed Tom the list of individual levies that made up the total rate. The list separated levies passed by the school district — called "inside" levies — from the "outside" levies approved by voters on the ballot. The list also told Tom how many mills each levy accounted for. So for Tom's question about the WCSD in tax year 2010, ten levies were listed as having an "indefinite" duration, meaning that they may be eligible to be reduced.

Now that Tom had the individual levies from the County Auditor, Tom called the Franklin County Board of Elections. First, Tom asked the Board of Elections how many voters in the Westerville City School District voted in the last election for governor. Then, because the Franklin County Board of Elections posts election results online, Tom culled through the elections results since 1980 to find out when voters in the WCSD passed the indefinite levies he saw in the auditor's report and what ballot language accompanied those levies. Tom was thus able to match up the ten indefinite levies from the auditor's office with the elections enacting those levies from the board of elections.

Step 2: Determine Which Tax to Reduce or Repeal.

Ohio law only allows voters to attack two specific types of school taxes: (1) property tax levies that are imposed "for a continuing period of time;"¹¹ and (2) school district income taxes.¹² Note an important type of levy that is *not* amongst these: unfortunately, you cannot reduce or repeal a school district income tax levy and property tax levy if the revenue from that levy is earmarked for the construction of new school facilities in your district.¹³

For Property Tax Levies:

You can reduce the rate of a property tax levy if it meets these criteria.

- (1) **Voters must have approved the levy.**¹⁴
- (2) **The levy must not expire.** It must be enacted "for a continuing period of time."¹⁵

- (3) **If there has been another attempt to reduce this property tax levy in your school district, it must have been greater than five years ago** for you to proceed - - a series of five-year reduction windows exists after a levy is approved.
- (4) **If voters attempted to reduce levies in the past, determine which five-year window you are currently in**, and make sure that no voter-initiated attempt to reduce this levy was placed on the ballot within the current five year window (because these efforts are uncommon you will be unlikely to find one; but please do not skip this step).

For Income Tax Levies:

In order to repeal an income tax levy, the following must be true:

- (1) **The levy must impose the income tax for greater than five years.**¹⁶
- (2) **Voters can only propose income tax repeals once every five years.**¹⁷ Make sure the election date you are shooting for will occur more than five years after the last repeal vote.
- (3) **The repeal cannot be voted on in the same calendar year that the income tax was approved.**

Step 3: Place Your Tax Repeal or Reduction on the Ballot.¹⁸

Now that you've decided which tax to reduce or repeal, you can begin drafting your petition, it's time to finalize your petition, collect signatures, and submit your petition:

- (1) **Determine how many signatures you need.** To get your petition on the ballot, you must obtain a number of *valid* signatures equal to *ten percent of the total votes cast in your school district* in the last gubernatorial election (November 2010). Your county board of elections can provide you with this number. If your school district is in two or more counties (for example, the Westerville school district is in both Franklin and Delaware counties), you will need to contact both (or all) county boards of elections to obtain the total number of votes cast in your school district. When determining the total number of signatures to gather and submit, remember that it's not uncommon for 25 to 33 percent of submitted signatures to be invalidated. (Those signing your petition must live in the school district).
- (2) **Determine your deadline for submitting signatures.** You must submit the required number of valid signatures no later than "*ninety days before the general election* in any year requesting that an election be held on such question." Thus, for example, if you wish for your tax reduction or repeal to appear on the November 6, 2012 ballot, you should plan on submitting our signatures not later than August 3, 2012. School district income taxes can be repealed at primary elections, generally in the spring, as well as at general elections (the same 90 day deadline applies).

- (3) **Use the legally-required petition form to gather signatures.** Gather your signatures on the appropriate petition attached to this guide. Fill in the information you obtained from your county auditor and board of elections, as required, before you begin.
- (4) **Use the right language on your petition form.** When you draft the petition language for reduction of a property tax levy, the effect must be a reduction, not a full repeal of the levy.¹⁹ This means that your levy rate must be greater than zero if voters approve the reduction.
- (5) **Submit your signatures to your county board of elections.** Draft a cover sheet tabulating the total number of petitions and signatures that you are submitting. Call ahead of time and make arrangements for a quick submission meeting. You may wish to keep copies for yourself, given the several infamous examples of government officials misplacing submitted petitions.
- (6) **Keep a low profile.** Remember, only once every five years can an attempt be made to reduce any given levy. If your school district's teachers union gets wind of your plans too early in the process, they may quickly gather signatures and place a .000001 mil reduction of the levy tax on the ballot before you are able to gather and submit signatures for your more significant reduction.

Finally, if the board of elections attempts to deny you access to the ballot, you must take immediate action in the courts to insure that your ballot access is preserved. Courts expedite elections matters, so waiting an extra day may result in a finding that, because of your delay, you cannot get access to the ballot. If this happens to you, please contact the 1851 Center without delay. Your attack on school district taxes will depend on it.

Attached Forms:

Form 6-R: Use for reducing property tax rate.

Form 6-S: Use for repealing a school district income tax.

For more information, see www.ohioconstitution.org, or contact Maurice A. Thompson, Director of the 1851 Center for Constitutional Law at (614) 340-9817, or MThompson@OhioConstitution.org.

Endnotes

¹ *Id.*

² R.C. 5748.04

³ *State ex rel. Choices for South-Western City Schools v. Anthony* (2005), 108 Ohio St.3d 1, 2005-Ohio-5362.

⁴ R.C. 5784.04

⁵ R.C. 5705.02

⁶ R.C. 5705.261

⁷ See R.C. 5705.215(A)(1) (describing the time limitations on school levies).

⁸ R.C. 5705.261

⁹ R.C. 5748.04

¹⁰ *Id.*

¹¹ R.C. 5705.261

¹² R.C. 5748.04

¹³ R.C. 3318.052(E)

¹⁴ R.C. 5705.261

¹⁵ *Id.*

¹⁶ R.C. 5748.04

¹⁷ *Id.*

¹⁸ These instructions are adapted from R.C. 3501.38

¹⁹ *State ex rel. Choices for South-Western City Schools v. Anthony* (2005), 108 Ohio St.3d 1, 2005-Ohio-5362.