

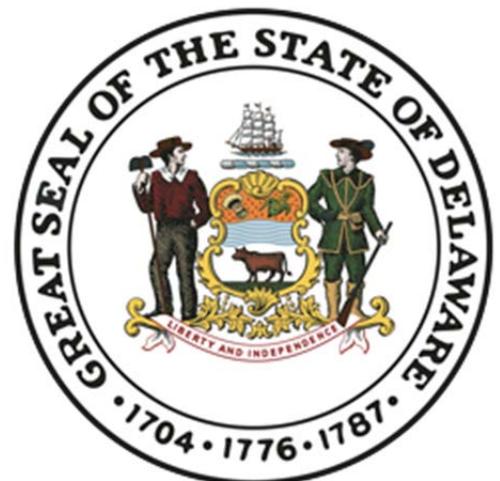
**State of Delaware
Office of Auditor of Accounts**

**School District Local Tax Collection and
Debt Service Management
Agreed-Upon Procedures Report**

Fiscal Year Ended June 30, 2012

**Fieldwork End Date: November 1, 2013
Issuance Date: November 12, 2013**

R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts



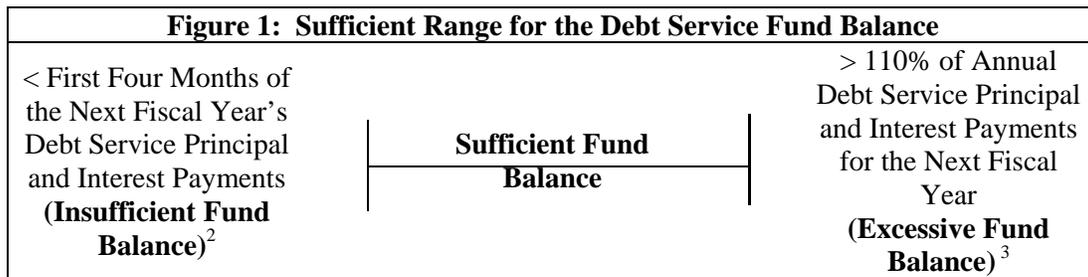
Background

This engagement focuses on whether Delaware school districts deposit their local tax revenues as advertised to the taxpayers and approved by the local school boards. We also consider how school districts manage the debt used to pay for school construction, focusing on whether the debt is paid according to the bond amortization schedule and if the school district has a reasonable amount of funds set aside to meet their bond obligations. All of these activities, including the collection and use of local tax receipts, are State of Delaware (State) funds and activities, as reflected in the State’s Comprehensive Annual Financial Report as primary government.

Debt Service Management¹

Once approved by a taxpayer referendum, the General Assembly will approve a bond issuance to cover a school district’s construction cost. The school district is responsible for using county tax receipts to repay the local share of the bond, which is typically between 20% and 40%. The remainder of the bond is covered by other sources of funds. Most school districts have payment obligations for multiple debt service bonds that have accumulated over recent decades.

The debt service appropriation must be carefully monitored to ensure that the school has sufficient tax receipts to cover its debt service obligations without accruing an excessive fund balance. This analysis is a good indicator of whether the district’s tax rates need adjustment. The parameters surrounding the debt service fund balance are illustrated in Figure 1 below.



Local Tax Collections

On a monthly basis, the school districts receive a lump sum amount of revenues collected from the three Delaware counties through real estate and capitation taxes.⁴ Sussex County school districts also receive rollback tax revenue.⁵ These revenues are commonly referred to as local funds.

To receive local funds, each school district’s local school board approves and sends an annual tax warrant to their respective county, which authorizes the levy and collection of taxes. The tax warrant shows a separate tax rate for a combination of the following categories:

¹ Debt Service is the series of principal and interest payments required on debt over a given time period.

² See page 10 of Appendix A for Attorney General’s Opinion 89-I017.

³ See page 15 of Appendix B for Attorney General’s Opinion 1W-024.

⁴ Capitation taxes are collected based on the number of adult residents in a school district.

⁵ Rollback taxes result when agricultural land is changed to another use, such as commercial or residential property. The basis for the tax is the difference between the land’s value when classified as agricultural and the land’s value under the new classification.

- **Current Expense:** costs associated with the general operation of the district as well as specific voter approved programs. This tax rate can only be increased with taxpayer approval through referenda.
- **Debt Service:** the principal and interest payments on capital improvement bonds used to fund new construction, additions, and major renovations. Voters must authorize the issue of bonds through a referendum. Thereafter, the school district's local school board annually sets the debt service tax rate to meet the authorized obligations.
- **Tuition:** the cost of providing in-district and out-of-district placements for students who must attend special schools within and outside of the State (e.g. Sterck School for the Hearing Impaired and Intensive Learning Centers). The local school board sets this tax rate annually based upon anticipated needs of the student body. A voter referendum is not required to adjust this rate and there is limited guidance regarding how to calculate the tax rate. As a result, the documentation to support the school districts' tuition tax rate calculation is inconsistent, making the tax rate difficult to validate.
- **Match:** provides a local match to State appropriations where required or allowed by law. According to the Fiscal Year 2012 State Budget Bill, examples of matching programs include minor capital improvements (MCI), technology, reading resource teachers, mathematic resource teachers, and extra time programs. Although the State only provides its portion of the MCI match funds, qualified school districts are still permitted to collect taxes for their local portion of other match programs. An explanation of each match program is provided below:
 - MCI – These funds are used to keep real property assets in their original condition and are reserved for projects that cost less than \$500,000.⁶ School districts are required to pay 40% of this amount through local tax collections, according to 29 Del. C. §7528 (e), while the State provides the remaining 60%.
 - Technology – This match is for ongoing technology equipment maintenance, repair, and replacement. If a school district collected a match for this purpose in Fiscal Year 2010, they may continue to collect a local tax in subsequent years. Otherwise, the school district does not meet the grandfathering provisions specified in the Budget Epilogue. DOE issued a memo in December 1998 which established the authorized match tax rates for each school district. During this engagement, we confirmed with DOE's Director of Financial Reform Resources that the tax rates per the 1998 memo were still in effect.
 - Reading and Math Resource Teachers* – School districts are assigned a specified number of teachers to assist students who need additional support and instruction in the areas of reading and mathematics. If a school district collected a match for this purpose in Fiscal Year 2010, they may continue to collect a local tax in subsequent years. Otherwise, the school district does not meet the grandfathering provisions specified in the Budget Epilogue.
 - Extra Time* – This match provides additional instruction for low achieving students. If a school district collected a match for this purpose in Fiscal Year 2008, they may

⁶ Section 7.1 of the State of Delaware *School Construction Technical Assistance Manual*.

State of Delaware ***School District Local Tax Collection and Debt Service
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continue to collect a local tax in subsequent years. Otherwise, the school district does not meet the grandfathering provisions specified in the Budget Epilogue.

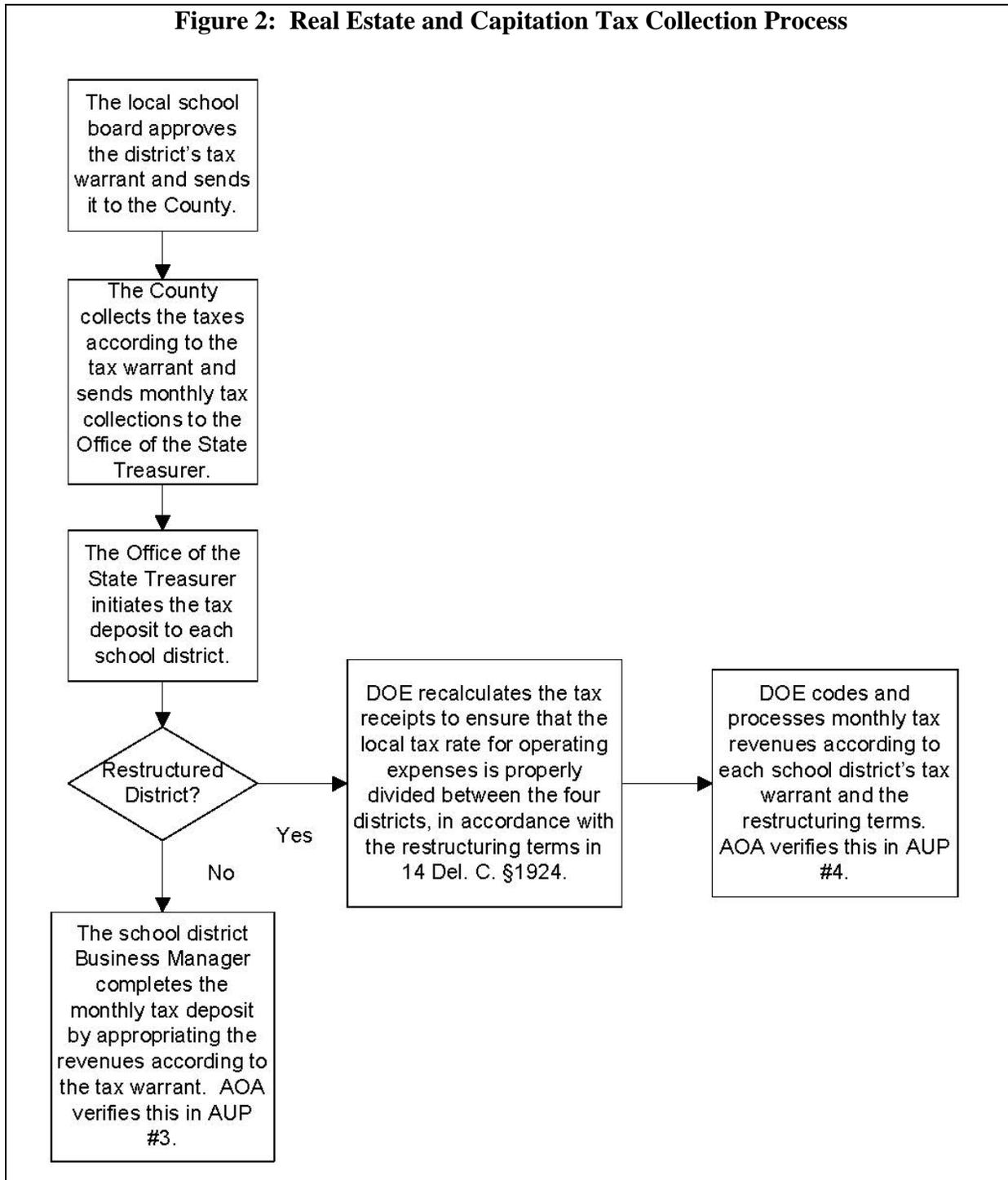
*Overall, there are unclear guidelines surrounding the collection of taxes for the expired match taxes. The school districts interpreted the Budget Epilogue’s direction of “continue to collect” in a variety of ways: (1) at the exact tax rate collected; (2) at the exact percentage of program costs; and (3) at the exact dollar amount collected (e.g. \$450,000). There is no Attorney General’s opinion regarding the expired match programs, and absent any guidance from DOE, we believe the school districts are satisfying the intent of the epilogue language.

DOE is responsible for allocating local tax revenues to the four restructured districts: Brandywine, Christina, Colonial, and Red Clay.⁷ Although these four districts operate separately, they all share a current expense tax rate as part of the restructuring plan. Each districts’ student enrollment unit count is used as the basis for dividing the tax revenue attributed to current expense, as defined at the bottom of page i.

The tax collection process is summarized in Figure 2 below.

⁷ These four districts were formerly the New Castle County School District but were divided in 1981 in accordance with 14 Del. C. §1924. Each of the four districts shares a local tax rate for the current expense appropriation, which is distributed by DOE to ensure the funds are disbursed objectively.

Figure 2: Real Estate and Capitation Tax Collection Process



The school districts may also receive payments in lieu of taxes (also known as PILOT) from sources such as the Delaware State Housing Authority, Prime Hook National Wildlife Refuge, and Bombay Hook National Wildlife Refuge. It is the school district’s responsibility to deposit and code the revenue to the correct appropriation. These funds are in addition to the tax receipts collected by each county, so AOA takes these items into consideration when performing procedure three (described on pages three and four of the report).

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The following statements were constructed as a result of the procedures performed:

***Statement of Local Tax Collections
for the Fiscal Year Ended June 30, 2012***

School District	Tax Receipts^a
Appoquinimink	\$ 26,114,033
Brandywine	62,724,477
Caesar Rodney	9,286,029
Cape Henlopen	27,022,396
Capital	21,377,958
Christina	95,536,968
Colonial	39,443,781
Delmar	1,649,019
Indian River	36,007,573
Lake Forest	5,222,647
Laurel	3,761,622
Milford	8,170,906
NCC Vo-Tech	26,084,215
Polytech	4,577,914
Red Clay	80,329,560
Seaford	6,838,352
Smyrna	8,085,578
Sussex Technical	8,328,604
Woodbridge	4,265,186
Total	\$474,826,818

^aThe figures represented in the Tax Receipts column are the local tax revenues for current expense, debt service, tuition, and match purposes that each district received from the counties for the fiscal year.

***Statement of School District Debt Service Funds
for the Fiscal Year Ended June 30, 2012***

School District	June 30, 2011 Debt Service Reserve Fund Balance	Debt Service Revenues^a	Debt Service Expenditures^b	Other Adjustments^c	June 30, 2012 Debt Service Reserve Fund Balance^d
Appoquinimink	\$3,418,281	\$6,214,374	\$(6,408,472)	\$66,102	\$3,290,285
Brandywine	2,812,497	8,477,331	(8,801,892)	89,384	2,577,320
Caesar Rodney	740,158	1,465,525	(2,105,426)	733,946	834,203
Cape Henlopen	3,141,371	3,451,310	(3,628,377)	16,079	2,980,383
Capital	3,712,856	6,357,900	(5,540,859)	454,767	4,984,664
Christina	4,777,888	7,533,407	(8,184,923)	44,278	4,170,650
Colonial	3,654,546	5,770,256	(5,889,153)	27,929	3,563,578
Delmar	160,248	322,767	(343,716)	1,486	140,785
Indian River	2,352,794	4,424,199	(4,638,745)	117,910	2,256,158
Lake Forest	169,936	647,138	(668,640)	27,481	175,915
Laurel	41,807	424,113	(68,603)	5,766	403,083
Milford	997,205	1,955,106	(1,991,041)	11,189	972,459
NCC Vo-Tech	719,353	2,021,465	(1,547,309)	42,441	1,235,950
Polytech	151,379	513,933	(274,219)	2,224	393,317
Red Clay	3,562,142	6,900,997	(7,447,098)	795,821	3,811,862
Seaford	437,348	864,519	(716,393)	6,382	591,856
Smyrna	2,247,210	1,849,231	(2,783,441)	563,888	1,876,888
Sussex Technical	366,960	1,005,683	(751,552)	9,533	630,624
Woodbridge	192,355	821,034	(530,431)	8,142	491,100
Totals	\$33,656,334	\$61,020,288	\$(62,320,290)	\$3,024,748	\$35,381,080

^a The figures represented in the Debt Service Revenues column are the local tax revenues that each district received from the counties for the fiscal year and allocated to the debt service appropriation.

^b The debt service expenditures represent the principal and interest payments made on each school district's long-term debt obligations.

^c Amounts recorded in the "Other Adjustments" column may be attributed to interest income, transfers in or out of the appropriation, or PILOT receipts that were not recorded to the "Real Estate Tax" account code in FSF, and were therefore not included as part of our procedures.

^d The debt service reserve balance represents the prior year debt service reserve balance plus the debt service tax receipts and other adjustments, and is reduced by the debt service expenditures for the fiscal year.

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STATE OF DELAWARE
OFFICE OF AUDITOR OF ACCOUNTS

R. THOMAS WAGNER, JR., CFE, CGFM, CICA
AUDITOR OF ACCOUNTS

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Independent Accountant's Report
on Applying Agreed-Upon Procedures

To the Specified Users of the Report:

The Honorable Mark Murphy
Secretary
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

Superintendents, All School Districts

We have performed the procedures enumerated below, which were agreed to by the specified users of the report, as identified above, and as defined within the applicable laws of the State of Delaware (State). The procedures were performed solely to assist the specified parties in evaluating the school districts' compliance with the criteria listed in each procedure below. Management of each school district is responsible for their school district's compliance with those requirements for the period July 1, 2011 through June 30, 2012 (Fiscal Year 2012).

This agreed-upon procedures engagement was performed in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States, the attestation standards established by the American Institute of Certified Public Accountants, and *Quality Standards for Investigations*, issued by the President's Council on Integrity and Efficiency. The sufficiency of these procedures is solely the responsibility of the Department of Education (DOE). Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and results were as follows:

Procedure 1: Obtained each school district's official, signed Fiscal Year 2012 tax warrant and verified that each tax rate properly agreed to the corresponding source document as follows [14 Del C. §1916(d)]:

- a. Current Expense tax rate – approved voter referenda
- b. Debt Service tax rate – approved voter referenda
- c. Tuition tax rate – approved board minutes
- d. Match tax rate
 - i. Minor Capital Improvements (MCI) – board approval and supporting calculations
 - ii. Technology – board approval and historical data
 - iii. Extra time programs – board approval and historical data
 - iv. Reading and Math Resource Teachers – board approval and historical data

Results: Each school district's tax rates properly agreed to corresponding source documents, with the exception of the following:

1. The following school districts levied tax revenues as MCI, but their supporting tax warrant calculations included various match taxes (e.g. Extra Time and Technology). The five districts were:
 - Appoquinimink School District
 - Brandywine School District
 - Capital School District
 - Colonial School District
 - Red Clay School District

All tax rates properly agreed to the authorizing source documents, with the exception of the items mentioned in numbers two through six below.

2. The Colonial School District also issued local debt that exceeded the authorized debt service referendum amount by \$394,000.
3. The Cape Henlopen School District's tax warrant contained two separate technology match taxes. One rate agreed to DOE's authorized rate, yet the school district also collected an additional unauthorized technology rate of \$.0063.
4. The Delmar School District's technology tax rate on their Fiscal Year 2012 tax warrant agreed to the DOE authorized rate. However, the school district was not collecting this tax during Fiscal Year 2010, as required by the State Budget Bill Epilogue language described in the Background section of this report.
5. We were unable to verify whether the Woodbridge School District's match tax rates agreed to corresponding source documentation because the district approves match taxes at an aggregate rate, distributes revenues based on historical collections and current needs, and does not maintain documentation to support their calculations.⁸
6. The Laurel School District was unable to provide support that their current expense tax rate was authorized. According to the District, the rate was approved through a referendum that was passed more than 20 years ago. The school district also collected a technology match tax which was \$.001 higher than the authorized rate. In addition, Board approval of all Fiscal Year 2012 tax rates was not documented in the official school board meeting minutes.

Procedure 2: Obtained from the Office of Management and Budget (OMB) the amount of Elderly Property Tax Relief funds received by each school district and verified that they were deposited in accordance with each school district's tax warrant. [14 Del. C. §1917 (c)]

Results: All school districts deposited their Elderly Property Tax Relief funds in accordance with the tax warrant, with the exception of the following:

1. Six school districts deposited the entire match portion of Elderly Property Tax Relief funds to an MCI appropriation. According to their tax warrant and supporting documentation, the

⁸ Refer to page iii of the Background section for further explanation on how the school districts levy match taxes.

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match funds should have been deposited to the respective match appropriations for each school district as illustrated in Table 1. Even if the school districts transferred the funds at a later date, this practice creates a risk that the funds will not be used as authorized.

Table 1: Correct Match Tax Distribution by School District

School District	Match Program			
	MCI	Technology	Extra Time	Reading & Math Resource Teachers
Appoquinimink	X	X	X	X
Caesar Rodney	X	X	X	X
Cape Henlopen	X	X	X	X
Capital	X	X	X	X
Christina	X	X		
Seaford	X	X		X

2. The Brandywine School District only allocated the match portion of Elderly Property Tax Relief funds to the MCI and Technology appropriations. The school district should have also allocated these funds into the Reading and Math Resource Teachers appropriation.
3. The Colonial School District only allocated the match portion of Elderly Property Tax Relief funds to the MCI and Technology appropriations. The school district was approved to collect all four match taxes.
4. Laurel School District coded the match portion of their Elderly Property Tax Relief funds to the current expense appropriation.
5. The Red Clay School District’s tax warrant approves two match taxes; however, the entire match portion of the Elderly Property Tax Relief was deposited to one appropriation labeled "Match". According to the school district, the match funds were allocated in accordance with the tax warrant through subsequent transfers.
6. Both of Woodbridge School District’s tax warrants (for Kent and Sussex Counties) list one match tax rate, which includes MCI, Technology, Extra Time, and Reading and Math Resource Teachers. We were able to verify that the match portion of the Elderly Property Tax funds was correctly allocated to the match appropriations in total. However, we were unable to determine if the school district correctly allocated the funds into each individual match appropriation due to the aggregate rate issue reported in procedure 1, item five.

It is important to note that we found exception with the way the Elderly Property Tax Relief was allocated amongst the match appropriations. The total dollar amount allocated is not in question.

For the balance of the school districts not mentioned in items one through five, the New Castle County Vocational Technical School District, Polytech School District, and Sussex Technical School District do not receive Elderly Property Tax Relief funds. No exceptions were found as a result of applying this procedure at the remaining five school districts.

Procedure 3: Recalculated the allocation of County taxes received during Fiscal Year 2012 to verify that tax revenues were properly recorded in the state's accounting system, First State Financials (FSF), using the following information:

- a. The monthly report of school tax collections levied by each County and obtained from the Office of the State Treasurer (OST). [14 Del. C. §1917 (a) and (b), §1919 (a) and (b)]
- b. The tax warrant for each school district.
- c. The amount of Elderly Property Tax Relief paid to each school district in Fiscal Year 2012, obtained from OMB. [14 Del. C. §1917 (c)]
- d. The amount of any additional PILOT payments from the Delaware State Housing Authority, Prime Hook and Bombay Hook National Wildlife Refuges, and Kent County Impact Fees, obtained from each school district.
- e. The FSF Revenue by Account and Appropriation report (Report ID DGL114) for each school district. [14 Del. C. §1918 (a)]
(Note: Nominal rounding variances are expected when applying this procedure.)

Results: All school districts allocated their tax revenues in accordance with the tax warrant, with the exception of the following:

1. The Appoquinimink and Capital School Districts' Fiscal Year 2012 tax warrants illustrated only an MCI match tax rate; however, both school districts distributed their tax revenues to several match appropriations. As reported in the results of procedure 1, both school districts' tax warrants were not labeled to reflect their calculations of the other match taxes.
2. The Cape Henlopen School District deposited all of their match tax revenues into their MCI appropriation, despite their tax warrant indicating a collection for four separate match taxes.
3. The Delmar School District misallocated their real estate tax receipts due to an incorrect formula in their internal spreadsheet. Upon inquiry of the variances in May 2013, the school district provided evidence of the correction, thus resolving the issue.
4. The Laurel School District coded their tax receipts for Extra Time programs to an incorrect appropriation. Per the school district, the error was identified and corrected for future deposits prior to our inquiry. The school district also misclassified their February 2012 current expense real estate tax receipts as capitation tax revenues in FSF. We verified that the school district corrected the error in October 2013, after our inquiry.
5. The Indian River School District misclassified the penalty portion (representing delinquent tax collections) of their January 2012 tax receipts as capitation tax revenues in FSF. In total, the tax revenues were allocated in accordance with the tax warrant.

Procedure 4: For the four restructured school districts within New Castle County, obtained support for and recalculated DOE's monthly calculations to verify that DOE properly allocated each school district's tax revenues. [14 Del. C. §1924]

Results: DOE properly allocated each school district's tax revenues based on the supporting documentation that the school districts provided to DOE. However, the supporting documentation obtained from the school districts revealed that three of the four restructured districts levied tax revenues as MCI, but their supporting tax warrant calculations included various match taxes, as reported in procedure one. As a result, we identified the following exceptions:

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1. At the instruction of the Brandywine School District, the Technology match tax was allocated to an MCI appropriation for half of the fiscal year. The district corrected the error in January 2012. Tax revenues for the Reading and Math Resource Teachers match were also allocated to an MCI appropriation at the district's instruction.
2. The Colonial School District collected tax revenues for the Reading and Math Resource Teachers, Technology, and Extra Time match. However, the school district instructed DOE to allocate the tax revenues for these three match taxes into only two appropriations.
3. Technology tax revenue was allocated to an MCI appropriation at the Red Clay School District's instruction.

Procedure 5: Obtained the amortization schedule from the OST for any new bond sales that occurred in Fiscal Year 2012 and added them to AOA's comprehensive amortization schedule, which is a compilation of the amortization schedules for each school district's outstanding bonds. Once updated, compared AOA's amortization schedule to the Fiscal Year 2012 local bond payment schedule prepared by the OST to ensure they agree. [14 Del C. §2108]

Results: No exceptions were found as a result of applying this procedure.

Procedure 6: Obtained a listing of all payments made on bond anticipation notes (BAN) from the OST and agreed these payments to the actual payments recorded in FSF (Report ID DGL011) for each school district. [14 Del C. §1922]

Results: No exceptions were found as a result of applying this procedure.

Procedure 7: Verified that the total Fiscal Year 2012 debt service expenditures per the amortization schedules agrees to the Fiscal Year 2012 debt service expenditures per the FSF Cumulative Budgetary Report (Report ID DGL115) for each school district. [14 Del C. §2108]

Results: No exceptions were found as a result of applying this procedure.

Procedure 8: Verified that each school district's debt service ending balance as of June 30, 2012 was sufficient to meet the total required debt service payments for July 1, 2012 through October 31, 2012. [Attorney General's Opinion 89-I017]

Results: The five school districts listed in Table 2 below did not have a debt service reserve sufficient to cover the total required debt service obligations for July 1, 2012 through October 31, 2012.

School District	Ending Fund Balance	Recommended Reserve Amount	(Deficit)
Brandywine	\$ 2,577,320	\$ 4,058,632	\$ (1,481,312)
Caesar Rodney	834,203	1,048,403	(214,200)
Indian River	2,150,692	2,162,838	(12,146)
Lake Forest	175,915	258,276	(82,361)
New Castle County Vo-Tech	1,235,950	1,621,631	(385,681)

All five districts were aware of the insufficient balance. To meet their debt service obligations from July 1, 2012 through October 31, 2012, the Caesar Rodney School District represented that they utilized Kent County Impact Fees. The Lake Forest School District represented that they borrowed a portion of the funds from another appropriation, used subsequent revenues to meet obligations as they came due, and also increased their tax rate. The remaining three districts indicated that they used subsequent tax revenues to meet obligations as they came due.

Procedure 9: If the debt service ending balance as of June 30, 2012 was sufficient, verified that the balance did not exceed 110% of the debt service obligations from July 1, 2012 through June 30, 2013 (Fiscal Year 2013). [Attorney General's Opinion 1W-024]

Results: The Laurel School District's ending debt service reserve balance of \$403,083 provided for 134% of the payments for Fiscal Year 2013 and, therefore, was excessive by \$102,286. For all other districts, no exceptions were found as a result of applying this procedure.

Procedure 10: Obtained from the Division of Accounting (DOA) the schedule used to prepare the State's Comprehensive Annual Financial Report (CAFR) that summarizes the Real Estate Taxes received by each school district for Fiscal Year 2012. Verified that the taxes reported in the CAFR agreed to the taxes received by the school districts for the fiscal year, which included county tax receipts and PILOT payments.

Results: No exceptions were found as a result of applying this procedure.

This report is intended solely for the information and use of the Department of Education and the management of the school districts. It is not intended to be, and should not be, used by anyone other than these specified parties.

We were not engaged to, and did not conduct an audit, the objective of which would be the expression of an opinion on compliance with specified laws. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to the specified parties.

R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts

November 12, 2013

Appendix A: Attorney General Opinion 89-I017 Regarding Minimum Four-Month Reserve in Debt Service



Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

*1 Office of the Attorney General
State of Delaware

Opinion No. 89-I017

July 26, 1989

The Honorable R. Thomas Wagner, Jr.
Auditor of Accounts
Thomas Collins Building
Dover, DE 19901

Dear Mr. Wagner:

You have asked the following questions with regard to a school district's authority to issue bonds for capital expenditures:

1. Are school districts required to honor all agreements made when a referendum is favorably passed; or can school districts, once a referendum is passed, use funds for purposes other than voted upon?
2. When a school district has excess funds in its debt service account that were collected for existing bonds and desires to use those funds to help pay for proposed additional bonds, should the school district make full disclosure to the taxpayer during the referendum?

Your request was prompted by your review of the Lake Forest School District debt service accounts.

For the reasons stated below, we conclude that: 1) Bond proceeds must be used generally for those purposes which have been stated in the notice of referendum, and upon which the public has relied. Similarly, tax receipts levied to cover the debt service of outstanding bonds should be used solely for debt service; 2) the amount of money in the district's debt service account is public information. Whether the district chooses to maintain "excess funds" in its debt service account is a matter left solely to its discretion and is governed by the political process. There may be valid reasons for maintaining such a reserve, however. We find that the practices of Lake Forest in maintaining such an excess do not violate Delaware law.

Lake Forest Bond Issue

Your specific concerns involve the use of the receipts from a tax increase, put into effect to service interest on a new bond, to pay the debt service on two outstanding bonds in the Lake Forest School District. Lake Forest held a referendum in the Spring of 1988, and obtained authorization from voters to issue a bond to fund major capital improvements. As part of that request, the notice of referendum indicated that a tax increase of 6.5¢ property tax and a \$5.00 capitalization tax was necessary to service the interest on the bond. (See notice, attached as exhibit A).

This tax increase went into effect in June and was collected in September of 1988. However, the bonds themselves were not sold in part, until May of 1989, with the remainder to be sold in 1990. [\[FN1\]](#) Thus, there was a gap between the time that the first receipts from the tax increase were received, and the time the first payment on interest will be due. The proceeds from the tax increase were deposited into the same debt service account used to fund the two other outstanding bond obligations of the district. The first of these will mature on March 1, 1995, and has \$34,160 still

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Del. Op. Atty. Gen. 89-1017, 1989 WL 406051 (Del.A.G.)

owed in principal and interest. The second will mature on November 1, 1997, and has \$410,525 still owed in principal and interest. [FN2]

There was sufficient surplus in the debt service account, prior to the June 1988 tax increase, to cover the interest payments on these bonds. In your view, because of this surplus, the June tax increase was not justified, and should not have been deposited in the same debt service fund that is used to pay interest on the other two bonds.

Power to Issue Bonds to Fund Capital Expenditures

*2 Capital investments in the school districts have historically been funded through a State appropriation which is matched by a local funding share on a 60:40 basis. The State's share is appropriated through the annual appropriations and bond authorization act. The State's share is usually conditioned on the deposit of a matching local share. 29 Del. C. sec. 7503. [FN3]

The local school board has the authority to issue bonds under 14 Del. C. sec. 2102. [FN4] The power to issue bonds is not plenary, however; such expenditures must be approved by the voters of the district in a special referendum held for that purpose. See 14 Del. C. sec. 2122(a). [FN5] Elections must be validly noticed, and the notice must be posted and published. It must also "plainly set forth the amount of bonds proposed to be issued and the purposes and reasons thereof. . . ." Section 2122(c). While the general nature of the expenditures planned must be outlined in order to make the notice legally valid, an exact itemization of the proposed expenditures is not required. McComb v. Dutton, Del. Super., 122 A. 81 (1923); Brennan v. Black, Del. Supr., 104 A.2d 777 (1954). It is clear that the proceeds of the bond sale must be used for the purposes specifically authorized by the referendum. Brennan, 104 A.2d at 758-9.

Power to Tax to Pay Interest on Bonds

The power to tax to pay the interest on these bonds comes under 14 Del. C. secs. 1902 [FN6] and 2116. Specifically, section 2116 states that the power to tax for the purpose of providing funds for the payment of principal and interest on bonds derives from the authority to issue bonds. [FN7] Unlike bonds for capital expenditures, the district has the power to levy taxes without referendum to cover debt service requirements. See 14 Del. C. sec. 2116. [FN8] Thus, once a bond bill is authorized by referendum, the district may set the rate it deems appropriate to cover the debt service expense of that bond. We understand that this rate is projected, and based upon the best expectation of when the bond will be sold, and what the market will be at that time. Tax receipts raised for the purpose of debt service on bonds should not be used for other expenditures. See Del. Const. art. X, sec. 6. [FN9]

Conclusion

There is nothing in your letter to indicate that the bond proceeds are being used in an inappropriate manner, so we see no reason to find that Lake Forest has exceeded its authority under the terms of the June 1988 referendum. We further conclude that the deposit of tax revenues into a single account does not violate the terms of 29 Del. C. ch. 75, 14 Del. C. ch. 19 and ch. 21, and Del. Const. art. X, sec. 6. Nor does the application of new tax revenues to already existing bond debt violate these sections. [FN10]

While it is desirable that the relative need for a tax increase be specifically disclosed to the public, you have provided us with no information which indicates that the information was not available. Whether the tax increase was necessary is a matter which is more appropriately raised, and answered, through the political process.

Very truly yours,
*3 Michael F. Foster
State Solicitor

Ann Marie Johnson
Deputy Attorney General

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*School District Local Tax Collection and Debt Service
Management Agreed-Upon Procedures Report*

State of Delaware

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

APPROVED:

Charles M. Oberly, III
Attorney General

[FN1]. In fact, we understand from Dr. Jim Spartz of DPI that the State issues the bonds and will wait for the best "market conditions" to do so. The district is therefore unaware of the exact timing of the sale. The State sold \$607,334 worth of bonds on May 1, 1989, with approximately \$1,000,000 to be sold in Spring 1990.

[FN2]. The first bond was authorized by referendum in 1969, and was used to build the Lake Forest High School. Neither your office or the Lake Forest School District was able to provide us with a copy of the notice. The second bond was authorized by referendum in 1978, was used to expand Lake Forest High School, and Lake Forest North Elementary School. (The notice for that referendum is attached as exhibit B.)

[FN3]. 29 Del. C. sec. 7503

Sec. 7503. Matching funds.

Except in the case of a school district for which a local share is not required by any school construction bond authorization act, the state share apportioned to a school district by such school construction bond authorization act shall not be expended unless the local share for such school district shall have been deposited with the State Treasurer not later than 2 years after the effective date of a school construction bond authorization act.

[FN4]. 14 Del. C. sec. 2102.

Sec. 2102. Power of district to issue bonds.

The school board of any district may issue bonds for the purpose of carrying out any plan or program for the acquisition of lands or the acquisition or construction of buildings or for the construction of sidewalks leading to a school site as may be authorized by this title when such plan or program shall have been approved by the State Board of Education.

[FN5]. 14 Del. C. sec. 2122(a).

Sec. 2122. Election to authorize bond issue; rules governing; referendum to transfer tax funds.

(a) Before any school board issues bonds under this chapter, it shall call a special election. The school board will designate the school buildings to be used as polling places and establish voting district boundaries.

[FN6]. 14 Del. C. sec. 1902

Sec. 1902. Power of district to levy taxes for school purposes.

(a) Any district may, in addition to the amounts apportioned to it by the State Board of Education or appropriated to it by the General Assembly, levy and collect additional taxes for school purposes upon the assessed value of all taxable real estate in such district, except taxable real estate which is exempt from county taxation, as determined and fixed for county tax purposes.

(b) In any instance except major capital improvement and new funds for educational advancement, as defined in Chapter 17 of this title, where the State shall make appropriations to school districts for any purpose and the applicable statute requires a local district contribution to the appropriations or expenditure, the local school board may levy such tax as is necessary to support the school district, notwithstanding sec. 1903 of this title. In the case of the school district of the City of Wilmington, such tax as is necessary to support its local district construction may be levied, notwithstanding the maximum tax rate specified in sec. 11, Chapter 92, Volume 23, Laws of Delaware, as amended by Chapter 9, Volume 46, Laws of Delaware and, unless otherwise specifically provided, such tax rate as may be so specified on or after June 3, 1968.

[FN7]. 14 Del. C. sec. 2116.

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Sec. 2116. Taxing power of district.

The authority to issue bonds shall be construed to be authority to provide funds for the payment of the interest and annual payments on such bonds, which without further authority shall be provided for by an additional tax levy on the property subject to taxation for county purposes in the district issuing such bonds and by a poll tax on all persons 21 years of age and upward, residing in the district, of such amount as shall be determined by the school board of the district.

[FN8]. This is distinguishable from the requirement under 14 Del. C. that taxes for school purposes be pursuant to an "election." 14 Del. C. sec. 1903, Section 1902(b) exempts taxes raised for the purpose of financing capital expenditures in which the State makes matching appropriations, from the election process.

[FN9]. Del. Const. art X, sec. 6 states:

Section 6: No property tax receipts received by a public school district as a result of a property tax levied for a particular purpose shall be used for any other purpose except upon the favorable vote of a majority of the eligible voters in the district voting on the question.

We believe that this section probably refers to those taxes authorized by election under 14 Del. C. sec. 1902. Capital expenditure taxes are specifically exempted under sec. 1902(b).

[FN10]. Because the tax increase went into effect prior to the bond sale, it created the "excess reserve" to which you refer. It is the position of DPI that such a reserve is desirable in order to provide adequate cash flow for payment. DPI recommends a minimum 4 month reserve.

Del. Op. Atty. Gen. 89-I017, 1989 WL 406051 (Del.A.G.)

END OF DOCUMENT

**Appendix B: Attorney General Opinion 1W-024
Regarding Excessive Balance in Debt Service Reserve**



STATE OF DELAWARE
DEPARTMENT OF JUSTICE
JUL 15 1975

RICHARD R. WIDER, JR.
ATTORNEY GENERAL

OPINION TO: The Honorable Richard T. Collins
Auditor of Accounts
Townsend Building
Dover, Delaware 19901

OPINION BY: A. Gary Wilson
Deputy Attorney General

QUESTIONS: 1. May a school district transfer funds
from its debt service account to:

(a) Finance a capital improvements
project which has not been approved by
referendum?

(b) Provide the local share for the
district's minor capital improvements
program?

(c) Pay the costs of a capital improve-
ments project which exceeds the maximum
amount authorized by referendum for such
project?

2. Does special legislation which authorizes
any of the aforesaid transfers violate the
State or federal constitutions?

REQUEST NO: 1W-024

ANSWERS: 1. Yes, but only if such transfers are
specifically authorized by special legislation.

2. No. Such legislation is not clearly
in violation of any applicable provision of
our State or federal constitutions.

The Honorable Richard T. Collins

DISCUSSION:

To answer your questions adequately, it is necessary to take a brief survey of the means by which the operations of the State's several school districts are financed.*

As you know, school district expenditures are divided into two broad categories: (1) capital expenditures and (2) non-capital or general operating expenses. The former category includes the cost of acquiring sites for school buildings, constructing and equipping such buildings, and installing incidental sidewalks and landscaping (14 Del. C., Ch. 21; 29 Del. C., Ch. 75). The latter category encompasses all remaining expenses, including teachers' salaries, supplies and routine maintenance (14 Del. C., Ch. 17, 19).

Non-capital expenditures are jointly financed by both the State and the respective school districts. The State's share is provided through general tax revenues. The share of each district is provided through local taxation, with the amount or rate of the tax being established by a referendum (14 Del. C., Ch. 17, 19).

Capital expenditures are also financed jointly. The State's share is derived from the sale of bonds, although there is no bar to financing such expenditures through general appropriations. (29 Del. C., Ch. 75).

*Due to the unique status of the Wilmington School District, the reader should not assume that the statements and conclusions expressed herein apply to the Wilmington School District in the same manner as they apply to the State's other school districts (14 Del. C., §1902).

The Honorable Richard T. Collins

For major capital improvements, the share of each district is derived from the sale of local bonds, with the amount of the bond authorization being established by referendum (14 Del. C., Ch. 21). For minor capital improvements, the share of each district may be provided either through the sale of local bonds or through local taxation (59 Del. Laws, Ch. 223, §16, Fiscal 1975 Bond Act). If financed through the sale of local bonds, the district must first obtain the approval of its residents by referendum. Once the sale of bonds is approved, the district is then authorized to levy taxes sufficient to make payment of the interest and principle on such bonds, plus 10 percent for delinquencies. Revenues derived from such tax levies are then placed in the district's debt service account, with disbursements being made from such account to pay the aforesaid bond obligations when due (14 Del. C., Ch. 21).

On the other hand, if the district chooses to finance its share of its minor capital improvements program through local taxation, a referendum need not be held, inasmuch as 14 Del. C., §1902(b), provides that where the State requires a district to contribute to a State appropriation, as is the case with minor capital improvements, the district is not required to hold a referendum in order to levy taxes sufficient to satisfy the required rate of contribution. See also 59 Del. Laws, Ch. 223, §17(g).

Accordingly, with the possible exception of expenditures for minor capital improvements, the residents of the State's various school districts, Wilmington and

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special districts excepted, have full control over the amount or rate of their local school tax levy (14 Del. C., §1902, Ch. 26 and 31). With this brief survey completed, we now turn to consideration of your specific questions.

I

You have indicated that in recent years many school districts have begun to accumulate large surpluses in their debt service accounts. In some instances, these surpluses have been in excess of the district's bond obligations for the next fiscal year. For example:

<u>DISTRICT</u>	<u>DEBT SERVICE BALANCE 6-73</u>	<u>PRINCIPLE AND INTEREST DUE FROM 7-73 THRU 6-74</u>
A	\$ 84,503	\$ 72,983
B	307,579	216,963
C	987,852	636,722
D	110,331	80,658
E	204,186	174,926
F	67,848	35,507

Thus, even if the aforementioned districts had not collected any school taxes in fiscal year 1974, they would have been able to meet their total bond obligations!

You have also indicated that it appears that these surpluses are being diverted, at an increasing rate, to pay for items which are unrelated to debt service, including general operating expenses (59 Del. Laws, Ch. 43,44). The practical effect of these transfers is to raise the local school tax levy above the amount authorized by a district's residents pursuant to 14 Del. C., §§1903 and 2122. For example, when money is transferred from a district's debt service account to its

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current expense account, the transfer effectively increases the non-capital tax levy to an amount exceeding that approved by the district's residents. You question the authority of the various districts to authorize such transfers.

As stated heretofore, the power of a district to levy taxes for bonded indebtedness is limited to the amount necessary to pay the interest and annual payment on outstanding bonds, plus 10 percent for delinquencies (14 Del. C., §2116, 2118). Thus, it would appear that accumulation of surpluses in the amounts cited above results, at least in part, from the imposition of artificially high tax rates or the failure of the district to adjust the tax rate downward as bonds are retired.

Since Attorney General Opinions are by definition advisory, rather than investigatory, we express no firm opinion on whether either of the aforesaid practices are being engaged in by any of the State's school districts. However, if in the course of your official audits you discover facts which indicate that a district's tax rate for bonded indebtedness may exceed the rate authorized by law, then you should immediately bring such facts to the attention of the responsible local officials and this Office.

With respect to existing surpluses, the general rule, absent specific language to the contrary, is that where the law provides for separate funds for distinct purposes, each fund is impressed with a trust for the specific purpose for which it is raised and no other. 63 Am.Jur.2d, Public Funds, §95; see also Roddy v. Andrix,

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201 NE2d 816 (Ohio 1964), wherein it was held that excess funds arising from a special levy for the purpose of maintenance and operation of schools for retarded children could not be used for acquisition of land for or construction of school buildings.

Here, §2116 provides that each district may levy taxes sufficient to cover its outstanding bond obligations. Section 2118 provides that monies collected pursuant to such levies be paid to the State Treasurer and deposited to the district's debt service account. Section 2118 further provides that the Secretary of Finance may draw on such deposits to pay the district's bond payments as they fall due; and there is no language to indicate that monies deposited to the debt service account may be used for any other purpose.

Thus, it is the opinion of this Office that debt service revenues qualify as "special funds" within the meaning of the rule stated above. Therefore, it follows that a school district may not transfer funds in its debt service account to pay for projects, material or services not within the scope of the referendum on which the underlying tax levy is based.

However, since the requirement that debt service funds be applied solely to payment of bond obligations is imposed by statute, such requirement can be abolished or suspended by subsequent act of the General Assembly. Thus, while a school district does not have the authority to transfer funds from its debt service account, the General Assembly may authorize such transfer through either general

The Honorab^l Richard T. Collins

or special legislation. For example, see 59 Del. Laws, Ch. 192, authorizing the Conrad Area School District to transfer \$164,000 from its debt service account to its school administration building construction account; 60 Del. Laws, Ch. 43, authorizing the Delmar School District to transfer \$25,400 from its debt service account to its current expense account; and 60 Del. Laws, Ch. 44, authorizing the Woodbridge School District to transfer \$60,000 from its debt service account to its current operating funds account.

II

With respect to your second question, regarding the constitutionality of such special legislation as is cited above, it must be noted that it is the responsibility of this Office to defend the laws of this State against constitutional attack, except where those laws are so clearly unconstitutional as to require this Office, as an officer of the Court, to so state.

Here, we concede that it can be argued that special legislation authorizing the use of debt service funds for purposes not encompassed by authorizing referenda violates the due process and equal protection rights of residents in the affected school districts. However, it is the opinion of this Office that such arguments are not, in the legal sense, substantial. Accordingly, we conclude that the General Assembly may authorize a school district to use debt service funds for other school purposes without violating the State or federal constitutions.

The Honorable Richard T. Collins

In summary, we conclude that:

(1) A school district may not assess debt service taxes in an amount which exceeds that necessary to pay off its bond obligations as they fall due.

(2) A school district, by itself, does not have the power to transfer funds from its debt service account or to use such funds for purposes not encompassed by the underlying referendum on which the tax levy is based, and

(3) The General Assembly, by appropriate legislation, may authorize the use of debt service funds for other school purposes without violating the State or federal constitutions.

Should you have any additional questions regarding debt service funds or this opinion, please contact the undersigned at your convenience.

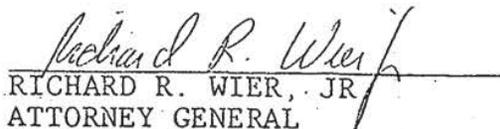
Very truly yours,



A. Gary Wilson
Deputy Attorney General

AGW/lah

APPROVED BY:



RICHARD R. WIER, JR.
ATTORNEY GENERAL

*School District Local Tax Collection and Debt Service
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Appendix C: Matrix of Exceptions by School District										
School District	Procedure									
	1	2	3	4	5	6	7	8	9	10
Appoquinimink	X	X	X							
Brandywine	X	X		X				X		
Caesar Rodney		X						X		
Cape Henlopen	X	X	X							
Capital	X	X	X							
Christina		X								
Colonial	X	X		X						
Delmar	X		X							
Indian River			X					X		
Lake Forest								X		
Laurel	X	X	X						X	
Milford										
New Castle County Vo-Tech								X		
Polytech										
Red Clay	X	X		X						
Seaford		X								
Smyrna										
Sussex Tech										
Woodbridge	X	X								