DEPARTMENT OF TRANSPORTATION
OFFICE OF THE DIRECTOR
P.O. BOX 942873, MS-49
SACRAMENTO, CA 94273-0001
PHONE (916) 654-5266
FAX (916) 654-6608
TTY 711
www.dot.ca.gov

Serious drought.
Help save water!

October 25, 2016

Ms. Diane Boyer-Vine
Legislative Counsel
State Capitol, Room 3021
Sacramento, CA 95814

Mr. Daniel Alvarez
Secretary of the Senate
State Capitol, Room 3044
Sacramento, CA 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, CA 95814

Dear Ms. Boyer-Vine, Messrs. Alvarez, and Wilson:

Enclosed is the "2016 Biennial Report to the Legislature on Unrefunded Gasoline Tax Used for Off-Highway Agricultural Purposes". This report estimates the funds to be transferred in fiscal years 2016-17 and 2017-18 from the Motor Vehicle Fuel Account to the California Department of Food and Agriculture (CDFA) Fund. The transfers represent the estimated amount of the unclaimed portion of refundable motor vehicle fuel taxes used for off-highway agricultural purposes. This biennial report was prepared by the California Department of Transportation (Caltrans) in cooperation with the CDFA, as required by Section 8352.5 of the Revenue and Taxation Code (R&TC).

The methodology utilized to calculate the transfer amounts has remained unchanged since the 2012 report. The 2016 report calculation is based on both the base excise tax and the price-based excise tax, totaling 27.8 cents per gallon. In accordance with R&TC, Section 8352.5 (b), the amount of the transfer attributable to the price-based excise tax will continue to be redirected to the General Fund (GF).

The enclosed report displays the most current data used to calculate the transfers for 2016-17 and 2017-18. The total amount for 2016-17 is $60,458,912 of which $30,229,456 will be transferred to the Agriculture Fund and $30,229,456 will be transferred to the GF. Pursuant to R&TC, Section 8352.9, Caltrans has withheld $3,500 from the 2016-17 transfer for administrative, clerical, and reproduction costs incurred while calculating the transfers and preparing the report. The total amount for 2017-18 is $60,462,412, of which $30,231,206 will be transferred to the Agriculture Fund and $30,231,206 will be transferred to the GF.

Distribution to the Legislature has been made by Caltrans pursuant to Government Code Section 9795. This report can be found at http://www.dot.ca.gov/reports-legislature.htm.

Should you have additional questions or concerns, please feel free to contact Norma Ortega, Chief Financial Officer at, (916) 654-3986.

Sincerely,

MALCOLM DOUGHERTY
Director

Enclosures
(1) 2016 Report To The Legislature on Unrefunded Gasoline Tax Used for Off-Highway Agricultural Purposes

2016 Biennial Report to the Legislature on Unrefunded Gasoline Tax Used for Off-Highway Agricultural Purposes

Caltrans

September 30, 2016

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Executive Summary

Pursuant to the Revenue and Taxation Code (R&TC), Section 8351, excise taxes collected on motor vehicle fuel is deposited into the Motor Vehicle Fuel Account (MVFA). These revenues are transferred from the MVFA to other funds and accounts, according to statute, for various transportation purposes including major road rehabilitation, maintenance of California's highway system, capital improvements, and other departmental programs.

In accordance with R&TC, Section 8352.5, the California Department of Transportation (Caltrans) prepared this document in cooperation with the California Department of Food and Agriculture (CDFA) to determine the estimated annual transfer of fuel tax funds to the Agriculture Fund from the MVFA for fiscal years 2016-17 and 2017-18. Resources in the Agriculture Fund, which is administered by the CDFA, are used for purposes such as the emergency eradication of pests and reimbursements to various county agricultural programs.

In accordance with Assembly Bill 1466 (2012), the formula relating to the annual funds transfer was amended. The calculation method in 2011 used the base excise tax (18 cents per gallon) only. Beginning in 2012, the calculation method uses the combined base and price-based excise tax amounts (27.8 cents per gallon in 2016). Pursuant to R&TC, Section 8352.5(b), the price-based excise tax portion of the transfer amount will be sent to the General Fund (GF) and the base excise tax portion will be sent to the Agriculture Fund.

Caltrans will request that the State Controller's Office (SCO) transfer $39,298,293 from the MVFA to the Agriculture Fund and $21,160,619 to the GF in 2016-17. In addition, Caltrans will request that the SCO transfer $39,300,568 from the MVFA to the Agriculture Fund and $21,161,844 to the GF in 2017-18.

Statutory Reference & Purpose

Statute allows the public to make requests for refunds of revenues collected on fuel usage, when that usage is for off-highway purposes. However, not all allowable refunds are requested. R&TC, Section 8352.5(a)(2) requires fuel taxes attributable to unclaimed, refundable, agricultural gasoline used for off-highway purposes to be transferred to the Agriculture Fund from the MVFA. A biennial report to the Legislature regarding the transfer is also required.

Appendix A lists, verbatim, the exact requirements of the law.

Program Background

In 1970, legislation required that unclaimed, refundable, agricultural gasoline taxes be transferred from the MVFA to the Agriculture Fund. As a result, a study was commissioned to develop a transfer formula methodology.

The study, which was conducted by the consulting firm of Peat, Marwick, Mitchell and Company, illustrated various methods that could be used in calculating the unrefunded amount. Two of the recommended methods were to be used in conjunction with each other. These methods incorporated farm sector income tax information from the California State Franchise Tax Board (FTB), refund data from the California State Controller's Office (SCO), and fuel energy information from the United States Agricultural Census specific to California. An expansion factor was applied to the average of the two methods to account for agricultural sectors other than farms.

In November 1986, FTB notified Caltrans that farm tax information would no longer be available due to reporting changes on the 1984 federal income tax forms. These changes eliminated several line items that FTB had used to compile total farm gasoline expenditure information.

A series of meetings was conducted between Caltrans and the CDFA to develop an alternative means of determining the appropriate transfer of unclaimed refunds. The meetings resulted in a Memorandum of Understanding where both departments agreed to transfer 0.56 percent of the MVFA gasoline tax receipts reported in the proposed Governor's Budget for the 1987-88 and 1988-89 transfers. This method was developed based on the past transfer amounts as a percentage of total net gasoline receipts. This served as an interim method until Caltrans and the CDFA completed their investigative studies to supplant the farm data formerly supplied by FTB.

Caltrans and the CDFA jointly developed a revised methodology similar to one of the methods illustrated in the Peat, Marwick, Mitchell and Company report. A horticultural study conducted in 1987 by the United States General Accounting Office (USGAO) estimated the horticultural products in use as well as the average fuel consumption of their machinery. This consumption data was combined with the most current data on horticultural machinery shipments during the last five years and used in a calculation that determined the amount of unrefunded agricultural gasoline taxes to be transferred to the CDFA.

Prior to 2002, reports to the Legislature used the average retail price for gasoline provided by the State Board of Equalization. However, the California Energy Commission reported that farmers typically purchase gasoline from jobbers (distributors) and paid a lower price (usually 3 to 6 cents over wholesale). For this reason, the 2002 average, unbranded, wholesale price for gasoline ($1.40)[1], as well as the high-end rate for delivery to the farm of an additional 6 cents, was being applied to the calculation in place of the retail price for gasoline. Additional data in the refund calculation included current SCO farm tax refund information and the California share of motor fuels sold in the United States.

The Census on Agriculture farm fuel expenditure data for California traditionally provided the retail gasoline expenditure figure applied to the transfer calculation. However, the United States Department of Agriculture (USDA) no longer compiled this information after 2002 pursuant to that year's Census on Agriculture (not released until February of 2004). Total agriculture fuel expenditures were estimated by multiplying the total agriculture gasoline expenditures for California in 1997[2] by the percent increase in the average price of gasoline in California from 1997 to 2005[3].

Beginning with the 2009 Report, a new methodology was implemented to determine small horticulture gallonage. Previously, data was gathered from various sources including the 1987 USGAO horticultural study, the 1999 Statistical Abstract of the United States, and five years of horticulture equipment data from the Outdoor Power Equipment Institute (OPEI). However, the OPEI informed the CDFA that they would no longer be able to provide the horticulture data. The previous method was significantly undercounting horticulture usage for California.

[1] 2004 Estimated Unbranded Wholesale Price for Gasoline, California Energy Commission
[2] 1997 USDA Census on Agriculture
[3] Historical Yearly Average California Gasoline Prices, California Energy Commission

In place of the OPEI data, the CDFA began utilizing the California Air Resources Board (CARB) OFFROAD data model. The model was developed using data compiled from the California Department of Motor Vehicles (DMV) registrations, equipment population data, sales data, and statistical surveys to calculate the gasoline consumption. Previous information was based on nationwide data, which then assumed an allocation of approximately 10% to California. The CARB model is California specific and, therefore, provides more accurate data than the method previously used to calculate horticulture gallonage.

On March 24, 2010, Assembly Bills 6 and 9 of the Eighth Extraordinary Session (ABX8 6 and ABX8 9) were enacted, which created a fuel tax swap. ABX8 6 eliminated the state portion of sales tax on gasoline and "swapped" it with an incremental increase to the base excise tax on gasoline, effective July 1, 2010. Pursuant to R&TC, Section 7360(b)(3), this incremental increase is adjusted annually to maintain revenue neutrality, and is referred to as the "price-based" excise tax (PBET). Because the excise tax rate fluctuates annually, the Agriculture Fund and the GF vary based on the rate.

Program Status/Program Accomplishments

The current methodology was developed in 2012 by using data compiled by the DMV from the number of registrations, equipment population data, sales data, and statistical surveys to calculate the gasoline consumption.

Effective July 1, 2016 the total excise tax rate is 27.8 cents per gallon, which consists of both the base and price-based excise tax rates (currently 18 and 9.8 cents per gallon, respectively). These rates are used as the basis for the 2016-17 and 2017-18 transfer calculations. Pursuant to R&TC, Section 8352.5, transfers are calculated based on the transfer split between the Agriculture Fund and the General Fund, respectively 65 percent and 35 percent due to the decrease in the Price-Based Excise Tax to 9.8 cents per gallon.

Based on the calculations in Table A, the 2016-17 total unclaimed gas tax is projected to be $60,458,912, of which $39,298,293 will be transferred to the Agriculture Fund and $21,160,619 will be transferred to the GF. Pursuant to R&TC, Section 8352.9, Caltrans has reduced the 2016-17 total transfer amount by $3,500 for administrative, clerical, and reproduction costs incurred while preparing this report.

The 2017-18 total unclaimed gas tax is projected to be $60,462,412, of which $39,300,568 will be transferred to the Agriculture Fund and $21,161,844 will be transferred to the GF.

If there is no change in the gasoline excise tax rate, this methodology determines the appropriate transfer amounts to be made in the current and subsequent fiscal years.

Conclusion

Caltrans and the CDFA will continue to use this methodology for future Agriculture Fund transfers. It should be noted that this particular methodology can cause the transfer amounts to vary in subsequent years when gas prices rise and fall. The current data has been implemented to calculate the 2016-17 and 2017-18 transfer amounts. In the event updated data becomes available that alters the transfer amount, a subsequent report will be provided to account for the increase or decrease.

Caltrans will request that the SCO transfer $39,298,293 from the MVFA to the Agriculture Fund and $21,160,619 to the GF in 2016-17. In addition, Caltrans will request that the SCO transfer $39,300,568 from the MVFA to the Agriculture Fund and $21,161,844 to the GF in 2017-18. The transfers are to be made during the second quarter of each fiscal year.

Appendix A: Statutory Reporting Reference[4]

Revenue and Taxation Code, Section 7360: (b)(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2012, the adjustment under paragraph (2) shall also take into account the extent to which the actual amount of revenues derived pursuant to this subdivision and, as applicable, Section 7361.1, the revenue loss attributable to the exemption provided by Section 6357.7 resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

Revenue and Taxation Code, Section 8351: The Controller shall transmit all money received by him or her in payment of taxes, interest, and penalties due under this part, and restitution orders or any other amounts otherwise authorized by law to be collected by the Controller, or any other amounts imposed by a court of competent jurisdiction to be paid to the Controller, to the State Treasurer who shall deposit it in the State Treasury and credit it to the Motor Vehicle Fuel Fund, which is continued in existence as the Motor Vehicle Fuel Account in the Transportation Tax Fund, which fund is hereby created. All fees paid and accepted for issuance or reinstatement of licenses under this part shall be deposited by the board in the State Treasury to the credit of the same account.

Revenue and Taxation Code, Section 8352.5: (a)(1) Subject to Sections 8352 and 8352.1, and except as otherwise provided in subdivision (b), there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund, during the second quarter of each fiscal year, an amount equal to the estimate contained in the most recent report prepared pursuant to this section.

(b) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 and otherwise to be deposited in the Department of Food and Agriculture Fund pursuant to subdivision (a) shall instead be transferred to the General Fund. The revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 and Section 7361.1 that were deposited in the Department of Food and Agriculture Fund in the 2010–11 and 2011–12 fiscal years shall be transferred to the General Fund.

(c) On or before September 30, 2012, and on or before September 30 of each even-numbered year thereafter, the Director of Transportation and the Director of Food and Agriculture shall jointly prepare, or cause to be prepared, a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel, which is subject to refund pursuant to Section 8101 less gross refunds allowed by the Controller to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101; and they shall submit a copy of the report to the Legislature.

Revenue and Taxation Code, Section 8352.9: The Controller shall withhold from any funds transferred pursuant to any section of this chapter an amount equal to the cost, as determined by the Department of Transportation, to the State Highway Account for preparing any report needed in order to establish the appropriate amount of any such transfer. He shall transfer such amounts withheld to the State Highway Account in the State Transportation Fund.

[4] This represents specifically referenced portions of statutes within the report.

Appendix B: Formula Calculation

AGRICULTURAL FUND
TRANSFER FORMULA METHODOLOGY
for Fiscal Years 2016-17 and 2017-18

			2016-17 Calculation		2017-18 Calculation
Total agricultural gas expenditures		(1)	$495,609,728		$495,609,728
(/)	Average price per gallon	(2)	$2.08		$2.08
(=)	Total agricultural gasoline gallons		238,273,908		238,273,908
(-)	Gallons refunded	(3)	1,667,728		1,667,728
(=)	Unclaimed eligible gasoline gallonage		236,606,180		236,606,180
(x)	% used off-highway	(4)	51.200%		51.200%
(=)	Eligible refundable gasoline gallons for farms		121,142,364		121,142,364
(+)	Small horticulture gallonage	(5)	96,348,327		96,348,327
(=)	Total eligible refundable agricultural gasoline gallonage		217,490,691		217,490,691
(x)	Gross refund rate	(6)	$0.278		$0.278
(=)	unclaimed gas tax		$60,462,412	(7)	**$60,462,412**
(-)	Administrative costs		$3,500		
		(7)	**$60,458,912**		
	Transfer Amount To The General Fund (35%)		$21,160,619		$21,161,844
	Transfer Amount To The Agriculture Fund (65%)		$39,298,293		$39,300,568

References:

(1) Using the California Energy Commission report for unbranded gasoline prices, the cost of gasoline decreased 30.67% over the period of July 7, 2014 through June 27, 2016. The average wholesale price per gallon was $2.08 in comparison to the $3.00 used in the previous calculation.
$714,856,091 x 69.33% = $495,609,728

(2) California Energy Commission 2015 Annual Average Weekly Unbranded Wholesale Gasoline Price + 6 Cents (jobber/distributor cost -)

(3) State Controller Farm Refunded Gallons, 2015-16 (Summary dated June 2016)

(4) Peat, Marwick, Mitchell & Co. Report on Unrefunded Gasoline for Agriculture.

(5) Used California Air Resources Board (CARB) OFFROAD Model. Reflects equipment gasoline consumption for 2015 calendar year horticulture catergory of equipment only.

(6) Effective July 2016 Excise Tax Rate decreased to $0.278 Cents Per Gallon (Gas Tax Swap Legislation).

(7) The total unclaimed gas tax amount will be disbursed according to statute to the General Fund and Agriculture Fund each year.

(8) Pursuant to R&TC, Section 8352.5, transfers are calculated based on the monthly transfer split between the Agriculture Account and the General Fund, respectively 65 percent and 35 percent.

Appendix C: Historical Transfers

MOTOR VEHICLE FUEL ACCOUNT
AGRICULTURE FUND TRANSFERS

Fiscal Year	Calculated Transfer Amount
1972-1973	$2,310,000.00
1973-1974	$2,230,000.00
1974-1975	$2,230,000.00
1975-1976	$2,800,143.00
1976-1977	$2,813,643.00
1977-1978	$3,353,000.00
1978-1979	$3,365,000.00
1979-1980	$3,820,032.00
1980-1981	$3,836,784.00
1981-1982	$4,122,161.00
1982-1983	$4,140,694.00
1983-1984	$3,785,000.00
1984-1985	$3,799,000.00
1985-1986	$6,191,770.00
1986-1987	$6,208,736.00
1987-1988	$5,949,788.00
1988-1989	$5,951,288.00
1989-1990	$6,552,000.00
1990-1991	$13,247,000.00
1991-1992	$15,704,065.00
1992-1993	$16,717,231.00
1993-1994	$17,730,396.00
1994-1995	$18,236,979.00
1995-1996	$20,599,983.00
1996-1997	$23,041,690.00
1997-1998	$23,141,190.61
1998-1999	$23,141,190.61
1999-2000	$26,115,982.00
2000-2001	$26,115,982.00
2001-2002	$23,341,071.00
2002-2003	$23,341,071.00
2003-2004	$32,281,772.00
2004-2005	$32,281,772.00
2005-2006	$33,271,838.00
2006-2007	$33,271,838.00
2007-2008	$32,966,126.00
2008-2009	$32,966,126.00
2009-2010	$38,167,476.00
2010-2011	$38,170,976.00
2011-2012	$38,323,791.00
2012-2013	$77,305,549.00
2013-2014	$77,309,049.00
2014-2015	$77,762,232.89
2015-2016	$77,765,732.89
2016-2017	$60,458,912.10
2017-2018	$60,462,412.10

Transfer increase is the result of implementing a new calculation methodology and the 5% gas tax.

"Preparation Costs" are deducted from the transfer amounts shown.

Transfer increase is the result of Assembly Bill 1466 (2012) which changed the calculation to include both the base and price-base excise taxes. This resulted in the General Fund receiving the price-base excise tax portion and the Agriculture Fund receiving the base excise tax portion of the calculation.