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August 22, 2012

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

Mr. Gregory Schmidt
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, Mr. Schmidt, and Mr. Wilson:

Enclosed is the "2012 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 2012-13 and 2013-14 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.

The passage of the 2012 Budget Act revised the methodology on how the transfer amount is calculated. Previously, the transfer was centered on the base excise tax of 18 cents/gallon; however, the 2012 report is now calculated based on both the base-excise tax and the price-based excise tax, totaling 36 cents/gallon. Consequently, the transfer to the CDFA will be approximately twice as much as it was in previous years. However, the amount of the transfer attributable to the price-based excise tax will be redirected to the General Fund pursuant to Assembly Bill 1466 of 2012.

The methodology used to estimate the total agricultural gas expenditures, as well as the average retail price for gasoline, have been revised.

The methodology change is described in detail in the enclosed report and the most current data has been used to calculate the transfers for 2012-13 and 2013-14. The amount to be transferred for 2012-13 is $77,305,549. The 2012-13 transfer includes a deduction of $3,500 for Caltrans administrative, clerical, and reproduction costs in calculating the transfers and preparing the report. These costs are withheld per Revenue and Taxation Code Section 8352.9. The amount to be transferred for 2013-14 is $77,309,049.

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.

Sincerely,

MALCOLM DOUGHERTY
Director

Enclosure

2012 REPORT TO THE LEGISLATURE ON UNREFUNDED GASOLINE TAX USED FOR OFF-HIGHWAY AGRICULTURAL PURPOSES

A Report to the Legislature by the
California Department of Transportation
and the
California Department of Food and Agriculture,
as required by
Revenue and Taxation Code Section 8352.5

2012 REPORT TO THE LEGISLATURE ON UNREFUNDED GASOLINE TAX USED FOR OFF-HIGHWAY AGRICULTURAL PURPOSES

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INTRODUCTION

Excise taxes collected on motor vehicle fuels are deposited in the Motor Vehicle Fuel Account (MVFA) in the Transportation Tax Fund. These revenues are transferred from the MVFA to other funds and accounts according to statute.

Statute allows requests to be made for refunds of fuel taxes collected on fuel usage, when that usage is for off-highway purposes. However, not all allowable refunds are requested. Revenue and Taxation Code Section 8352.5 requires fuel taxes attributable to unclaimed, refundable, agricultural gasoline used off-highway to be transferred to the Department of Food and Agriculture Fund (Agriculture Fund) from the MVFA. A biennial report to the Legislature regarding the transfer is also required.

This document is prepared in cooperation with the California Department of Food and Agriculture (CDFA) and reports the estimated annual transfer of fuel tax funds from the MVFA to the Agriculture Fund for fiscal years 2012-13 and 2013-14. The Agriculture Fund, which is administered by the CDFA, is used for purposes such as the Emergency Eradication Fund and reimbursements to various county agricultural programs.

HISTORY

In 1970, legislation required that unclaimed refundable agricultural gas 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 these methods were recommended to be used in conjunction with each other. The 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 the State of 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 the California Department of Transportation (Caltrans) that farm tax information would no longer be available due to reporting changes on the 1984 federal income tax forms. The changes eliminated several line items that FTB had used to compile total farm fuel expenditure information.

A series of meetings were conducted between Caltrans and CDFA to develop an alternative means of determining an 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 past transfer amounts as a percentage of

total net gas receipts. This served as an interim method until Caltrans and CDFA completed investigative studies to supplant the farm data formerly supplied by FTB.

Caltrans and CDFA jointly developed a revised methodology similar to one of the methods illustrated in the Peat, Marwick, Mitchell and Company report. A 1987 United States General Accounting Office (USGAO) horticultural study estimated the horticultural products in use, and the average fuel consumption of the various machines. 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 fuel taxes to be transferred to 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 pay a lower price (usually 3 to 6 cents over wholesale). For that reason, the 2002 average unbranded wholesale price for gasoline ($1.40)[i], plus 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 has traditionally provided the retail gasoline expenditure figure applied to the transfer calculation. Beginning with the 2002 Census on Agriculture, which was released in February 2004, the United States Department of Agriculture (USDA) no longer compiles this information. Total agriculture gasoline expenditures were estimated by multiplying the total agriculture gasoline expenditures for California in 1997[ii] by the percent increase in the average price of gasoline in California from 1997 to 2005[iii].

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, 1999 Statistical Abstract of the United States, and five years of horticulture equipment data from the Outdoor Power Equipment Institute (OPEI) were used. However, OPEI informed the CDFA they will no longer be able to provide the horticulture data. The previous method was significantly undercounting horticulture usage for California.

The passage of Assembly Bill 1466 of 2012 amended the formula relating to the annual funds transfer. The previous method for transferring funds was based on the base excise tax (18 cents/gallon); however, the new methodology is based on both the base-excise tax and the price-based excise tax (totaling 36 cents/gallon). Once the transfer commences, the price-based excise portion of the transfer (18 cents/gallon) is immediately redirected to the General Fund.

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[i] 2004 Estimated Unbranded Wholesale Price for Gasoline, California Energy Commission
[ii] 1997 USDA Census on Agriculture
[iii] Historical Yearly Average California Gasoline Prices, California Energy Commission

NEW METHODOLOGY

In place of the OPEI data, CDFA has substituted the newly developed CARB OFFROAD data model. The model was developed using data compiled from Department of Motor Vehicles 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 (AB) 6 and 9 of the eighth extraordinary session of 2009-10 (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 17.3 cent/gallon increase (adjusted each year based on consistency with state sales on gasoline) to the base excise tax on gasoline effective July 1, 2010.

Effective July 1, 2011, the modified excise tax rate was 35.7 cents/gallon. After additional analysis and mutual consent with the CDFA, it was determined that only the base 18 cents/gallon is applicable towards the gross refund rate. However, effective July 1, 2012, the 2012 Budget Act included language that changed the methodology from using only the base 18 cents/gallon to using both the base and the price-based excise tax (18 cents/gallon)—totaling 36 cents/gallon. Once the transfer is completed, the amount attributable to the price-based excise tax will be immediately transferred to the General Fund.

Based on the revised methodology, the transfer to be made will be $77,305,549 for 2012-13. The FY 2013-14 transfer will be $77,309,049 (see Table A). The 2012-13 transfer includes a deduction of $3,500 for Caltrans' administrative, clerical, and reproduction costs in calculating the transfers and preparing the report. These costs are withheld per Revenue and Taxation Code Section 8352.9.

Immediately after this transfer is completed, approximately half of the transfer amount will be redirected to the General Fund.

If no change in the gasoline excise tax rate occurs, this methodology determines the appropriate transfer amount to be made in the current and subsequent fiscal year.

CONCLUSION

Caltrans and the CDFA will continue to use this methodology for future Agriculture Fund transfers. It should be noted that this methodology would cause the transfer amount to fluctuate as gas prices rise and fall. The current data has been implemented to calculate the 2012-13 and 2013-14 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 $77,305,549 for 2012-13 and $77,309,049 for 2013-14 from the MVFA to the Agriculture Fund. The transfers are to be made during the second quarter of each fiscal year.

Table A

AGRICULTURAL FUND
TRANSFER FORMULA METHODOLOGY
for Fiscal Years 2012-13 and 2013-14

		2012-13 Calculation	2013-14 Calculation
Total agricultural gas expenditures	(1)	**$691,016,038**	**$691,016,038**
(/) Average price per gallon	(2)	**$2.90**	**$2.90**
(=) Total agricultural gasoline gallons		238,281,392	238,281,392
(-) Gallons refunded	(3)	**2,078,147**	**2,078,147**
(=) Unclaimed eligible gasoline gallonage		236,203,245	236,203,245
(x) % used off-highway	(4)	51.200%	51.200%
(=) Eligible refundable gasoline gallons for farms		120,936,062	120,936,062
(+) Small horticulture gallonage	(5)	**93,811,297**	**93,811,297**
(=) Total eligible refundable agricultural gasoline gallonage		214,747,359	214,747,359
(x) Gross refund rate	(6)	$0.360	$0.360
(=) unclaimed gas tax		$77,309,049	**$77,309,049**
(-) Administrative costs		$3,500	
		$77,305,549	

References:

(1) Using the CA Energy Commission report for unbranded gasoline prices, the cost of gasoline increased 1.23% over the period of July 5, 2010 through June 25, 2012. The average wholesale price per gallon was $2.47 in the previous calculation. $88,555,039 x 117.41% = $691,016,038

(2) California Energy Commission 2010 Annual Average Weekly Unbranded Wholesale Gasoline Price + $0.06.

(3) State Controller Farm Refunded Gallons, 2010-11.

(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 2011 horticulture catergory of equipment only.

(6) Effective July 2011 Excise Tax Rate increased to 35.7 Cents Per Gallon (Gas Tax Swap Legislation). Effective July 2012, excise tax was increased, thereby bringing the total tax to 36 Cents Per Gallon. The full 36 cents/gallon applies to this formula

Table B

MOTOR VEHICLE FUEL ACCOUNT
AGRICULTURE FUND TRANSFERS

	Fiscal Year	Original Estimate	Revised Est. Increase	Calculated Transfer Amount [1]
	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
[2]	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	$18,236,979	$2,363,004	$20,599,983.00
	1996-1997	$18,236,979	$4,804,711	$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

1 "Preparation Costs" not deducted from the transfer amounts shown.

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