2009 Report To The Legislature on Unrefunded Gasoline Tax Used for Off-Highway Agriculture 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

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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 year (FY) 2009-10 and FY 2010-11. 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 (Department) 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 was conducted between the Department 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 the Department and CDFA completed investigative studies to supplant the farm data formerly supplied by FTB.

The Department 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 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)[1], 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[2], by the percent increase in the average price of gasoline in California from 1997 to 2005[3].

NEW METHODOLOGY

Beginning with the 2009 Report, a new methodology is being implemented to determine small horticulture gallonage. Previously, data was gathered from various sources including the 1987 US General Accounting Office, 1999 Statistical Abstract of the United States, and five years of horticulture equipment data from the Outdoor Power Equipment Institute (OPEI) were used.

[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

However, OPEI informed the CDFA they will no longer be able to provide the horticulture data. In place of the OPEI data, CDFA has substituted the newly developed CARB OFFROAD data model. The model was developed using data compiled from 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. CARB also realized that the previous method was significantly undercounting horticulture usage for California. The CARB model is California specific and therefore, provides more accurate data than the method previously used to calculate horticulture gallonage.

Since no changes are anticipated in the gasoline excise tax rate, and the data used is from the most current resources available, the transfer to be made is $38,167,476 for FY 2009-10. The FY 2010-11 transfer will be $38,170,976 (see Table A). The FY 2009-10 transfers includes a deduction of $3,500 for the Department's 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.

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

The Department 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 FY 2009-10 and FY 2010-11 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.

The Department will request that the SCO transfer $38,167,476 for FY 2009-10 and $38,170,976 for FY 2010-11 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 2009-10 and 2010-11

		2009-10 Calculation	2010-11 Calculation
Total agricultural gas expenditures	(1)	**$581,406,597**	**$581,406,597**
(/) Average price per gallon	(2)	**$2.44**	**$2.44**
(=) Total agricultural gasoline gallons		238,281,392	238,281,392
(-) Gallons refunded	(3)	**2,980,579**	**2,980,579**
(=) Unclaimed eligible gasoline gallonage		235,300,813	235,300,813
(x) % used off-highway	(4)	51.200%	51.200%
(=) Eligible refundable gasoline gallons for farms		120,474,016	120,474,016
(+) Small horticulture gallonage	(5)	**91,586,959**	**91,586,959**
(=) Total eligible refundable agricultural gasoline gallonage		212,060,975	212,060,975
(x) Gross refund rate	(6)	$0.18	$0.18
(=) unclaimed gas tax		$38,170,976	**$38,170,976**
(-) Administrative costs		$3,500	
		$38,167,476	

References:

(1) Using the CA Energy Commission report for unbranded gasoline prices, the cost of gasoline increased 11% over the period of July 2, 2007 through June 29, 2009. The average wholesale price per gallon was $2.44 in comparison to the $2.19 used in the previous calculation. $523,789,727 X 111% = $581,406,597.

(2) California Energy Commission 2008 Annual Average Weekly Unbranded Wholesale Gasoline Price + $0.06.

(3) State Controller Farm Refunded Gallons, 2007-2008.

(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 2007 horticulture catergory of equipment only. (Note: Previously used 1987 US General Accounting Office, 1999 Statistical Abstract of the United States and Five Years of Horticulture Equipment Data from Outdoor Power Equipment Institute (OPEI). They no longer provide this data. No other sources for this data are known, therefore we are substituting the CARB OFFROAD data for horticulture equipment gasoline consumption.)

(6) Current gasoline excise tax rate of $0.18 cents per gallon.

STATE CONTROLLER'S USE ONLY		
DOCUMENT NO.	DATE C C Y Y M M D D	MSG Code
J E		

STATE OF CALIFORNIA
OFFICE OF THE STATE CONTROLLER
TRANSACTION REQUEST

STATE CONTROLLER'S USE ONLY	
TC Code	VERIFIED BY:
	DATE:

PAGE 1 OF ____

Agency:	Address:	Agency Document Number:
DEPARTMENT OF TRANSPORTATION	1120 N STREET, SACRAMENTO CA 95814	

FUND	AGY	FY	M	REF/ITEM	FED CAT	P/N	C	CAT	PGM	ELE	COMP	TASK	ACCT		REV/OBJ	AMOUNT	D C	A	T	O	B	SOURCE FUND
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DESCRIPTION: FR 0061FD-R & T 8352.5					CHAPTER NUMBER/YEAR/ITEM											PROGRAM DESCRIPTION						
0 1 1 1	8 5 70	2 0 0 9													3 0 0 6 1 0	38,167,476.00	C	R				
TO 0111FD-R & T 8352.5					CHAPTER NUMBER/YEAR/ITEM											PROGRAM DESCRIPTION						
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TYPE OF TRANSACTION:
TRANSFER OF FUNDS

LEGAL AUTHORITY AND REASON FOR REQUEST:

In accordance with the Revenue and Taxation Code 8352.5, the biannual transfer from the Motor Vehicle Fuel Account to the Department of Agriculture Fund for December 2009 is $38,167,476.00

I hereby certify under penalty of perjury that I am duly appointed, qualified, and acting officer of the herein named State agency, department, board, commission, office or institution; that the within transfer is in all respects true, correct, and in accordance with all applicable provisions or restrictions in the Budget Act, Federal Regulations, or other statute pertaining to the particular appropriation.

AUTHORIZED SIGNATURE:

CONTACT PERSON: Mary Stephenson

PHONE FOR CONTACT: 916-651-9092

DATE: 09/30/2009

NOT TO BE USED AS A CONTROLLER'S REMITTANCE ADVICE

CA504 (7/1989)