

**2011 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**

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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 (FY) 2011-12 and 2012-13. 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 was 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 1997ⁱⁱ by the percent increase in the average price of gasoline in California from 1997 to 2005ⁱⁱⁱ.

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.

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, 2010, the modified excise tax rate was 35.4 cents/gallon, per the fuel tax swap. 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.

Since no changes are anticipated in the gasoline base excise tax rate of 18 cents/gallon, and the data used is from the most current resources available, the transfer to be made is \$38,320,291 for FY 2011-12. The FY 2012-13 transfer will be \$38,323,791 (see Table A). The FY 2011-12 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.

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 FY 2011-12 and 2012-13 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 \$38,320,291 for FY 2011-12 and \$38,323,791 for FY 2012-13 from the MVFA to the Agriculture Fund. The transfers are to be made during the second quarter of each fiscal year.

**AGRICULTURAL FUND
TRANSFER FORMULA METHODOLOGY
for Fiscal Years 2011-12 and 2012-13**

	2011-12 Calculation	2012-13 Calculation
Total agricultural gas expenditures	(1) \$588,555,039	\$588,555,039
(/) Average price per gallon	(2) <u>\$2.47</u>	<u>\$2.47</u>
(=) Total agricultural gasoline gallons	238,281,392	238,281,392
(-) Gallons refunded	(3) <u>2,077,259</u>	<u>2,077,259</u>
(=) Unclaimed eligible gasoline gallonage	236,204,133	236,204,133
(x) % used off-highway	(4) <u>51.200%</u>	<u>51.200%</u>
(=) Eligible refundable gasoline gallons for farms	120,936,516	120,936,516
(+) Small horticulture gallonage	(5) <u>91,973,433</u>	<u>91,973,433</u>
(=) Total eligible refundable agricultural gasoline gallonage	212,909,949	212,909,949
(x) Gross refund rate	(6) <u>\$0.18</u>	<u>\$0.18</u>
(=) unclaimed gas tax	<u>\$38,323,791</u>	<u>\$38,323,791</u>
(-) Administrative costs	<u>\$3,500</u>	
	<u>\$38,320,291</u>	

References:

- (1) Using the CA Energy Commission report for unbranded gasoline prices, the cost of gasoline increased 1.23% over the period of July 6, 2009 through June 27, 2011. The average wholesale price per gallon was \$2.47 in the previous calculation. $\$581,406,957 \times 101.23\% = \$588,555,039$.
- (2) California Energy Commission 2010 Annual Average Weekly Unbranded Wholesale Gasoline Price + \$0.06.
- (3) State Controller Farm Refunded Gallons, 2009-2010.
- (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 2010 horticulture category of equipment only.
- (6) Effective July 2010 Excise Tax Rate increased to 35.4 Cents Per Gallon (Gas Tax Swap Legislation). Only 18 Cents Per Gallon of the Gasoline Excise Tax Rate applies to this formula.

**MOTOR VEHICLE FUEL ACCOUNT
AGRICULTURE FUND TRANSFERS**

Fiscal Year	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
	<u>Original Estimate</u>	<u>Revised Est. Increase</u>	
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			\$38,323,791.00

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.