

Unrefunded Gasoline Tax Used for Off-Highway Agricultural Purposes



Report to the Legislature

2022

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Executive Summary

California tax law requires excise taxes collected on motor vehicle fuel to be deposited into the Motor Vehicle Fuel Account. These fuel tax revenues comprise an excise tax based on volume (per gallon) and an excise tax based on price (a percentage of price) and generally are used for various transportation purposes, including major road rehabilitation, maintenance of California's highway system, transportation-related capital improvements, and other California Department of Transportation (Caltrans) programs.

California tax law also requires the State Controller's Office to transfer annually from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund unclaimed refundable fuel excise tax revenues from fuel purchases for agricultural uses. Monies in the Department of Food and Agriculture Fund are used for activities and programs, such as the emergency eradication of pests and support for county agriculture programs.

The law further requires the transfer annually from the Motor Vehicle Fuel Account to the General Fund of price-based fuel excise tax revenues. The law also requires Caltrans and the California Department of Food and Agriculture to jointly prepare and submit to the Legislature each even-numbered year a report of the fuel tax revenues transferred from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund and to the General Fund.

Accordingly, for Fiscal Year 2022-23, Caltrans will request the State Controller's Office to transfer a total of \$124,471,861 from the Motor Vehicle Fuel Account with \$78,978,435 to the California Department of Agriculture Fund and \$45,493,426 to the General Fund. For Fiscal Year 2023-24, Caltrans estimates the total requested transfer will be \$134,405,678 of which \$85,215,971 will go to the Agriculture Fund and \$49,189,707 to the General Fund.

Program Background

Revenue and Taxation Code Section 8101 authorizes motor vehicle fuel purchasers to receive excise tax refunds on fuel purchased for specified non-highway uses. Revenue and Taxation Code Section 8352.5 requires exempted and unclaimed refundable excise taxes to be transferred from the Motor Vehicle Fuel Account to the General Fund and the Department of Food and Agriculture Fund, respectively. The statute also requires a biennial report to the Legislature of the transferred funds; this report fulfills this requirement (see Appendix A).

Statutory Reporting Reference

- Revenue and Taxation Code Section 7360
- Revenue and Taxation Code Section 8352.5

See Appendix C (page 12) for a history of the methodology used for these transfers.

Program Status

Current Methodology and Calculations

Senate Bill (SB) 1 (Beall, Chapter 5, Statutes of 2017) increased the excise tax on gasoline by 12 cents per gallon effective November 1, 2017. SB 1 also replaced the price-based excise tax with a volume-based excise tax of 17.3 cents per gallon effective July 1, 2019. On July 1, 2022, the combined excise tax rates were adjusted for inflation, as required by SB 1, using the California Consumer Price Index (CPI) as calculated by the Department of Finance. SB 1 requires this inflation adjustment to occur annually.

This adjustment resulted in a combined excise tax of 53.9 cents, which includes a volume-based excise tax of 34.2 cents per gallon and a volume-based (formerly price-based) excise tax of 19.7 cents per gallon. The Fiscal Year 2022-23 and 2023-24 transfers will be calculated using the inflation-adjusted combined excise tax of 53.9 cents and 58.2 cents, respectively, with the split between the Agriculture Fund and the General Fund at approximately 63 percent and 37 percent, respectively.

Prior to 2012, these annual transfers from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Account's Agriculture Fund were calculated from the volume-based excise tax of 18 cents per gallon. Legislation enacted in 2012 also included in the annual transfer revenue generated from

the former price-based but now volume-based excise tax of 1.75 percent enacted in 2010.

Reports since 2012 have used the total of the two excise taxes and data compiled by the Department of Motor Vehicles from the number of registrations; equipment population data, sales data, and statistical surveys; and fuel consumption based on exhaust emissions reported by the California Air Resources Board to calculate the annual transfer of funds. The Agriculture Fund receives the unclaimed refundable volume-based tax revenues and the General Fund receives the formerly price-based, now volume-based tax revenues.

The Fiscal Year 2022-23 total transferrable excise gas tax is projected to be \$124,471,861, of which \$78,978,435 will go to the Agriculture Fund and \$45,493,426 to the General Fund. As permitted by law, the total Fiscal Year 2022-23 transfer amount is reduced by the \$3,500 withheld by Caltrans to recover administrative, clerical, and reproduction costs incurred for compiling and preparing this report. The Fiscal Year 2023-24 total transferrable gas tax is projected to be \$134,405,678 of which \$85,215,971 will go to the Agriculture Fund and \$49,189,707 to the General Fund (see calculation methodology table on page 5).

Fiscal Year	Gasoline Excise Tax Rate	Transfer to Agriculture Fund	Transfer to General Fund
2022-23	53.9 cents/gallon	\$78,978,435	\$45,493,426
2023-24 *	58.2 cents/gallon	\$85,215,971	\$49,189,707

* The 2023-24 Gasoline Excise Tax Rate is projected due to inflation indexing

AGRICULTURAL FUND TRANSFER FORMULA METHODOLOGY
Fiscal Years 2022-23 and 2023-24

	2022-23	2023-24
	Calculation	Calculation
Total agricultural gas expenditures	(1) \$667,154,275	\$667,154,275
(/) Average price per gallon	(2) \$2.80	\$2.80
(=) Total agricultural gasoline gallons	238,269,384	238,269,384
(-) Gasoline gallons refunded	(3) 976,442	976,442
(=) Unclaimed eligible gasoline gallons	237,292,942	237,292,942
(x) Percentage used off-highway	(4) 51.200%	51.200%
(=) Eligible refundable gasoline gallons for farms	121,493,986	121,493,986
(+) Small horticulture gasoline gallons	(5) 109,443,604	109,443,604
(=) Total eligible refundable agricultural gasoline gallons	230,937,590	230,937,590
(x) Gross refund rate	(6) \$0.539	\$0.582
(=) Unclaimed gas tax	<u>\$124,475,361</u>	<u>\$134,405,678</u>
(-) Administrative costs	\$3,500	
	(7) <u>\$124,471,861</u>	
Transfer Amounts ⁽⁸⁾		
Transfer amount to Agriculture Fund (approx. 63%)	\$78,978,435	\$85,215,971
Transfer amount to General Fund (approx. 37%)	\$45,493,426	\$49,189,707

References:

- (1) Using the California Energy Commission report for unbranded gasoline prices, the cost of gasoline increased 27.85% over the period of July 6, 2020, through June 27, 2022. The average wholesale price per gallon was \$2.80 in comparison to the \$2.19 used in the previous calculation ($\$521,825,792 \times 127.85\% = \$667,154,275$).
- (2) California Energy Commission 2021 Annual Average Weekly Unbranded Wholesale Gasoline Price + 6 cents (jobber/distributor cost).
- (3) State Controller Farm Refunded Gallons, 2021-22 (summary dated June 2022).
- (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 2021 calendar year horticulture category of equipment only.
- (6) Effective July 1, 2022, the Excise Tax Rate increased to 53.9 cents per gallon.
Effective July 1, 2023, the Excise Tax Rate is projected to increase to 58.2 cents per gallon.
- (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 Revenue and Taxation Code Section 8352.5, transfers are calculated based on the transfer split between the Agriculture Fund and the General Fund, approximately 63 percent and 37 percent respectively for Fiscal Years 2022-23 and 2023-24.

Conclusion

Caltrans and the California Department of Food and Agriculture will continue to use the current calculation methodology for Agriculture Fund and General Fund transfers. As in past years, transfer amounts may fluctuate due to adjustments to the excise tax rates. Current data have been used to calculate the Fiscal Year 2022-23 and Fiscal Year 2023-24 transfer amounts. In the event updated data become available that alter the transfer amount, a supplemental report will be provided to account for the increase or decrease.

Caltrans will request in Fiscal Year 2022-23 that the State Controller's Office transfer \$78,978,435 to the Agriculture Fund and \$45,493,426 to the General Fund, both from the Motor Vehicle Fuel Account. Based on current data and projections, Caltrans estimates the transfer request for Fiscal Year 2023-24, will be \$85,215,971 to the Agriculture Fund and \$49,189,707 to the General Fund. The transfers are to be made during the second quarter of each fiscal year.

Appendix A: Statutory Reporting Reference

California Revenue and Taxation Code

7360. (a)(1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(2) If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by paragraph (1), on and after the date of the reduction, shall be recalculated by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal twenty-seven cents (\$0.27).

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt under this section.

(b)(1) On and after July 1, 2010, in addition to the tax imposed by subdivision (a), a tax is hereby imposed upon each gallon of motor vehicle fuel, other than aviation gasoline, subject to the tax in Sections 7362, 7363, and 7364 in an amount equal to seventeen and three-tenths cents (\$0.173) per gallon.

(2) For the 2011-12 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate in paragraph (1) in that manner as to generate an amount of revenue that will equal the amount of revenue loss attributable to the exemption provided by Section 6357.7, based on estimates made by the board, and that rate shall be effective during the state's next fiscal year.

(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.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Section 6357.7 does not produce a net revenue gain in state taxes.

(5) Commencing July 1, 2019, the adjustments in paragraphs (2) and (3) shall cease, and the rate imposed by this subdivision shall be the rate in paragraph (1).

(c) On and after November 1, 2017, in addition to the taxes imposed by subdivisions (a) and (b), a tax is hereby imposed upon each gallon of motor vehicle fuel, other than aviation gasoline, subject to the tax in Sections 7362, 7363, and 7364, in an amount equal to twelve cents (\$0.12) per gallon.

(d) On July 1, 2020, and every July 1 thereafter, the board shall adjust the taxes imposed by subdivisions (a), (b), and (c), with the adjustment to apply to both to the base tax rates specified in those provisions and to any previous adjustment in rates made pursuant to this subdivision, by increasing the taxes by a percentage amount equal to the increase in the California Consumer Price Index, as calculated by the Department of Finance with the resulting taxes rounded to the nearest one-tenth of one cent (\$0.01). The first adjustment pursuant to this subdivision shall be a percentage amount equal to the increase in the California Consumer Price Index from November 1, 2017, to November 1, 2019. Subsequent annual adjustments shall cover subsequent 12- month periods. The incremental change shall be added to the associated rate for that year.

7361.2. (a) For the privilege of storing, for the purpose of sale, each supplier, wholesaler, and retailer owning 1,000 or more gallons of tax-paid motor vehicle fuel on November 1, 2017, shall pay a storage tax, the rate of which shall be determined by the board pursuant to the difference in the rate of the tax on motor vehicle fuel in effect on October 31, 2017, and the rate in effect on November 1, 2017, on tax-paid motor vehicle fuel in storage according to the volumetric measure thereof.

8101. The following persons who have paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

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.

8352.5. (a)(1) Subject to Sections 8352 and 8352.1, and except as otherwise provided in paragraph (1) of 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.

(2) The amounts are not subject to Section 6357 with respect to the collection of sales and use taxes thereon, and represent the portion of receipts in the Motor Vehicle Fuel Account during a calendar year that were 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 during the fiscal year ending June 30 following the calendar year to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

(b)(1) Commencing July 1, 2012, the revenues attributable to the taxes imposed pursuant to subdivision (b) of Section 7360 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.

(2) Commencing November 1, 2017, the revenues attributable to the taxes imposed pursuant to subdivision (c) of Section 7360, as adjusted pursuant to subdivision (d) of Section 7360, and Section 7361.2 shall be deposited in the Department of Food and Agriculture 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.

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.

Appendix B: Historical Transfers

MOTOR VEHICLE FUEL ACCOUNT AGRICULTURE FUND TRANSFERS

Fiscal Year	Calculated Transfer Amount
1972-1973	\$2,310,000
1973-1974	\$2,230,000
1974-1975	\$2,230,000
1975-1976	\$2,800,143
1976-1977	\$2,813,643
1977-1978	\$3,353,000
1978-1979	\$3,365,000
1979-1980	\$3,820,032
1980-1981	\$3,836,784
1981-1982	\$4,122,161
1982-1983	\$4,140,694
1983-1984	\$3,785,000
1984-1985	\$3,799,000
1985-1986	\$6,191,770
1986-1987	\$6,208,736
1987-1988	\$5,949,788
1988-1989	\$5,951,288
1989-1990	\$6,552,000
1990-1991	\$13,247,000
1991-1992	\$15,704,065
1992-1993	\$16,717,231
1993-1994	\$17,730,396
1994-1995	\$18,236,979
1995-1996	\$20,599,983
1996-1997	\$23,041,690
1997-1998	\$23,141,191

Fiscal Year	Calculated Transfer Amount
1998-1999	\$23,141,191
1999-2000	\$26,115,982
2000-2001	\$26,115,982
2001-2002	\$23,341,071
2002-2003	\$23,341,071
2003-2004	\$32,281,772
2004-2005	\$32,281,772
2005-2006	\$33,271,838
2006-2007	\$33,271,838
2007-2008	\$32,966,126
2008-2009	\$32,966,126
2009-2010	\$38,167,476
2010-2011	\$38,170,976
2011-2012	\$38,323,791
2012-2013	\$77,305,549
2013-2014	\$77,309,049
2014-2015	\$77,762,233
2015-2016	\$77,765,733
2016-2017	\$60,458,912
2017-2018	\$81,990,000
2018-2019	\$94,311,340
2019-2020	\$106,980,622
2020-2021	\$115,811,576
2021-2022	\$119,025,791
2022-2023	\$124,471,861
2023-2024	\$134,405,678

Appendix C: Historical Methodologies

The following provides a history of methodologies used to calculate transfers of unclaimed refundable fuel taxes from agricultural uses to the General Fund and the Department of Food and Agriculture Fund. These methodologies are no longer in use.

In 1970, the Legislature required unclaimed refundable gasoline taxes from agricultural uses to be transferred from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund. The state contracted with the consulting firm Peat, Marwick, Mitchell, and Company to develop a transfer formula methodology. A 2-part methodology was adopted, incorporating farm-sector income tax information from the California State Franchise Tax Board, refund data from the State Controller's Office, and fuel-related information from the United States Agricultural Census specific to California. This methodology accounted for non-farm agricultural sectors.

In November 1986, the farm-sector income tax information became unavailable due to reporting changes on the 1984 federal income tax forms. To meet the immediate need to fill this data gap, Caltrans and the California Department of Food and Agriculture entered into a Memorandum of Understanding under which both departments agreed to transfer to the Agriculture Fund 0.56 percent of the Motor Vehicle Fuel Account gasoline tax receipts reported in the proposed Governor's Budget for Fiscal Years 1987-88 and 1988-89. This method, based on past transfer amounts as a percentage of total net gasoline receipts, served as an interim formula while Caltrans and the California Department of Food and Agriculture developed a revised methodology to account for the farm data formerly supplied by Franchise Tax Board.

The methodology Caltrans and the California Department of Food and Agriculture jointly developed was a revision of another of the Peat Marwick Mitchell and Company proposed methodologies using a horticultural study conducted in 1987 by the United States General Accounting Office (U.S. GAO) that estimated the horticultural products in use, as well as the average fuel consumption of their associated machinery. The new Caltrans and California Department of Food and Agriculture methodology combined fuel consumption data with data on horticultural machinery shipments during the previous five years to calculate an estimate of unclaimed refundable agricultural gasoline excise taxes to be transferred to the Agriculture Fund.

Initially, the report methodology used the average retail price of gasoline provided by the State Board of Equalization. In 2002, however, following the California Energy Commission determination that farmers typically purchase gasoline from jobbers (distributors) at a reduced price—usually 3 cents to 6 cents

over wholesale—the 2002 report used the average wholesale price for unbranded gasoline (then \$1.40 per gallon) plus the high-end delivery rate of 6 cents in place of the retail price for gasoline. Additional data in the refund calculation included current State Controller's Office 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 had 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 compiled this information. Consequently, total agriculture gasoline expenditures were instead estimated by multiplying the total agriculture gasoline expenditures for California in 1997 by the percent increase in the average price of gasoline in California from 1997 to 2005.

Beginning with the 2009 report, a revised methodology was necessary to determine horticulture gallonage as the Outdoor Power Equipment Institute had ceased compiling horticulture equipment data. In addition, reviews of the then-current data sources revealed horticultural usage was being significantly undercounted.

This revised methodology replaced the Outdoor Power Equipment Institute data with the California Air Resources Board OFFROAD data model. This model used data compiled from the California Department of Motor Vehicles registrations, equipment population data, sales data, and statistical surveys to calculate the gasoline consumption. The California Air Resources Board model uses California-specific data, which is more accurate than either the Outdoor Power Equipment Institute horticulture usage or assuming California consumes approximately 10 percent of the national gallonage.

On March 22, 2010, Assembly Bill (AB) 6 and AB 9 of the Eighth Extraordinary Session (ABX8-6, Budget Committee, Chapter 11, Statutes of 2010, and ABX8-9, Budget Committee, Chapter 12, Statutes of 2010) took effect, creating what has become known as the fuel tax swap. ABX8-6 eliminated the state portion of the price-based sales tax on gasoline and “swapped” it with an increase in the excise tax on gasoline, effective July 1, 2010. Revenue and Taxation Code Section 7360(b)(3) required this tax to be adjusted up or down annually to keep the impact on consumers of the total of the combined taxes neutral.

The calculation method for the 2011 transfer used the base excise tax only—18 cents per gallon. Beginning in 2012, the calculation method used the combined volume-based and price-based excise tax amounts. In 2012, the first year's transfer split percentage was also applied to the second year, as the total excise tax was unknown.