

# 2018 Biennial Report to the Legislature on Unrefunded Gasoline Tax Used for Off-Highway Agricultural Purposes



September 30, 2018

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## **Executive Summary**

Pursuant to Revenue and Taxation Code (R&TC), Section 8351, excise taxes collected on motor vehicle fuel are deposited into the Motor Vehicle Fuel Account (MVFA). These revenues are transferred from the MVFA to other funds and accounts 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 2018-19 and 2019-20. 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 used in 2011 utilized the base excise tax (18 cents per gallon) only. Beginning in 2012, the calculation method began using the combined base and price-based excise tax amounts. Pursuant to R&TC, Section 8352.5(b)(1), 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.

Senate Bill 1 (SB 1) was signed into law in April 2017, executing a 12 cents per gallon excise tax increase on gasoline and took affect November 1, 2017. Pursuant to R&TC, Section 8352.5(b)(2), the revenues attributable to agriculture off-highway use are to be deposited into the Department of Food and Agriculture Fund. The calculation method continues to use the combined excise tax of 41.7 cents, which includes the base excise tax of 30 cents per gallon and price-based excise of 11.7 cents per gallon. Pursuant to SB 1, effective 2019-20 the price-based excise tax will be replaced by a traditional excise tax of 17.3 cents per gallon for a total tax amount of 47.3 cents per gallon. Beginning July 1, 2020 both excise tax rates will adjust for inflation using the California Consumer Price Index (CPI) as calculated by the Department of Finance.

Caltrans will request that the State Controller's Office (SCO) transfer \$67,904,165 from the MVFA to the Agriculture Fund and \$26,407,175 to the GF in 2018-19. In addition, Caltrans will request that the SCO transfer \$67,397,792 from the MVFA to the Agriculture Fund and \$39,582,830 to the GF in 2019-20.

## **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 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 of 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)<sup>1</sup>, 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).

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<sup>1</sup> 2004 Estimated Unbranded Wholesale Price for Gasoline, California Energy Commission

Total agriculture fuel expenditures were estimated by multiplying the total agriculture gasoline expenditures for California in 1997<sup>2</sup> by the percent increase in the average price of gasoline in California from 1997 to 2005<sup>3</sup>.

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.

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 percent 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, Budget Committee, Chapter 11 and ABX8 9, Budget Committee, Chapter 12) 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 adjusted annually to maintain revenue neutrality, and is referred to as the “price-based” excise tax (PBET).

On April 28, 2017, Governor Brown signed into law SB 1. Beginning November 1, 2017, the base excise tax on gasoline increased by 12 cents to 30 cents per gallon. Pursuant to R&TC, Section 8352.5(b)(2), the taxes imposed pursuant to subdivisions (a) & (c) of Section 7360 attributable to off-highway purposes shall be deposited in the Department of Food and Agriculture Fund. As a result, a portion of the 30 cents per gallon attributable to agricultural gasoline used for off-highway purposes shall be transferred from the MVFA to the Department of Food and Agriculture Fund. Furthermore, Pursuant to R&TC, Section 8352.5(b)(1) the price-based excise tax will continue to be deposited in the General fund.

The calculation method for 2018-19 continues to use the combined base excise (30 cents per gallon) and price-based excise (11.7 cents per gallon) tax amounts of 41.7 cents per gallon. Effective 2019-20 the price-based excise tax will be replaced by a traditional excise tax (versus an incremental excise tax) of 17.3 cents per gallon for a total tax amount of 47.3 cents per gallon.

Beginning July 1, 2020 both excise tax rates will adjust for inflation using the California Consumer Price Index (CPI) as calculated by the Department of Finance.

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<sup>2</sup> 1997 USDA Census on Agriculture

<sup>3</sup> Historical Yearly Average California Gasoline Prices, California Energy Commission

## **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, statistical surveys to calculate the gasoline consumption and exhaust emissions reported from the CARB.

Effective July 1, 2018 (2018-19) the total excise tax rate is 41.7 cents per gallon, which consists of both the base and price-based excise tax rates (currently 30.0 and 11.7 cents per gallon, respectively).

Effective July 1, 2019 (2019-20) the price-based excise tax will be replaced by a traditional excise tax of 17.3 cents per gallon for a total tax amount of 47.3 cents per gallon.

These rates are used as the basis for the 2018-19 and 2019-20 transfer calculations. Pursuant to R&TC, Section 8352.5, transfers are calculated based on the transfer split between the Agriculture Fund and the GF, respectively 72 percent & 28 percent for 2018-19 and 63 percent & 37 percent for 2019-20 due to the replacement of the price-based excise tax with a traditional excise tax of 17.3 cents per gallon.

Based on the calculations in Table A, the 2018-19 total unclaimed gas tax is projected to be \$94,311,340, of which \$67,904,165 will be transferred to the Agriculture Fund and \$26,407,175 will be transferred to the GF. Pursuant to R&TC, Section 8352.9, Caltrans has reduced the 2018-19 total transfer amount by \$3,500 for administrative, clerical, and reproduction costs incurred for compiling and preparing this report.

The 2019-20 total unclaimed gas tax is projected to be \$106,980,622 of which \$67,397,792 will be transferred to the Agriculture Fund and \$39,582,830 will be transferred to the GF.

The calculation method in 2011 used the base excise tax (18 cents per gallon) only. Beginning in 2012, the calculation method began using the combined base and price-based excise tax amounts. Pursuant to R&TC, Section 8352.5(b)(1), the price-based excise tax portion of the transfer amount will be sent to the GF and the base excise tax portion will be sent to the Agriculture Fund. Since 2012, the first year's transfer split percentage was also applied to the second year, as its respective total excise tax was unknown. Effective November 1, 2017 the base excise tax on gasoline increased by 12 cents to 30 cents per gallon, pursuant to SB 1. In addition, SB 1 also stipulates that, effective 2019-20, the price-based excise tax will be replaced by a traditional excise tax (versus an incremental excise tax) of 17.3 cents per gallon for a total tax amount of 47.3 cents per gallon. Because the total excise tax can now be determined for 2019-20, we are able to calculate the second year's transfer split. As in past years, the future transfer amounts may fluctuate due to the changing of the excise tax rates.

Beginning July 1, 2020 both excise tax rates will adjust for inflation using the California Consumer Price Index (CPI) as calculated by the Department of Finance.

## **Conclusion**

Caltrans and the CDFR will continue to use the previously mentioned calculation method for future Agriculture Fund and General Fund transfers. As in past years, the future transfer amounts may fluctuate due to the changing of the excise tax rates. Current data has been used to calculate the 2018-19 and 2019-20 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 \$67,904,165 from the MVFA to the Agriculture Fund and \$26,407,175 to the GF in 2018-19. In addition, Caltrans will request that the SCO transfer \$67,397,792 from the MVFA to the Agriculture Fund and \$39,582,830 to the GF in 2019-20. The transfers are to be made during the second quarter of each fiscal year.



## Appendix A: Statutory Reporting Reference<sup>4</sup>

**Revenue and Taxation Code, Section 7360:** (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.

**Revenue and Taxation Code, Section 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.

**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.

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<sup>4</sup> This represents specifically referenced portions of statutes within the report.

**Revenue and Taxation Code, Section 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.

**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.

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<sup>4</sup> This represents specifically referenced portions of statutes within the report.

## Appendix B: Formula Calculation

### AGRICULTURAL FUND TRANSFER FORMULA METHODOLOGY for Fiscal Years 2018-19 and 2019-20

	2018-19 Calculation	2019-20 Calculation
Total agricultural gas expenditures	(1) \$471,770,900	\$471,770,900
(/) Average price per gallon	(2) <u>\$1.98</u>	<u>\$1.98</u>
(=) Total agricultural gasoline gallons	238,268,131	238,268,131
(-) Gallons refunded	(3) <u>1,960,597</u>	<u>1,960,597</u>
(=) Unclaimed eligible gasoline gallonage	236,307,534	236,307,534
(x) % used off-highway	(4) <u>51.200%</u>	<u>51.200%</u>
(=) Eligible refundable gasoline gallons for farms	120,989,458	120,989,458
(+) Small horticulture gallonage	(5) <u>105,185,218</u>	<u>105,185,218</u>
(=) Total eligible refundable agricultural gasoline gallonage	226,174,676	226,174,676
(x) Gross refund rate	(6) <u>\$0.417</u>	<u>\$0.473</u>
(=) unclaimed gas tax	<u>\$94,314,840</u>	(7) <u><u>\$106,980,622</u></u>
(-) Administrative costs	<u>\$3,500</u>	
	(7) <u><u>\$94,311,340</u></u>	
Transfer Amount To The General Fund (28%)	\$26,407,175	
Transfer Amount To The Agriculture Fund (72%)	\$67,904,165	
Transfer Amount To The General Fund (37%)		\$39,582,830
Transfer Amount To The Agriculture Fund (63%)		\$67,397,792

#### References:

- (1) Using the California Energy Commission report for unbranded gasoline prices, the cost of gasoline increased/decreased 4.81% over the period of July 4, 2016 through June 28, 2018. The average wholesale price per gallon was \$1.98 in comparison to the \$2.08 used in the previous calculation.  
\$495,609,728 x 95.19% = \$471,770,900
- (2) California Energy Commission 2017 Annual Average Weekly Unbranded Wholesale Gasoline Price + 6 Cents (jobber/distributor cost)
- (3) State Controller Farm Refunded Gallons, 2017-18 (Summary dated June 2018)
- (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 2017 calendar year horticulture category of equipment only.
- (6) Effective November 2017 Excise Tax Rate increased to \$0.417 Cents Per Gallon (Gas Tax Swap Legislation & as a result of SB 1).  
Effective July 2019 the Excise Tax Rate will increase to \$0.473 Cents Per Gallon (as a result of SB 1).
- (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 transfer split between the Agriculture Fund and the GF, respectively 72 percent & 28 percent for 2018-19 and 63 percent & 37 percent for 2019-20 due to the replacement of the price-based excise tax with a traditional excise tax of 17.3 cents per gallon.

## Appendix C: 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 <sup>1</sup>	\$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
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 <sup>2</sup>	\$38,167,476
2010-2011	\$38,170,976
2011-2012	\$38,323,791
2012-2013 <sup>2,3</sup>	\$77,305,549
2013-2014	\$77,309,049
2014-2015 <sup>2</sup>	\$77,762,233
2015-2016	\$77,765,733
2016-2017 <sup>2</sup>	\$60,458,912
2017-2018 <sup>4</sup>	\$81,990,000
2018-2019	\$94,311,340
2019-2020	\$106,980,622

<sup>1</sup> Transfer increase is the result of implementing a new calculation methodology and the 5% gas tax.

<sup>2</sup> "Preparation Costs" are deducted from the transfer amounts shown.

<sup>3</sup> 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.

<sup>4</sup> SB 1 was signed into law on April 28, 2017. Per statute, the excise tax on gasoline fuel increased by 12 cents per gallon, and took effect November 1, 2017.

## Legislative Report Preparation Checklist

1st Submission	Legislative Affairs	Final Review	Item
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Update Table of Contents.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Update pagination.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Check math in tables and figures.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Check that the text conforms to tables and figures.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Check grammar and spelling.