



# A SELECTED READING

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## Municipalities and State-Shared Fuel Taxes and Inspection Fees

**NOTE:** *Acts 2011-565, 2013-402, 2015-54 and 2019-2 make numerous changes in Alabama's motor fuel taxation laws. Therefore, interpretations of the previous law may have to be reconfirmed under the new statutes. Readers are advised to verify for themselves the applicability of any cases or Attorney General's Opinions contained in this article.*

Alabama has various taxes on gasoline, lubricating oil and motor fuels as well as an inspection fee on motor fuels. Section 40-17-325, Code of Alabama 1975, levies a 16-cent per gallon gasoline tax, that is comprised of a 7-cents per gallon excise tax, a 5-cents per gallon supplemental excise tax and an additional 4-cents per gallon tax. Section 40-17-325(a)(2) levies a 6-cents per gallon tax on diesel fuels. The Rebuild Alabama Act passed in 2019 and codified in Sections 40-17-370 and 371, levies an additional 10-cents excise tax on each net gallon of gasoline and diesel fuel. In addition, Section 8-17-87, Code of Alabama 1975, imposes an inspection fee of 2-cents per gallon on gasoline and diesel fuel, with some exceptions for diesel fuel, and inspection fees in varying amounts for other fuels and lubricating oil. The revenues derived from these taxes and fees are shared with counties and municipalities.

The major portion of this article deals with the 7-cents and 5-cents per gallon gasoline tax and its impact on municipalities. A brief overview of the 4-cents per gallon tax on gasoline and lubricating oils, 6-cent per gallon tax on motor fuels, 10-cents gasoline and diesel fuel tax and 2-cents per gallon inspection fee is also provided.

### Different Tax Rate on Aircraft Fuels

In addition to the various taxes on gasoline, lubricating oil, and motor fuel, a different tax rate for aircraft fuels is provided for in Section 40-17-325(3), Code of Alabama 1975.

Section 40-17-357 prohibits any municipality from levying new or additional taxes on aviation fuel after October 1, 2012. However, the bulk of the revenue derived from the state aircraft fuel tax has been used to construct, improve and maintain municipal airports. Today, because of this tax, Alabama has one of the best systems of municipal airports in the United States.

Section 40-17-329(g), Code of Alabama 1975, provides an exemption from the aircraft gasoline tax for fuel used by a certified or licensed carrier with a hub operation in Alabama. A hub operation is defined as one which originates, from a location, 15 or more flight departures and five or more different first-stop destinations five days per week for six or more months during the calendar year, and passengers or property are regularly exchanged at the location between flights of the same or a different certified or licensed air carrier.

### Municipalities and Gasoline Taxes - Exemptions

Section 40-17-329(e), Code of Alabama 1975, provides that local governments must pay the state gasoline taxes, then apply for a quarterly refund for gasoline taxes they purchase. Similarly, counties and municipalities are exempt from paying the federal excise tax on gasoline, but must pay the federal gasoline tax and then apply for a refund. Title 40 of the Alabama Code contains several other exemptions to the state gasoline excise taxes.

Section 40-17-330 sets out the procedure for claiming a refund of the state gasoline taxes. Municipalities must request the refund by presenting a sworn petition within two years of the date the fuel was purchased and present the original or a duplicate of the sales slip, invoice or other documentation showing the gallons of fuel purchase and the taxes paid. Entities that are entitled to request a refund pursuant to Section 40-17-329(e), including municipalities, must also accurately maintain adequate records as required under regulations promulgated by the department of revenue pursuant to Chapter 22 of Title 41.

### Distribution Formula – 7 and 5 cents Gasoline Taxes

Sections 40-17-359 of the Code, as amended, provides for the distribution and use of the 7-cents gasoline tax. Proceeds

from the tax are distributed as follows: 45 percent to the State Highway Department and 55 percent to the counties and municipalities of the state.

The 55 percent which goes to counties and municipalities is divided in the following manner: 25 percent is divided equally among the state's 67 counties and the remaining 30 percent goes to the counties pro rata on the basis of the ratio of the population of each such county to the total population of the state according to the last federal decennial census or any subsequent federal special census. There is a further provision that no county shall receive less than \$550,000 annually.

The state treasurer distributes monthly 10 percent of the county's share among the municipalities in the county. This distribution is based on the ratio of the population of each such municipality to the total population of all municipalities in the county according to the last federal decennial census. The remaining portion of the amount allocated or apportioned to each county is distributed monthly to the county by the state treasurer.

The amounts distributed by the state treasurer to the municipalities of the county represent 10 percent of the county's share except in the case of the following counties where municipalities share additional gasoline tax revenues from the county's share under special acts:

- Madison County – Act 708 of 1967 as amended by Act 919 of 1969
- Jefferson County – Act 329 of 1969
- Montgomery County – Act 364 of 1967; Act 176 of 1967 as amended by Act 1665 of 1971
- Mobile County – Act 476 of 1967
- Etowah County – Act 619 of 1967 as amended by Act 145 of 1969 and Act 813 of 1971
- Barbour County – Act 546 of 1967; Act 720 of 1967
- Russell County – Act 859 of 1969
- Calhoun County – Act 393 of 1971
- Dale County – Act 1954 of 1971
- Morgan County – Act 80-597 (4-cent tax only), as amended by Act 87-867

Local acts providing for the collection of gasoline taxes by the Alabama Department of Revenue were not repealed by Act 98-192 (the revised sales and use tax law). AGO 1998-210.

Section 40-17-325, Code of Alabama 1975, also levies a supplemental excise tax of 5-cents per gallon on gasoline. Section 40-17-359(f), Code of Alabama 1975, provides that the proceeds from the 5-cents gasoline tax are to be distributed as follows:

Three-fifths of the tax proceeds (3 cents) shall be deposited in the state treasury to the credit of the Public Road and Bridge Fund of the State Highway Department. The remaining two-fifths of the proceeds from the 5-cents gasoline tax (2 cents) are to be distributed in the same manner as the proceeds of the 7-cents gasoline tax as provided by Sections 40-17-359(c)(d) and (e), Code of Alabama 1975, including those special distributions established by local act of the Legislature for distributing the 7-cents gasoline tax in certain counties.

Section 40-17-359(j)(3), Code of Alabama 1975, specifically requires municipalities to keep their share of the 7-cent per gallon state gasoline excise tax in a special fund and specifically prohibits the commingling of these tax funds with other funds of the municipality, except the 2-cent state inspection fee with which it may be commingled. See, Section 8-17-91(a)(2)(c)(5). The 5-cents gasoline tax may be maintained in a separate account with the 4 cents per gallon tax on gasoline and lubricating oil. See, Sections 40-17-359(f) and 40-17-362, Code of Alabama, 1975, and AGO to Hon. Ricky Harcrow, September 5, 2012.

A municipality's share of the state highway gasoline tax must be kept and expended from a separate account and not commingled with other municipal funds. This law is not sufficiently complied with if a municipality merely utilizes accounting and bookkeeping methods which accurately reflect the amount of state-shared gasoline tax funds on hand and the purposes for which disbursements are made. AGO to Hon. Cecil Gardner, November 6, 1969.

### **Use of Funds Restricted**

Both constitutional and statutory limitations have been placed on municipal use of state-shared gasoline tax funds. Amendments 93 and 354 (Section 111.06) Alabama Constitution, 1901.

Section 111.06 provides:

“No moneys derived from any fees, excises, or license taxes, levied by the state, relating to registration, operation, or use of vehicles upon the public highways except a vehicle-use tax imposed in lieu of a sales tax, and no moneys derived for

any fee, excises, or license taxes, levied by the state, relating to fuels used for propelling such vehicles except pump taxes, shall be expended for other than cost of administering such laws, statutory refunds and adjustments allowed therein, cost of construction, reconstruction, maintenance and repair of public highways and bridges, costs of highway rights-of-way, payment of highway obligations, the cost of traffic regulations, and the expense of enforcing state traffic and motor vehicle laws. The provisions of this Amendment shall not apply to any such fee, excises, or license taxes now levied by the state for school purposes for the whole state or for any county or city board of education therein;”

According to the Attorney General, the section is not an affirmative grant of authority to the Legislature, counties or municipalities to expend gasoline tax funds. Rather, the purpose of the section is to prohibit the Legislature from authorizing that the funds mentioned may be expended in any manner other than that prescribed therein. 87 Quarterly Report of the Attorney General 15.

The Supreme Court of Alabama in *In Re Opinion of the Justices*, 96 So.2d 634 (1957), held that the restrictions contained in Section 111.06 apply only to proceeds derived from the state highway gasoline tax and in no way limit the use of taxes collected by virtue of a municipal gasoline tax ordinance.

The legislative limitation on the expenditure of 7-cent gasoline tax funds is found at Section 40-17-359(j)(3), Code of Alabama 1975, and reads, in pertinent part, as follows:

“Where the use is by a municipality, such use shall be for transportation planning, the construction, reconstruction, maintenance, widening, alteration and improvement of public roads, bridges, streets and other public ways, including payment of the principal of and interest on any securities at any time issued by the municipality pursuant to law for the payment of which any part of the net tax proceeds were or may be lawfully pledged; provided, that no part of the net tax proceeds referred to in this section shall be expended contrary to the provisions of the Constitution.”

Section 40-17-359(k), Code of Alabama 1975, authorizes a county governing body to expend proceeds from the state-shared gasoline tax for the construction and maintenance of streets within the corporate limits of any municipality located within the county. **Note:** Municipalities in Jefferson County should consult their local act on this matter.

### **Opinions on the Use of 7-Cent Gasoline Tax Revenue**

The Attorney General has been asked frequently to rule on the legality of certain uses by municipalities of the 7-cent gas tax. The following opinions are the most important ones issued on the subject:

- A municipality may invest surplus gasoline tax funds in U.S. Treasury notes as long as the gas tax funds are not commingled with other municipal funds. AGO to Hon. Bob A. Davis, October 30, 1969.
- Salaries of employees who perform work necessary for enumerated purposes listed in Section 40-17-78, Code of Alabama 1975, may be paid from funds derived from the state highway gasoline tax. If an employee works only part-time on such purposes, then a proportionate share of his salary may be paid from gasoline tax funds. AGO to Hon. Cecil Gardner, November 6, 1969.
- Improvement bonds were issued covering street improvements but the collections were insufficient to pay the principal and interest of such bonds. The Attorney General held that gasoline tax funds could be used to pay the installments AGO to Hon. W. H. McDermott, December 15, 1969.
- A city may purchase from gasoline tax funds a truck to service traffic control signals. AGO to Hon. Jack B. Rucker, March 24, 1970.
- Gasoline tax funds may be used in lighting streets. AGO to Hon. James M. White, April 30, 1970.
- Gasoline tax funds may not be used for “routine street cleaning” but can be used to pay the expense of removing objects interfering with traffic. AGO to Hon. John F. Watkins, May 21, 1970 and AGO to Hon. John Gaither, September 4, 1970.
- A city may not use gasoline tax funds to construct off-street parking facilities. AGO to Hon. H. E. Swearingen, May 31, 1971.
- State gasoline tax funds may be used to “rough-in and pave” a street if the street is dedicated for public use. AGO to Hon. Edward Minyard, December 2, 1971.
- Gasoline tax funds may not be put into the general fund and used for general purposes. AGO to Hon. B. H. Reynolds, March 10, 1972.
- Gasoline tax funds may be used to pay a portion of the cost of the annual audit provided the employee donates a part of his time to purposes which may be paid from gasoline tax funds. AGO to Hon. W. J. Coker, September 28, 1972.
- A municipality may use general funds for a paving project and reimburse the fund from future collections of gas tax

funds. The minutes should reflect the arrangement. AGO to Hon. John A. Hughes, Jr., January 29, 1973.

- State gasoline tax funds distributed to a municipality may be used to improve, maintain and repair a street. AGO to Hon. A. N. Roberts, May 18, 1973.
- A municipality may use its state-shared gas tax funds to purchase machinery and equipment to be used in construction, reconstruction, maintenance, widening and improvement of public roads, bridges, streets and other public ways. AGO to Hon. Cecil Gardner, September 9, 1969 and AGO to Hon. Gene L. Hughes, May 26, 1977.
- Proceeds from the state gasoline tax fund may be used to construct a building to house those municipal vehicles which are used to construct and maintain the streets and other public ways of the municipality. However, the building may not be used to house other municipal vehicles. AGO to Mrs. Carole Dykes, August 14, 1972.
- The Attorney General has held that Alabama municipalities may expend state-shared gasoline tax funds for lighting and traffic control. AGO to Hon. Herman Nelson, March 20, 1968.
- State gas tax funds cannot be used on a city water project. AGO to Hon. J. W. Donahoe, November 9, 1977.
- State gas tax funds may be used to purchase a town map and erect street signs. AGO to Hon. Janice L. Gurley, October 27, 1977.
- Proceeds from the state gasoline tax cannot be used to pay off a loan for a police car and fire truck. AGO 1981-282 (to Hon. J. G. Morse, March 11, 1981).
- The 7-cents per gallon gasoline tax cannot be used for sidewalks. AGO 1983-115 (to Mr. James R. Stone, December 22, 1982).
- Proceeds from the 7-cents per gallon gasoline tax cannot be used to purchase computer equipment to process and record the tax proceeds. AGO 1984-085 (to Hon. Mac Smith, December 1, 1983).
- The 7-cents per gallon gasoline tax money may be used for drainage improvements if such improvements are directly connected with and necessary for the maintenance and repair of a road. AGO 1984-193 (to Hon. Kenneth Moss, March 5, 1984).
- The 7-cent gasoline tax may be used to maintain structures and equipment which control flood waters which cause road and bridge damage. AGO 1986-387.
- A county commission may not use gasoline tax funds to operate the sheriff's department or jail. AGO 1993-037.
- A county commission may not use gas tax funds to hire deputies or maintain sheriff's department vehicles absent local legislation authorizing the expenditure. AGO 1993-394.
- A municipality may use 7-cent gasoline tax funds to construct new curbs and gutters on existing municipal streets. AGO 1997-170.
- Seven-cent gasoline tax funds may be used to cut grass on the rights of way of public roads. AGO 1999-062
- A municipality may not use gasoline tax proceeds to repair and restore the runway of a regional airport. AGO 1998-179
- Four and 7-cent gasoline tax funds may be used to repair, maintain and construct ditches and culverts along street rights of way. AGO 1998-189.
- Proceeds from the 2-cent fee and the seven-cent gasoline tax may be used by a municipality for a one-time cleaning of the street and the adjoining sidewalk and parking area. These funds may also be used for landscaping along a state right-of-way. AGO 2001-078.
- Gasoline tax funds cannot be used to purchase scales and hire personnel to enforce weight limits on county roads. AGO 1989-442.
- Labor costs, including pension increases and insurance premiums, associated with the general scheme of constructing, maintaining and supervising public roads may be paid from appropriate gasoline tax funds. AGO 1991-267.
- A municipality may use the proceeds of the seven cent gasoline tax to purchase a leaf vacuum truck. AGO 2006-083.
- In the absence of an agreement, a county cannot insist that a municipality's share of the gasoline tax proceeds be used for the upkeep of county roads in a municipality. A county, by virtue of its exclusive authority to maintain and control its roads, is under a common-law duty to keep its roads in repair and in reasonably safe condition for their intended use. A county has a statutory obligation to maintain the safety of its roadways pursuant to §22-1-80 of the Code of Alabama.



See *Holt v. Lauderdale County*, 26 So.3d 401 (Ala.2008). If a municipality has not accepted roads for maintenance under the procedure set out in Sections 11-49-80 and 11-49-81 of the Code of Alabama, nor has it assumed responsibility by exercising sole authority over those roads, then the municipality is not responsible for the material costs of maintenance, paving, and scraping of roads within its corporate limits. See AGO 2003-034.

- Fire Protection Districts organized pursuant to Act 79 (1966), as amended, are not exempt from motor fuel and gasoline excise taxes. AGO 2008-07 Note: This opinion overrules AGO 2005-162. Act 79 (1966) applies only to Jefferson County.
- The proceeds from the \$.07 gasoline excise tax, the \$.02 inspection fee, and the motor vehicle license tax may be used for the purchase of reflective street signs. AGO 2016-002.
- Pursuant to Sections 40-17-359(j) and 8-17-91 of the Code of Alabama, the City of Creola may use the proceeds from the \$0.07 gasoline tax or the \$0.02 inspection fee to directly repay the Alabama Department of Transportation for repairs and maintenance to traffic signals. AGO 2018-028.
- Pursuant to Section 40-17-359(j)(3) of the Code of Alabama, the City of Creola may pay the outstanding balance on a backhoe used exclusively in the building, maintaining, and rehabilitation of the roadways and bridges located in the municipality. AGO 2018-047.
- Pursuant to Section 40-17-359(j)(3), the city may construct a building to house equipment used in the building, maintaining, and rehabilitating of the roadways and bridges located in the municipality. AGO 2018-047.
- Alternatively, pursuant to Section 40-17-359(j)(3), the city may pay a proportionate share of the cost to construct a building to house the public works department used for the building, maintaining, and rehabilitation of roadways and bridges located in the municipality. AGO 2018-047.

#### **4-Cents per Gallon Tax on Gasoline and Lubricating Oil and 5-Cents per Gallon Tax on Motor Fuels**

Section 40-17-325(a)(1), Code of Alabama 1975, levies an additional 4-cents per gallon state tax on all gasoline and lubricating oils sold in Alabama. The proceeds of 4-cents per gallon tax on gasoline and lubricating oil are distributed in the same manner as the 7-cents gasoline tax described above, including the special distribution formulas provided for certain counties by local law.

Prior to 2013, these funds could only be used by the recipient municipality for resurfacing, restoration and rehabilitation of roads, bridges and streets, for bridge replacement and for the construction of new roads within the municipality. However, Act 2013-402 amended Section 40-17-362 of the Code to allow the proceeds of the 4-cent per gallon tax to be used for vegetation management on the right-of-way of roads. Section 40-17-362(a)(3), Code of Alabama 1975.

These funds shall be used for the same purposes and may be deposited in the same municipal funds as the 5-cents per gallon gasoline tax. These funds cannot be commingled with other funds of the municipality, including any other gasoline tax revenues and shall be kept and disbursed by such municipality from a special fund only for the purposes specified. See, Sections 40-17-359(f) and 40-17-362, Code of Alabama, 1975, and AGO to Hon. Ricky Harcrow, September 5, 2012.

#### **Use of Funds Restricted**

Section 40-17-362, Code of Alabama 1975, imposes even more severe limitations on municipal use of state-shared revenue from the 4-cents per gallon tax on gasoline and lubricating oils than the restrictions on the 7-cents per gallon gasoline tax. See, Sections 40-17-359(f) and 40-17-362, Code of Alabama, 1975, and AGO to Hon. Ricky Harcrow, September 5, 2012. The section provides that revenue from the 4-cent tax may only be used for resurfacing, restoration and rehabilitation of roads, bridges and streets, and for bridge replacement within the municipality. Proceeds of the 4-cents per gallon tax to be used to construct new roads within the municipality. Section 40-17-362(b)(3).

A municipality's share of the proceeds from the 5-cent tax shall be used for the same purposes and deposited in the same municipal fund as the 4-cents per gallon gasoline and lubricating oil tax.

#### **Opinions on the Use of the 4-Cent and 5-Cent Tax Revenues**

- Proceeds from the 4-cent per gallon gasoline tax may be used for equipment rental for the purposes of restoring, resurfacing, and rehabilitating roads. AGO 1981-254 (to Hon. Hiram Pitts, February 19, 1981).
- Proceeds from the 4-cent gas tax may be used to repair culverts as well as highways and bridges. AGO 1982-030 (to Hon. William P. Smith, October 21, 1981).
- A town may spend 4-cent gas tax revenues to pay a note for monies borrowed in anticipation of such revenues to be used for resurfacing the main street in town. AGO 1982-155 (to Mrs. Martha F. Kelley, January 26, 1982).

- A county may not use 4-cent gas tax revenue to cut and maintain a right of way. AGO 1982-332 (to Hon. Gerald Dial, May 11, 1982).
- Proceeds from the 4-cents per gallon gasoline tax may be used to pay for labor and fuels needed to repair or restore streets. AGO 1982-469 (to Hon. Kenneth H. Sanders, July 23, 1982).
- Four-cents gasoline tax funds may not be used to pay for water pipe. AGO 1985-238 (to Hon. Glenn Fuller, March 5, 1985).
- Five-cent gasoline tax funds may not be used to cut grass on the rights of way of public roads unless the mowing is part of the rehabilitation or restoration of the road. AGO 1999-062
- Four and 5-cent gasoline tax funds may be used to construct curbs and gutters on existing streets if the curbs or gutters would serve to preserve the streets or return them to a condition of adequate structural support. AGO 1997-170.
- Four-cents gasoline tax funds may be used for restriping and re-signing county roads. AGO 1985-241 (to Hon. Richard H. Ramsey, III, March 12, 1985).
- Four-cents gasoline tax funds may be used to widen the shoulders of a Federal Aid Security Secondary Route in advance of a resurfacing project. AGO 1985-409 (to Hon. F. R. Albritton, Jr., June 26, 1985).
- Four-cents gasoline tax funds cannot be used to mow the shoulders of a road for normal road maintenance. AGO 1985-493 (to Hon. Jack Floyd, September 3, 1985).
- Four-cents gas tax funds may be used for repairing storm drains. AGO 1986-020 (to Hon. David Money, October 23, 1985).
- Funds from the 4-cent gas tax cannot be commingled with funds from a Community Development Block Grant. AGO 1986-314.
- A municipality may not use proceeds of the 4-cent tax to resurface, restore and rehabilitate driveway accesses located on the city's right-of-way. AGO 1989-159.
- Both the 7-cent gasoline tax and the 4-cent gasoline tax may be used to build an access road to the municipal fire station. AGO 1991-071.
- The 4-cent gasoline tax may be used to pave a dirt road. AGO 1993-046.
- Five-cent gasoline tax proceeds cannot be used to convert the fuel systems of city or utility board vehicles to natural gas. AGO 1993-160.
- A county commission may use 4-cent gasoline tax funds to remove debris, resulting from the recent winter storm, from county roads. AGO 1993-172.
- A city may not use four-cent gasoline tax funds to purchase property on which a private road is located. AGO 1996-022.
- Four and 7-cent gasoline tax funds may be used to repair, maintain, and construct ditches and culverts along street rights-of-way. AGO 1998-189.
- A municipality may not use 4-cent gasoline tax proceeds to repair and restore the runway of a regional airport. AGO 1998-179.
- A municipality may not use four-cent gasoline tax proceeds to pay for the removal of trash and debris from public streets on a daily basis, nor may a municipality use 4-cent money to pay for the operation and maintenance of lighting along an interstate highway or public street. AGO 1999-270.
- The 4-cent and 5-cent gasoline tax proceeds may not be used for landscaping alongside state highways because this is not restoration or rehabilitation of a road. The 4-cent and 5-cent gasoline tax proceeds may be used for a one-time cleaning of the street and adjoining parking and sidewalk area only if this work is part of the restoration, rehabilitation or resurfacing of the road. AGO 2001-078.
- Four-cent gasoline tax funds can be used by a municipality to purchase a dump truck for street repair work and for removing debris from streets when the restoration, rehabilitation or resurfacing of streets is involved. Four-cent gasoline tax funds can be used to pay for lighting along an interstate road for streets within the municipality when the lighting is part of the construction of the road, or when it is part of the restoration, rehabilitation or resurfacing of the street or road. AGO 1999-252.
- Proceeds from the 2-cent fee and the 7-cent gasoline tax may be used by a municipality for a one-time cleaning of the street and the adjoining sidewalk and parking area. These funds may also be used for landscaping along a state right-

of-way. The 4-cent and 5-cent gasoline tax proceeds may not be used for landscaping alongside state highways because this is not restoration or rehabilitation of a road. The 4-cent and 4-cent gasoline tax proceeds may be used for a one-time cleaning of the street and adjoining parking and sidewalk area only if this work is part of the restoration, rehabilitation or resurfacing of the road. AGO 2001-078.

- A municipality may use the proceeds from a four cent gasoline tax to install speed bumps on streets. AGO 2007-125.
- A town may create a matching fund using 4 cent gasoline tax proceeds for the purpose of road paving. The town should keep the matching funds in a separate account from grant funds because section 40-17-224(3) of the Code of Alabama prohibits gasoline tax funds from being commingled with other municipal funds. AGO 2010-090.
- A town may pay a proportionate share of the cost and maintenance of a backhoe used for
- resurfacing, restoration, and rehabilitation of roads, bridges, and streets within the municipality from the \$.05 and \$.04 gasoline tax funds. AGO 2014-084.
- A town may not use the \$.04 per-gallon gasoline additional excise tax, the \$.05-per gallon
- gasoline supplemental excise tax, or the \$.06 per-gallon diesel fuel additional excise tax to fund the purchase or installation of the emergency street signs. The proceeds from the \$.07 gasoline excise tax, the \$.02 inspection fee, and the motor vehicle license tax may be used for the purchase of reflective street signs. AGO 2016-002.

### **State Inspection Fee on Motor Fuels and Motor Oils**

Section 8-17-87, Code of Alabama 1975, imposes an inspection fee of 2-cents per gallon on gasoline and diesel fuel sold and it imposes a varying tax rate on other petroleum products. Municipalities receive a portion of this revenue each month. A municipality's share of the revenue must be used for transportation planning or for the construction, reconstruction, maintenance, widening, alteration and improvement of public roads, bridges, streets and other public ways, including payment of principal and interest of any securities at any time issued by the municipality pursuant to law for the payment of which any part of the net proceeds of the tax were or may be lawfully pledged.

Funds distributed under this statute shall not be commingled with other funds of the municipality, except the municipality's share of the 7-cent highway gasoline tax. The funds shall be kept and disbursed by the city or town from a special fund only for the purposes enumerated above.

### **Separate Accounts and Co-mingling of Funds**

By way of summary, municipalities must maintain the proceeds of the various gasoline taxes and inspection fees in separate accounts. Municipalities are authorized to co-mingle the proceeds of the 7-cent gasoline tax and the 2-cent inspection fee in a separately maintained account. Further, municipalities are authorized to co-mingle the proceeds of the 4-cent per gallon tax on gasoline and lubricating oils and the 5-cent per gallon tax on gasoline.

### **6-Cents per Gallon Tax on Diesel Fuel**

Section 40-17-325(a)(2) levies a 6-cents per gallon tax on all diesel fuel sold in Alabama. The proceeds of the 6-cents per gallon tax on diesel fuels are distributed as follows:

1. 4.69 percent shall be distributed equally among each of the 67 counties of the state monthly. These funds shall be used by counties for the purposes specified in Section 8-17-91(a)(2)a.;
2. .93 percent shall be allocated among the incorporated municipalities of the state and distributed and used as provided in Section 8-17-91(a)(2)c.; and
3. The balance shall be paid to the state treasury to be used for highway purposes by the State Department of Transportation."

Provided, however, for the first five full fiscal years following the effective date of Act 2004-546, if distributions to the counties and municipalities provided for in subdivisions (1) and (2) above are insufficient to ensure, in combination with the distributions provided in Section 8-17-91, Code of Alabama 1975, that said counties and municipalities receive no less than the distributions received for fiscal year 2003 under the previous provisions of Section 8-17-91, then the above percentages shall be adjusted accordingly. After the first five full fiscal years, the above percentages shall not be adjusted.

Pursuant to Section 8-17-91(a)(2)(c), Code of Alabama, 1975, municipalities can use these funds for transportation planning, the construction, reconstruction, maintenance, widening, alteration, and improvement of public roads, bridges, streets, and other public ways, including payment of the principal of and interest on any securities at any time issued by the municipality pursuant to law for the payment of which any part of the net tax proceeds were or may be lawfully pledged. This

Code provision states that none of these funds shall be expended contrary to the provisions of the Constitution. Additionally, these cannot be commingled with other funds of the municipality, except the municipalities' portion of the highway gasoline tax (the 7-cent tax), and the 2-cent inspection fee, and shall be kept and disbursed by such municipality from a special fund only for the purposes hereinabove provided.

### **Rebuild Alabama Act: 10-Cent Gasoline Tax**

In 2019 the Alabama legislature passed Act 2019-2, the Rebuild Alabama Act. Section 40-17-370 levies a 10-cents excise tax on each net gallon of gasoline and diesel fuel to be distributed among the state and local governments as follows:

1. 66.77% - ALDOT
  - a. Transportation infrastructure statewide
  - b. ALDOT Grant program (not less than \$10M annually – for local government projects upon competitive application)
  - c. ATRIP II – (\$30-50M annually – fund projects of “local interest on the state maintained highway system, which may include local roads and bridges”)
2. 25% - Counties
3. 8.33% - Municipalities
  - a. 25 percent will be allocated evenly - every municipality will receive approx. \$14,109
  - b. 75% will be distributed by population.

Distributions are made monthly. The monies paid to municipalities “shall be deposited into a separate fund”. Section 23-8-8, Code of Alabama 1975. It is the opinion of the League that these funds must be maintained in a completely separate account. If a municipality wishes to commingle these funds with other gasoline tax funds and simply account for them separately, it is STRONGLY advised that you seek an opinion of the Attorney General opinion issued to your municipality before doing so.

Localities receive two monthly distributions – one for gas tax and one for diesel tax. It is the League’s opinion that all of the new gas tax monies coming in as a result of the Rebuild Alabama Act, can go into the same account. In other words, you can combine the diesel and gasoline distributions from this new money into the same account which MUST be separate from your other gasoline taxes.

#### **Use of Rebuild Alabama Funds Restricted**

Section 23-8-8, Code of Alabama 1975 provides that the funds received from the Rebuild Alabama Act may only be expended for the following:

1. The maintenance, improvement, replacement, and construction of roads and bridges
2. Matching funds for federal road or bridge projects;
3. Debt repayment for road and bridge projects; or
4. Joint road and bridge projects with one or more municipalities and/or counties;

The funds CANNOT be used for the following:

1. Salaries, benefits, or any other form of compensation for county, municipal, or contract employees or officials except as included as project costs and subject to audit by the Examiners of Public Accounts;
2. The purchase, lease, or maintenance of equipment, other than equipment purchased and permanently installed as part of a road or bridge project; or
3. The maintenance and construction of public buildings or other structures that are not integral to the system of roads or bridges;

All fund records shall be audited by the Department of Examiners of Public Accounts in the same manner as all other municipal funds. Section 28-8-8(c), Code of Alabama 1975.

### **Annual Transportation Plan Required under Rebuild Alabama Act**

While receipt of distributions is not tied to any report or plan, the Rebuild Alabama Act requires municipalities to adopt, by majority vote of the council, an annual transportation plan “no later than August 31 for the next fiscal year.” This plan must provide “a detailed list of projects for which expenditures are intended to be made in the next fiscal year” based on an



estimate of the revenues from the fund. Once adopted, the plan must be all times be posted at city hall and if a municipality has an official website, on the website. Section 23-8-8(d), Code of Alabama 1975.

Further, at the first meeting in January of each year following the creation of the fund, the municipal engineer or other person designated by the council must present an annual written report detailing expenditures made from the fund during the previous fiscal year. The report must include the status of each project included in the previous fiscal year's Transportation Plan. The report must be entered into the minutes at a council meeting and must be made available to the public for inspection, including posting on the municipality's website, if available. Section 23-8-8(e), Code of Alabama 1975.

*Revised 2020*