



**LEGISLATIVE  
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# LEGISLATIVE GUIDE

## *Legal Services Division*



**Note to Reader:**

Legislative Guides, prepared in an objective and nonpartisan manner, provide a general survey of a particular area of the law and are intended for use primarily by members of the Iowa General Assembly and their staffs. Legislative Guides are updated periodically to reflect changes in the law. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

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## ROAD USE TAX FUND

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## I. Introduction

State, county, and city governments maintain over 114,000 miles of roadway and nearly 25,000 bridges in Iowa.<sup>1</sup> Roads are classified as primary roads, secondary roads, and municipal streets.<sup>2</sup> Primary roads, which include the interstate highway system, are under the jurisdiction of the Iowa Department of Transportation (DOT) and comprise less than 10 percent of the total mileage. Secondary roads, which include farm-to-market roads, are under the jurisdiction of the counties and make up nearly 80 percent of the total mileage. Municipal roads and streets are generally under the jurisdiction of the incorporated city in which they are located and comprise over 10 percent of the total mileage. Road classification is instrumental in determining funding levels, maintenance standards, and funding priorities. Decisions regarding the construction, reconstruction, repair, maintenance, alteration, closure, or establishment of a road are generally made by the governmental entity with jurisdiction over the road.<sup>3</sup>

The major state funding source for the construction, maintenance, and supervision of Iowa's roads is the Road Use Tax Fund (RUTF).<sup>4</sup> However, funding for Iowa's roads is also provided by other sources. County and city governments utilize revenue from local taxes and bonds to finance the construction, maintenance, and supervision of roads under their respective jurisdictions. In fiscal year 2013-2014, county revenue from these local sources totaled nearly \$216 million, and city revenue from these local sources totaled nearly \$570 million. State, county, and city governments also receive moneys from the federal government for purposes related to transportation infrastructure. In fiscal year 2013-2014, Iowa's obligation authority for federal transportation infrastructure programs was approximately \$450 million.<sup>5</sup> Of this amount, Iowa counties received nearly \$23 million, and city governments in Iowa received nearly \$41 million.

This Legislative Guide provides an overview of the RUTF and addresses several issues regarding the RUTF, including its sources of revenue, distribution of its moneys, the unique constitutional status of the RUTF, and what constitutes "construction, maintenance, and supervision" for the purpose of expending constitutionally protected moneys in the RUTF.<sup>6</sup> References in this Guide to the Iowa Code are to the 2016 Iowa Code. Cases and opinions referred to in this Guide are current through September 2015. All fiscal information in this Guide was provided by the Fiscal Services Division of the Legislative Services Agency.

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<sup>1</sup> See <http://www.iowadot.gov/about/Roads,Streets,andBridges.html> (last visited October 2015).

<sup>2</sup> Iowa Code §306.3.

<sup>3</sup> Iowa Code §§306.4 and 306.10.

<sup>4</sup> The RUTF is established in Iowa Code §312.1.

<sup>5</sup> These programs include the National Highway Performance Program, the Surface Transportation Program, the Highway Safety Improvement Program, the Railway-Highway Crossings Program, the Congestion Mitigation and Air Quality Improvement Program, and the Metropolitan Planning process. "Obligation authority" means the limit on the amount of federal dollars apportioned to a state that can be obligated for projects in one year, and does not represent actual receipts by the DOT.

<sup>6</sup> See generally Iowa Const. art. VII, §8.



# Road Use Tax Fund

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## II. The Road Use Tax Fund

The RUTF was established in 1949<sup>7</sup> and is governed by Article VII, section 8, of the Iowa Constitution and Iowa Code chapter 312.

### A. Sources of Road Use Tax Fund Moneys

In fiscal year 2013-2014, the RUTF received approximately \$1.4 billion in revenue as follows:

Motor vehicle fuel taxes: <sup>8</sup>	\$451 million
Motor vehicle registration and title fees:	\$544 million
Fees for new registration:	\$316 million
Other revenue: <sup>9</sup>	\$88 million

#### 1. Motor Vehicle Fuel Taxes

Excise taxes on motor fuel and special fuel are collected before the fuel leaves the terminal for distribution in the state. The supplier, the blender, or the person who causes the fuel to be imported into the state is responsible for payment of the tax. The per gallon amount of the tax is then added to the retail price of every gallon of motor fuel or undyed special fuel sold in the state so that the ultimate consumer bears the burden of the tax.<sup>10</sup>

Until June 30, 2020, the tax rates on gasoline and ethanol blended gasoline will vary based on the number of gallons of ethanol blended gasoline distributed statewide in comparison to the number of gallons of gasoline distributed statewide.<sup>11</sup> The tax rate on gasoline will vary between 30 and 31 cents per gallon and the tax rate on ethanol blended gasoline will vary between 29 and 30 cents per gallon.<sup>12</sup> Until June 30, 2020, the tax rate on biodiesel blended fuel will vary based on the number of gallons of biodiesel blended fuel distributed statewide in comparison to the number of gallons of diesel fuel distributed statewide.<sup>13</sup> The tax rate on biodiesel blended fuel will vary between 29.5 and 32.5 cents per gallon.<sup>14</sup> The tax rate on diesel fuel is 32.5

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<sup>7</sup> 1949 Iowa Acts, ch. 122, §1.

<sup>8</sup> In 2015, the General Assembly increased the excise tax on most types of motor vehicle fuel by 10 cents per gallon. See 2015 Iowa Acts, ch. 2, §§5-10. In fiscal year 2015-2016, it is estimated that the amount of motor vehicle fuel tax revenue deposited in the RUTF will equal approximately \$670 million. The General Assembly intends this increase in revenue to be used by the DOT and county governments for critical road and bridge construction projects. See 2015 Iowa Acts, ch. 2, §12.

<sup>9</sup> Other revenue includes underground storage tank fees, driver's license fees, miscellaneous vehicle-related collections, and interest.

<sup>10</sup> Iowa Code §452A.3(11). Iowa Code §452A.4 requires a person to obtain a license from the Iowa Department of Revenue to sell, or otherwise act as a supplier, importer, exporter, dealer, or user of motor fuel or special fuel within the state. Iowa Code §§214A.1 and 452A.2 contain the various definitions of types of fuel subject to taxation.

<sup>11</sup> Iowa Code §452A.3(1).

<sup>12</sup> According to the Iowa Department of Revenue, effective July 1, 2015, the tax rate for ethanol blended gasoline is 29.3 cents per gallon and the tax rate for gasoline is 30.8 cents per gallon.

<sup>13</sup> Iowa Code §452A.3(6).

<sup>14</sup> According to the Iowa Department of Revenue, effective July 1, 2015, the tax rate for biodiesel blended fuel is 29.5 cents per gallon.

cents per gallon. Beginning January 1, 2006, an excise tax of 17 cents was imposed on each gallon of E-85 gasoline.<sup>15</sup> However, the tax rate on E-85 gasoline is required to be equal to the tax rate on ethanol blended gasoline if the amount of tax paid on E-85 gasoline during the previous calendar year is compared to the amount of tax on E-85 gasoline that would have been paid using the tax rate for gasoline, and the difference between the two amounts is equal to or greater than \$25,000.<sup>16</sup>

A refund or income tax credit is allowed for taxes paid on fuel used under certain circumstances, including but not limited to fuel used by urban and regional transit systems, fuel used in various types of machinery and equipment operated for nonhighway purposes, fuel used in the production of denatured alcohol, fuel used by commercial fishers, fuel used in the extraction and processing of natural deposits, undyed special fuel used in watercraft, and racing fuel.<sup>17</sup>

## **2. Motor Vehicle Registration and Title Fees**

All fees from the titling and annual registration of motor vehicles are credited to the RUTF except certain fees diverted to the Statutory Allocations Fund and certain collection fees retained by county treasurers.<sup>18</sup> The annual registration fee for most motor vehicles is equal to 1 percent of the vehicle's value plus 40 cents for each 100 pounds of the vehicle's weight, as fixed by the DOT.<sup>19</sup> Older model vehicles receive an automatic reduction in their annual registration fees.<sup>20</sup> In addition to regular annual registration fees, special registration fees are collected for the issuance of certain special license plates, such as personalized plates, collegiate plates, Iowa heritage plates, and natural resources plates.<sup>21</sup> Special registration fees are generally between \$25 and \$45.

In most instances, the issuance of motor vehicle certificates of title, registration plates, and validation stickers is the duty of the county treasurer. County treasurers may retain 4 percent of the total amount collected for each vehicle registration and each duplicate registration card or license plate issued, \$2.50 of each fee collected for a certificate of title, 40 percent of each fee collected for a certified copy of a certificate of title, 60 percent of each fee collected for perfection of a security interest, 25 percent of each penalty collected for improper business-trade truck registration, \$1.00 of each fee for new registration, and 25 percent of each penalty collected for improper

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<sup>15</sup> See Iowa Code §452A.3(3). "E-85 gasoline" is defined in Iowa Code §214A.1.

<sup>16</sup> Iowa Code §452A.3(4). According to the Iowa Department of Revenue, effective July 1, 2015, the tax rate for E-85 gasoline is 29.3 cents per gallon.

<sup>17</sup> Iowa Code §452A.17(1),(2).

<sup>18</sup> Iowa Code §321.145.

<sup>19</sup> Iowa Code §321.109. The annual registration fees for certain types of vehicles are not calculated in this way. See Iowa Code §§321.117 (motorcycle, ambulance, and hearse fees), 321.120 (business-trade trucks), 321.121 (special trucks for farm use), 321.122 (trucks, truck tractors, and road tractors), and 321.124 (motor homes, multipurpose vehicles, and motorsports recreational vehicles).

<sup>20</sup> Iowa Code §321.113.

<sup>21</sup> Iowa Code §321.34. Special registration fees are deposited in the RUTF, and then, for certain special plates, an amount equivalent to the special registration fee is reallocated from the Statutory Allocations Fund to the fund or function designated for the special plate.



## Road Use Tax Fund

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motorsports recreational vehicle registration.<sup>22</sup> The moneys retained by the county treasurer are deposited in the general fund of the county.

### 3. Fee for New Registration

A fee for new registration in the amount of 5 percent of the purchase price of a vehicle or 5 percent of the leased price of a vehicle is imposed on each vehicle subject to registration.<sup>23</sup> The fee is paid by the owner of the vehicle at the time the owner applies for a new registration and certificate of title. All revenues derived from the fee for new registration are credited to the RUTF.

### 4. Other Revenues — Statutory Allocations Fund

The RUTF also receives revenue from other sources, including revenue derived from environmental protection charges on petroleum diminution,<sup>24</sup> interest and investment earnings on moneys in the RUTF and the other funds to which moneys from the RUTF are credited,<sup>25</sup> and fines and fees attributable to commercial vehicle violation citations issued by the Motor Vehicle Division of the DOT.<sup>26</sup> In fiscal year 2013-2014, approximately \$33 million was credited to the RUTF from these sources.

Certain revenues derived from the regulation of motor vehicles that are not constitutionally dedicated for highway purposes are credited to the Statutory Allocations Fund.<sup>27</sup> These revenues include trailer registration fees, driver's license and nonoperator's identification card fees,<sup>28</sup> certificate of title fees and surcharges, the use tax on vehicles not subject to registration, the use tax on manufactured housing, and the excise tax imposed on vehicle rentals. In fiscal year 2013-2014, approximately \$67 million was credited to the Statutory Allocations Fund from these sources.

Each quarter, \$3.5 million is transferred from the Statutory Allocations Fund to the Iowa Comprehensive Petroleum Underground Storage Tank Fund and \$750,000 is transferred to the Renewable Fuel Infrastructure Fund. From the moneys remaining in the Statutory Allocations Fund, annual allocations are made to the DOT for use in public transit assistance, to the Motorcycle Rider Education Fund, and to the various funds specified for purposes of special license plates under Iowa Code section 321.34. The remaining balance is credited to the RUTF. In fiscal year 2013-2014, approximately \$35 million was credited to the RUTF from the Statutory Allocations Fund.

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<sup>22</sup> Iowa Code §321.152.

<sup>23</sup> Iowa Code §321.105A.

<sup>24</sup> Iowa Code §§424.3 and 424.7.

<sup>25</sup> Iowa Code §312.1.

<sup>26</sup> Iowa Code §602.8108(10).

<sup>27</sup> Iowa Code §321.145.

<sup>28</sup> Counties not served by a permanent DOT facility are authorized to issue driver's licenses and nonoperator's identification cards, and retain \$7.00 of each issuance or renewal fee. Iowa Code §§321M.3 and 321M.9.

## B. Road Use Tax Fund Expenditures

In fiscal year 2013-2014, expenditures from the RUTF totaled over \$1.4 billion. The Treasurer of State is required to allocate RUTF moneys according to a percentage formula. The Primary Road Fund receives 47.5 percent, the Secondary Road Fund receives 24.5 percent, the Farm-to-Market Road Fund receives 8 percent, and the Street Construction Fund of the Cities receives 20 percent.<sup>29</sup> However, prior to these allocations occurring, the Treasurer of State is required by statute to make several “off-the-top” allocations.<sup>30</sup> In addition, RUTF moneys are often appropriated by the General Assembly.<sup>31</sup>

### 1. Off-the-Top Allocations

In fiscal year 2013-2014, off-the-top allocations totaled approximately \$163.7 million, including \$113.5 million in allocations required by statute and \$50.2 million in appropriations by the General Assembly. Allocations required by statute include credits to the Highway Grade Crossing Safety Fund and the Highway Railroad Grade Crossing Surface Repair Fund, to the Primary Road Fund to pay DOT expenses associated with state institutional roads and state park roads, to the DOT for the costs of purchasing materials and supplies related to titling and registration, to the Living Roadway Trust Fund,<sup>32</sup> to the Primary Road Fund and the Farm-to-Market Road Fund to partially compensate for allowing trucks with certain gross weights to operate on Iowa roads, to the Revitalize Iowa’s Sound Economy (RISE) Fund,<sup>33</sup> to the DOT for county, city, and state traffic safety improvement projects, to the County Bridge Construction Fund and City Bridge Construction Fund, to the DOT for automation and telecommunications equipment and support for vehicle registration, titling, and driver licensing by county treasurers, and to the Primary Road Fund for the Commercial and Industrial Highway Network.

In addition, certain moneys are required by statute to be credited from the RUTF to the Transportation Investment Moves the Economy in the Twenty-first Century (TIME-21) Fund.<sup>34</sup> The TIME-21 Fund receives revenue from the RUTF derived from registration and title fee increases enacted in 2008, and distributes the revenue to the Primary Road Fund, Secondary Road Fund, and Street Construction Fund of the Cities according to a different percentage formula than such revenue would have been distributed from the RUTF.<sup>35</sup> The Primary Road Fund receives 60 percent for highway maintenance and construction, with

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<sup>29</sup> Iowa Code §312.2(1).

<sup>30</sup> Iowa Code §312.2(2)-(17). Some of the off-the-top allocations include credits to the Primary Road Fund, the Secondary Road Fund, and the Farm-to-Market Road Fund. Specifying allocations in this manner circumvents the use of the RUTF’s percentage formula.

<sup>31</sup> See, e.g., 2015 Iowa Acts, ch. 131, §1. These appropriations are generally associated with operating expenses of the DOT.

<sup>32</sup> The Living Roadway Trust Fund is established in Iowa Code §314.21 to be used for the development and implementation of integrated roadside vegetation plans.

<sup>33</sup> The RISE Fund is established in Iowa Code §315.2. Pursuant to Iowa Code §315.3, the RISE fund is used for the establishment, construction, improvement, and maintenance of roads and streets which promote economic development, and for the reimbursement or payment to cities or counties of the interest and principal on general obligation bonds issued for the purpose of financing approved road and street projects.

<sup>34</sup> Iowa Code §312.2(15)-(17). The TIME-21 Fund is established in Iowa Code §312A.2.

<sup>35</sup> See Iowa Code §312A.3. For fee increases, see 2008 Iowa Acts, ch. 1113.



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priority given to projects on Access Iowa Highways,<sup>36</sup> projects on highways in the Commercial and Industrial Highway Network, projects in areas of the state that have existing biodiesel, ethanol, or other biorefinery plants, and projects on interstate highways. The Secondary Road Fund receives 20 percent for construction and maintenance projects on secondary road bridges and on highways in the Farm-to-Market Road System, with priority given to projects that aid and support economic development and job creation. The Street Construction Fund of the Cities receives 20 percent to sustain and improve the Municipal Street System. In fiscal year 2013-2014, the TIME-21 Fund received nearly \$173 million from the RUTF for distribution in this manner. The TIME-21 Fund is to be repealed June 30, 2028.<sup>37</sup>

### 2. Primary Road Fund Allocations

In fiscal year 2013-2014, approximately \$586 million was distributed to the Primary Road Fund from the RUTF and the TIME-21 Fund. The Primary Road Fund is used for the establishment, construction, and maintenance of the Primary Road System,<sup>38</sup> including maintenance of DOT facilities, the construction, reconstruction, improvement, and maintenance of state institutional roads and state park roads, merit pay increases for DOT employees for which appropriations are not otherwise made by the General Assembly, restoration of secondary roads and municipal streets used as primary road detours, and the operation and maintenance of certain primary road freeway lighting systems.<sup>39</sup> In addition, Primary Road Fund moneys are often appropriated by the General Assembly.<sup>40</sup>

The DOT is required to spend at least \$30 million per year from the Primary Road Fund on the Commercial and Industrial Highway Network.<sup>41</sup> The identification and improvement of a network of commercial and industrial highways is intended to improve the flow of commerce, to make travel more convenient, safe, and efficient, and to better connect Iowa with regional, national, and international markets.<sup>42</sup>

### 3. Secondary Road Fund Allocations

In fiscal year 2013-2014, approximately \$285 million was distributed to the Secondary Road Fund from the RUTF and the TIME-21 Fund. The moneys credited to the Secondary Road Fund are distributed to counties based on a methodology determined by the

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<sup>36</sup> Access Iowa Highways are highways designated by the DOT for accelerated development. These highways are generally direct and priority linkages between economic centers with populations of at least 20,000 people. See 2005 Iowa Acts, ch. 178, §41. The provisions creating the Access Iowa Highway designation are to be repealed July 1, 2025. See 2005 Iowa Acts, ch. 178, §41, as amended by 2015 Iowa Acts, ch. 2, §11, 14.

<sup>37</sup> Iowa Code §312A.4.

<sup>38</sup> The Primary Road System consists of roads and streets, both inside and outside the boundaries of municipalities, which are under the jurisdiction of the DOT. Iowa Code §306.3(6). The State Transportation Commission is required to annually publish a long-range program for the construction and maintenance of the Primary Road System. Iowa Code §307A.2.

<sup>39</sup> Iowa Code §313.4(1)-(4). The Primary Road Fund is established in Iowa Code §313.3.

<sup>40</sup> See, e.g., 2015 Iowa Acts, ch. 131, §2. These appropriations are generally associated with operating expenses of the DOT.

<sup>41</sup> Iowa Code §313.4(5).

<sup>42</sup> Iowa Code §313.2A.

Secondary Road Fund Distribution Committee.<sup>43</sup> The methodology was implemented over a five-year period beginning July 1, 2006, and is based on a county's area, a county's rural population, vehicle miles traveled daily within a county, miles of earth-surfaced, granular-surfaced, and paved roads within a county, and the length of bridges within a county.<sup>44</sup>

A county may use moneys credited to the Secondary Road Fund of the county for the construction, reconstruction, maintenance, and repair of secondary roads,<sup>45</sup> bridges in cities with a population of 8,000 people or less, roads in cities with a population of less than 400 people, roads which lead to state parks, and other uses relating to secondary roads.<sup>46</sup> Beginning February 25, 2015, moneys credited to the Secondary Road Fund that originated from the RUTF cannot be used by counties to repay indebtedness where the term for repayment of the indebtedness exceeds the useful life of the road or bridge constructed or repaired as a result of the indebtedness.<sup>47</sup>

#### **4. Farm-to-Market Road Fund Allocations**

In fiscal year 2013-2014, approximately \$83 million was distributed to the Farm-to-Market Road Fund from the RUTF. The Farm-to-Market Road Fund is used for the establishment, construction, reconstruction, and improvement of the Farm-to-Market Road System,<sup>48</sup> including its bridges, culverts, and railroad crossings.<sup>49</sup> The Farm-to-Market Road Fund is distributed to counties based on a methodology determined by the Secondary Road Fund Distribution Committee.<sup>50</sup> The methodology was implemented over a five-year period beginning July 1, 2006, and is based on a county's area, a county's rural population, vehicle miles traveled daily within a county, miles of granular-surfaced and paved roads within a county, and the length of bridges within a county.<sup>51</sup> A county has only three years to expend its allotment from the Farm-to-Market Road Fund.<sup>52</sup> Any amount remaining at the end of the three-year period is reapportioned among all counties.

#### **5. Street Construction Fund of the Cities Allocations**

In fiscal year 2013-2014, approximately \$239 million was distributed to the Street Construction Fund of the Cities from the RUTF and the TIME-21 Fund. Used for the Municipal Street System,<sup>53</sup> moneys in the Street Construction Fund of the Cities are apportioned among cities according to the ratio of the population of each city, as shown by

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<sup>43</sup> Iowa Code §§312.3(1) and 312.3C. Iowa Admin. Code 761-102.2. The Secondary Road Fund Distribution Committee is comprised of representatives appointed by the president of the Iowa County Engineers Association, the president of the Iowa County Supervisors Association, and the DOT.

<sup>44</sup> See <http://publications.iowa.gov/6556> (last visited September 2015).

<sup>45</sup> Secondary roads are those roads outside the boundaries of municipalities that are under the jurisdiction of the county board of supervisors of the county in which that portion of the road is located. Iowa Code §§306.3(9) and 306.4(2).

<sup>46</sup> Iowa Code §331.429(2).

<sup>47</sup> Iowa Code §§312.2A, 315.4A, and 331.443A.

<sup>48</sup> The Farm-to-Market Road System includes those roads under county jurisdiction which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. Iowa Code §306.3(3).

<sup>49</sup> Iowa Code §310.4. The Farm-to-Market Road Fund is established in Iowa Code §310.3.

<sup>50</sup> Iowa Code §§312.3C and 312.5. Iowa Admin. Code 761-102.2.

<sup>51</sup> See <http://publications.iowa.gov/6556> (last visited September 2015).

<sup>52</sup> Iowa Code §310.27.

<sup>53</sup> The Municipal Street System is comprised of streets within municipalities that are not primary roads or secondary roads. Iowa Code §306.3(5).



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the latest available federal census, to the total population of all cities in the state.<sup>54</sup> An apportionment to a city with a farm-to-market extension under county jurisdiction is reduced proportionately based on the mileage of the extension, and the balance is transferred to the appropriate county.<sup>55</sup> Jurisdiction and control over the Municipal Street System is vested in the governing body of each municipality, except that the DOT and a municipality exercise concurrent jurisdiction over extensions of the primary roads which run through the municipality.<sup>56</sup> The use of moneys received by a municipality from the RUTF is limited to the construction, maintenance, and supervision of the public streets.<sup>57</sup>

### III. Constitutional Restrictions on the Use of Certain Road Use Tax Fund Revenues

The RUTF is somewhat unique among special funds in Iowa. Article VII, section 8, of the Iowa Constitution limits the purposes for which some, but not all, of RUTF revenues may be used. Article VII, section 8, reads as follows:

All motor vehicle registration fees and all licenses and excise taxes on motor vehicle fuel, except cost of administration, shall be used exclusively for the construction, maintenance and supervision of the public highways exclusively within the state or for the payment of bonds issued or to be issued for the construction of such public highways and the payment of interest on such bonds.

Subsequent to the adoption of Article VII, section 8, by constitutional amendment in 1942, the scope and intent of the provision have been the subject of several opinions by the Iowa Supreme Court and the Iowa Attorney General. Interpretations of constitutional or statutory provisions concerning the RUTF by the Iowa Supreme Court are binding on the General Assembly, other governmental entities and officials, and residents of the state until legislatively or judicially overruled.

Opinions of the Attorney General, however, are treated somewhat differently. Though courts often consider opinions of the Attorney General, courts are not bound by the opinions and often reach different conclusions than the Attorney General.<sup>58</sup> Although opinions of the Attorney General are important to carrying out legislative duties and often provide important information regarding the constitutionality or application of pending or enacted legislation, the General Assembly, because it makes law rather than applies it, is also not bound by opinions of the Attorney General.<sup>59</sup> However, the Attorney General

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<sup>54</sup> Iowa Code §312.3(2)(a). Beginning March 2011 and ending March 2021, the population of a city is determined by the last certified federal census or by the April 1, 2010, population estimates base as determined by the United States census bureau, whichever is greater. Iowa Code §312.3(2)(d).

<sup>55</sup> Iowa Code §312.3(2)(b).

<sup>56</sup> Iowa Code §306.4.

<sup>57</sup> Iowa Code §312.6.

<sup>58</sup> *Sioux City Comm. Sch. Dist. v. Bd. of Public Instruction*, 402 N.W.2d 739, 742 (Iowa 1987).

<sup>59</sup> Letter from Elizabeth M. Osenbaugh, Solicitor General, Department of Justice, to Richard L. Johnson, Deputy Director, Legislative Service Bureau (September 9, 1996) (on file with the Legal Services Division of the Legislative Services Agency).



expects state and local government officials to follow official opinions of the Attorney General as they would follow a decision by a court of law.<sup>60</sup>

## A. Road Use Tax Fund Expenditures Related to Highways

The Iowa Supreme Court has found that Article VII, section 8, was not intended to be particularly restrictive on the use of protected moneys:

From the language used, needs, and circumstances, we think it is fair to say the intent and purpose was to assure adequate highways and that a source of funds be available for that purpose; and at the same time limit the use of the funds, not to maintain the status quo of highway construction but to keep such fees and taxes at a reasonable rate and not allow the same to become a general revenue measure to be used for governmental purposes totally foreign to highways.<sup>61</sup>

Thus, an expenditure of moneys protected by Article VII, section 8, will survive constitutional scrutiny if the expenditure is not totally foreign to highway construction, maintenance, or supervision.<sup>62</sup> The meaning of “construction, maintenance and supervision” has also received a fairly broad interpretation by the Iowa Supreme Court and the Attorney General. The Court has interpreted “construction” to include “all things necessary to the completed accomplishment of a highway for all uses properly a part thereof.”<sup>63</sup> The term “supervision” has been found by the Attorney General to encompass supervision of the overall operation of the highway system.<sup>64</sup> Using these standards, a number of activities have been found to be constitutionally acceptable expenditures of protected moneys, including the relocation of utility facilities,<sup>65</sup> the construction of highway rest areas,<sup>66</sup> the payment of tort claims against the DOT,<sup>67</sup> and the payment of worker’s compensation premiums for employees of the County Engineer’s office.<sup>68</sup> However, protected moneys may not be spent outside the State of Iowa.<sup>69</sup>

## B. Expenditures Not Constitutionally Protected

According to the Attorney General, the use of revenue from the tax on motor fuel used for nonhighway purposes is not limited by Article VII, section 8.<sup>70</sup> For example, moneys from the imposition of the motor fuel tax on watercraft are diverted to the Marine Fuel Tax Fund for recreational boating programs,<sup>71</sup> and moneys from the imposition of the motor fuel

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<sup>60</sup> Id.

<sup>61</sup> Edge v. Brice, 113 N.W.2d 755, 759 (Iowa 1962).

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> 1984 Op. Iowa Att’y Gen. 154 at 158 (9/26/84).

<sup>65</sup> Edge, 113 N.W.2d at 759-760.

<sup>66</sup> 1968 Op. Iowa Att’y Gen. 494 at 501-502 (1/16/68).

<sup>67</sup> 1984 Op. Iowa Att’y Gen. 154 at 159 (9/26/84).

<sup>68</sup> 1993 Op. Iowa Att’y Gen. 49 at 50 (9/27/93).

<sup>69</sup> Frost v. State, 172 N.W.2d 575, 583 (Iowa 1969).

<sup>70</sup> 1973 Op. Iowa Att’y Gen. 349 at 350 (12/28/73). This opinion ties the constitutionality of the allocation of revenue collected on motor fuel not used for highway purposes to the validity of the estimate of the amount of fuel used for nonhighway purposes.

<sup>71</sup> Iowa Code §§452A.79 and 452A.84.



## Road Use Tax Fund

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tax on aircraft are diverted to the State Aviation Fund for a variety of purposes related to aviation enhancement.<sup>72</sup>

### C. Other Expenditures

One unsettled issue is whether the use of all moneys credited to the RUTF is limited by Article VII, section 8. Prior to July 1, 2008, vehicle use tax revenues were used as the funding source for several off-the-top allocations and standing appropriations which arguably did not involve the construction, maintenance, or supervision of highways.<sup>73</sup> Because Article VII, section 8, does not identify the vehicle use tax in its restrictions, these expenditures appeared to be constitutionally acceptable.<sup>74</sup>

However, the Attorney General has found that Article VII, section 8, has the effect of protecting not only those moneys specifically mentioned in the provision but also those moneys that are commingled with the moneys specifically mentioned in Article VII, section 8.<sup>75</sup> The Attorney General has also indicated that all allocations from the RUTF must be used for highway-related purposes, notwithstanding the fact that the particular moneys at issue were not specifically linked to a constitutionally protected funding source.<sup>76</sup> Thus, the validity of some of the RUTF's off-the-top allocations and annual appropriations from commingled vehicle use tax revenues seemed to depend on whether the purposes for which the allocations or appropriations were made were highway-related in the constitutional sense. The Iowa Supreme Court has not addressed this issue.

Constitutional questions regarding the status of commingled vehicle use tax revenues were arguably put to rest in 2008 when the General Assembly repealed the vehicle use tax and replaced it with the fee for new registration,<sup>77</sup> because Article VII, section 8, specifically requires motor vehicle registration fees to be dedicated to the construction, maintenance, and supervision of highways.

### IV. Summary

The RUTF receives revenue from motor vehicle registration fees, fuel taxes, and certain other sources. Moneys in the RUTF are dedicated by law to the DOT, county governments, and city governments for highway-related uses. Although a significant portion of the moneys in the RUTF are subject to an explicit constitutional limitation

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<sup>72</sup> Iowa Code §§328.56 and 452A.82.

<sup>73</sup> See 2007 Iowa Code §423.43, where vehicle use tax revenue was diverted to the Iowa Comprehensive Petroleum Underground Storage Tank Fund, and 2007 Iowa Code §312.2(14), where vehicle use tax revenue was diverted to fund public transit assistance.

<sup>74</sup> See *Frost*, 172 N.W.2d at 583, where the Iowa Supreme Court held the expenditure of moneys from the Primary Road Fund outside the state violated Article VII, section 8, because "such funds come partially from sources the constitution limits to use within the state." The Iowa Supreme Court has not applied this rationale to the expenditure of commingled funds in the RUTF.

<sup>75</sup> 1969 Op. Iowa Att'y Gen. 162 at 165 (5/12/69).

<sup>76</sup> 1991 Op. Iowa Att'y Gen. 8 at 13 (3/27/91). The Attorney General concluded that moneys from the Motor Vehicle Fraud Account, which receives moneys from the RUTF, could not be transferred to the General Fund of the State due to the constitutional limitations of Article VII, section 8.

<sup>77</sup> See 2008 Iowa Acts, ch. 1113. With the repeal of the vehicle use tax as a funding source for off-the-top allocations and standing appropriations, the Statutory Allocations Fund was established as a depository for certain moneys which are not constitutionally protected, but which are generally intended for deposit in the RUTF. Several former off-the-top allocations are now made from the Statutory Allocations Fund.

regarding the purposes for which they may be expended, the Iowa Supreme Court has interpreted the limitation to allow expenditures which are not “totally foreign to highways.” This interpretation, together with the opinions of the Attorney General, has allowed the moneys in the RUTF to be broadly and flexibly spent for a variety of highway-related purposes.

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