



**LEGAL SERVICES DIVISION**

# **Legislative Guide**

## **ROAD USE TAX FUND**

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**as updated by**

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# LEGISLATIVE GUIDE TO ROAD USE TAX FUND



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## I. Introduction.

State, county, and municipal governments currently maintain over 113,000 miles of roadway and nearly 25,000 bridges in the state.<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, comprise less than 10 percent of the mileage. Primary roads are under the jurisdiction of the Department of Transportation (DOT). Secondary roads, which include farm-to-market roads, make up nearly 80 percent of the total mileage and are under the jurisdiction of the counties. Municipal roads and streets comprise over 10 percent of the total. Road classification determines funding levels, maintenance standards, and funding priorities. Decisions regarding construction, reconstruction, maintenance, and repair are generally made by the governmental entity having jurisdiction over the road.<sup>3</sup>

The major state funding source for the construction, maintenance, and supervision of Iowa's highways is the Road Use Tax Fund (RUTF). This Legislative Guide provides an overview of RUTF and addresses several issues regarding RUTF, including the unique constitutional status of RUTF, its sources of funding, distribution of funding, and what constitutes "construction, maintenance, and supervision" for the purpose of expending constitutionally protected moneys in RUTF. References in this Guide to the Iowa Code are to the 2007 Iowa Code and 2007 Iowa Code Supplement. Cases and opinions referred to are current through August 2007. All fiscal information was provided by the Fiscal Services Division of the Legislative Services Agency.

## II. The Road Use Tax Fund.

The RUTF was established in 1949.<sup>4</sup> The RUTF 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 2006-2007, RUTF received approximately \$1.106 billion in revenue as follows:

Motor vehicle fuel taxes:	\$433.4 million
Motor vehicle registration and title fees: <sup>5</sup>	\$403.4 million
Motor vehicle use taxes:	\$219.5 million
Other revenues:	\$ 49.5 million

#### 1. Motor Vehicle Fuel Taxes.

Motor fuel and special fuel taxes are collected from the person who owns the fuel immediately prior to being withdrawn from the terminal or from the person who causes the fuel to be imported into the state rather than from the distributor. In addition, the tax on the alcohol to be used for blending ethanol blended gasoline is to be paid by the supplier when the alcohol is withdrawn from the terminal rather than by the alcohol

<sup>1</sup> See [http://www.dot.state.ia.us/dot\\_overview/transfacts.htm#roads](http://www.dot.state.ia.us/dot_overview/transfacts.htm#roads) (last visited August 14, 2007).

<sup>2</sup> Iowa Code § 306.3.

<sup>3</sup> Iowa Code § 306.4.

<sup>4</sup> 1949 Iowa Acts ch. 122, § 1.

<sup>5</sup> Includes miscellaneous vehicle-related collections.



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manufacturer.<sup>6</sup> Between July 1, 2002, and July 1, 2012, 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 total number of gallons of motor fuel distributed.<sup>7</sup> The tax rate on gasoline will vary from 20 to 21 cents per gallon and the tax rate on ethanol blended gasoline will vary from 19 to 20 cents per gallon.<sup>8</sup> Diesel fuel and fuel oil are taxed at the rate of 22.5 cents per gallon. A refund or income tax credit is allowed for taxes paid on fuel in certain circumstances, including fuel used by urban transit systems, by regional transit systems, in various types of machinery and equipment used for nonhighway purposes, in refrigerator units on trailers or in other vehicles, and in the extraction and processing of natural deposits.<sup>9</sup>

Beginning January 1, 2006, an excise tax of 17 cents was imposed on each gallon of E-85 gasoline. The rate of the excise tax on E-85 gasoline is to be determined based on the number of gallons of E-85 gasoline that are distributed in this state during the previous calendar year. The Department of Revenue is to determine the actual tax paid for E-85 gasoline for each calendar year. The amount of the tax paid on E-85 gasoline during the past calendar year is compared to the amount of tax on E-85 gasoline that would have been paid using the tax rate that was otherwise imposed on ethanol blended gasoline and a difference is calculated. If the difference is equal to or greater than \$25,000, the tax rate for E-85 gasoline for the period beginning July 1 following the end of the determination period is the rate imposed on ethanol blended gasoline.<sup>10</sup>

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

All fees from the registration and titling of motor vehicles are credited to RUTF except certain collection fees retained by the county treasurers.<sup>11</sup> In most instances, the issuance of motor vehicle certificates of title and registration is the duty of the county treasurer. County treasurers may retain 4 percent of the total collected for each vehicle registration and duplicate registration card or license plate issued, \$2.50 from each certificate of title, 40 percent of the fees collected for certified copies of certificates of title, and 60 percent of fees collected for perfection of security interests.<sup>12</sup> The moneys retained are deposited in the general fund of the county.<sup>13</sup>

Moneys collected from the issuance of registration plates are generally credited to RUTF. However, the special registration fees paid for certain special plates, such as

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<sup>6</sup> Iowa Code § 452A.3. Iowa Code § 452A.4 requires a person to obtain a license from the Department of Revenue to sell, or otherwise act as a supplier, importer, or exporter, dealer, or user of motor fuel and special fuel within the state. Iowa Code §§ 214A.1 and 452A.2 contain the various definitions of fuels subject to taxation. Generally, motor fuel means gasoline and other liquids advertised or commonly used for the purpose of operating internal combustion engines, including but not limited to motor vehicles. See Iowa Code §§ 214A.1(12, 13) and 452A.2(19, 25). Special fuel is defined as fuel oils and combustible gases and liquids suitable for propelling motor vehicles and turbine-powered aircraft which are not motor fuel. See Iowa Code § 452A.2(34).

<sup>7</sup> Iowa Code § 452A.3.

<sup>8</sup> Iowa Code § 452A.3. According to the Department of Revenue, the tax rate for ethanol blended gasoline for fiscal year 2007-2008 is 19 cents per gallon and the tax rate for regular gasoline for the same fiscal year is 20.7 cents per gallon.

<sup>9</sup> Iowa Code § 452A.17.

<sup>10</sup> Iowa Code § 452A.3(1B, 1C). According to the Department of Revenue, the tax rate for E-85 gasoline for fiscal year 2007-2008 is 19 cents per gallon. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 and 85 percent by volume of ethanol, if the formulation meets certain standards. See Iowa Code § 214A.1(9).

<sup>11</sup> Iowa Code § 321.145.

<sup>12</sup> Iowa Code § 321.152.

<sup>13</sup> Iowa Code §§ 321.24, 321.151, and 321.152.



collegiate plates, Iowa heritage plates, and natural resources plates, are deposited in RUTF and then motor vehicle use tax revenues are reallocated to their respective special funds.<sup>14</sup>

In addition to the issuance of motor vehicle registrations and certificates of title, counties not served by a permanent DOT facility are also authorized to issue driver's licenses and to retain \$7.00 of each driver's license transaction fee for deposit in the general fund of the county.<sup>15</sup>

### 3. Motor Vehicle Use Taxes.

A use tax of 5 percent of the purchase price is imposed on the tangible personal property purchased for use in this state.<sup>16</sup> The use of leased vehicles is subject to a use tax of 5 percent of the amount subject to tax.<sup>17</sup> Revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment are appropriated by law for several different purposes and credited to RUTF for specific purposes. Depending on the amount of use tax revenue received, use tax proceeds may also be credited generally to RUTF.

Eighty percent of motor vehicle-related use tax revenue is earmarked for purposes of the Iowa Comprehensive Petroleum Underground Storage Tank Fund and for purposes of RUTF.<sup>18</sup> Of this 80 percent, 25 percent is allocated to the Iowa Comprehensive Petroleum Underground Storage Tank Fund, with a cap on the allocation of \$4,250,000 per quarter. Any moneys remaining after this allocation are credited to RUTF.<sup>19</sup>

The remaining 20 percent of the use tax proceeds is credited one-half to RUTF and one-half to the Primary Road Fund for use for the Commercial and Industrial Highway Network.<sup>20</sup>

Motor vehicle-related use tax revenues credited to RUTF may be credited to the Primary Road Fund to reimburse the Primary Road Fund for costs incurred for repairing, improving, and maintaining bridges over the rivers bordering the state.<sup>21</sup>

### 4. Other Revenues.

The RUTF also receives revenue from other sources, including revenue derived from the excise tax imposed upon the rental of automobiles,<sup>22</sup> environmental protection charges on petroleum diminution,<sup>23</sup> earnings on investments or interest earned on time deposits of money in RUTF and the funds to which moneys from RUTF

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<sup>14</sup> Iowa Code § 321.34. In addition to the regular motor vehicle registration fee, a special fee of \$25-\$45 is generally assessed. It is this amount which is reallocated to the funds or functions supported by the issuance of the special plate.

<sup>15</sup> Iowa Code §§ 321M.3 and 321M.9.

<sup>16</sup> Iowa Code § 423.5.

<sup>17</sup> Iowa Code § 423.5. The lease amount subject to tax is determined pursuant to § 423.27.

<sup>18</sup> Iowa Code § 423.43.

<sup>19</sup> Iowa Code § 423.43(1).

<sup>20</sup> Iowa Code § 423.43.

<sup>21</sup> Iowa Code § 423.44.

<sup>22</sup> Iowa Code § 423C.5.

<sup>23</sup> Iowa Code §§ 424.3 and 424.7.



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are allocated,<sup>24</sup> and fines and fees attributable to commercial vehicle violation citations issued by the Motor Vehicle Division of DOT.<sup>25</sup>

### B. Road Use Tax Fund Expenditures.

For fiscal year 2006-2007, total expenditures from RUTF were \$1.106 billion. The Treasurer of State is required to allocate RUTF moneys by formula to the Primary Road Fund, the Secondary Road Fund, the Farm-to-Market Road Fund, and the Street Construction Fund of the Cities. However, prior to these allocations occurring, several "off-the-top" allocations are required by statute and additional funds are often appropriated by the General Assembly.<sup>26</sup>

#### 1. Off-the-top Allocations.

Off-the-top allocations amounted to approximately \$139.6 million, or 12.6 percent of the moneys available in RUTF for fiscal year 2006-2007. Statutory allocations totaled approximately \$92.5 million in fiscal year 2006-2007.<sup>27</sup> Allocations required by statute include credits to the Primary Road Fund to pay DOT expenses relating to providing technical expertise to cities and counties; to pay DOT expenses associated with construction, maintenance, and improvement of state institutional roads and state park roads; to partially compensate DOT for allowing trucks with certain gross weights to operate on roads of this state; transfers to the General Fund of the State for costs associated with motor vehicle fraud enforcement and prosecution; credits to DOT for public transit assistance;<sup>28</sup> transfers to DOT for city, county, and state traffic safety improvement projects; credits to the Motorcycle Rider Education Fund; and credits to the Revitalize Iowa's Sound Economy (RISE) Fund.<sup>29</sup>

Off-the-top allocations appropriated by the General Assembly in fiscal year 2006-2007 amounted to approximately \$47.1 million and included a \$40.2 million appropriation for operating expenses of DOT.<sup>30</sup>

Moneys remaining in RUTF after the off-the-top allocations, approximately \$966.3 million in fiscal year 2006-2007, are allocated by formula among the various road funds. 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>31</sup>

#### 2. Primary Road Fund Allocations.

Primary roads are those roads and streets both inside and outside the boundaries of municipalities, including the state primary road system.<sup>32</sup> Moneys in the Primary

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<sup>24</sup> Iowa Code § 312.1.

<sup>25</sup> Iowa Code § 602.8108(8).

<sup>26</sup> Iowa Code § 312.2.

<sup>27</sup> Iowa Code § 312.2. Some of the off-the-top allocations include appropriations to the Primary Road Fund, Secondary Road Fund, and Farm-to-Market Road Fund. Specifying allocations in this manner circumvents the use of the formula.

<sup>28</sup> Iowa Code § 312.2(14).

<sup>29</sup> The RISE Fund is established in Iowa Code § 315.2. Pursuant to Iowa Code § 315.3, the fund is used for the establishment, construction, improvement, and maintenance of roads and streets which promote economic development. The fund may also be used for reimbursement or payment to cities or counties of all or part of the interest and principal on general obligation bonds issued by cities or counties for financing approved road and street projects.

<sup>30</sup> See 2006 Iowa Acts ch. 1170 for examples of appropriations made from RUTF.

<sup>31</sup> Iowa Code § 312.2.

<sup>32</sup> Iowa Code § 306.3(6).



Road Fund may be used to construct and maintain the primary road system and for expenses related to the primary road system, including the maintenance of DOT facilities and merit pay increases for DOT employees for which appropriations are not otherwise made.<sup>33</sup>

Beginning July 1, 2003, and ending June 30, 2013, a portion of the moneys in the Primary Road Fund are to be transferred to the Transfer of Jurisdiction Fund and appropriated to (1) counties and cities that have assumed jurisdiction of certain primary roads identified in a transfer of jurisdiction report compiled by the ad hoc road use tax fund committee, and (2) the Secondary Road Fund and the Street Construction Fund of the Cities.<sup>34</sup> After June 30, 2013, the same portion of the moneys is to be transferred only to the Secondary Road Fund and the Street Construction Fund of Cities.<sup>35</sup>

DOT is required to spend at least \$30 million annually from the Primary Road Fund on the Commercial and Industrial Highway Network.<sup>36</sup> Identification of certain primary highways as part of the Commercial and Industrial Highway Network is intended to concentrate resources to improve the flow of commerce; make travel more convenient, safe, and efficient; and better connect Iowa with regional, national, and international markets.<sup>37</sup>

### 3. Secondary Road Fund Allocations.

Secondary roads are those roads, outside the boundaries of municipalities, under the jurisdiction and control of the county board of supervisors in the county in which that portion of the road is located.<sup>38</sup> Prior to fiscal year 2006-2007, 70 percent of the moneys allocated to the Secondary Road Fund of the Counties were apportioned among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state for each fiscal year based upon the total needs of secondary roads of the state as shown in the latest quadrennial need study, with the remaining 30 percent apportioned among the counties in the ratio that the area of each county bears to the total area of the state.

For fiscal year 2006-2007 and subsequent fiscal years, the distributions from the Secondary Road Fund are calculated by using the methodology determined by the Secondary Road Fund Distribution Committee. The methodology is being phased in over a five-year period beginning July 1, 2006. The methodology used is as follows:

- a. Fiscal year 2006-2007 — 80 percent needs-based methodology and 20 percent formula.
- b. Fiscal year 2007-2008 — 60 percent needs-based methodology and 40 percent formula.

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<sup>33</sup> Iowa Code § 313.4(1-3).

<sup>34</sup> Iowa Code § 313.4(6).

<sup>35</sup> Iowa Code § 313.4(7).

<sup>36</sup> Iowa Code § 313.4(5).

<sup>37</sup> Iowa Code § 313.2A.

<sup>38</sup> Iowa Code §§ 306.3(9) and 306.4(2).





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c. Fiscal year 2008-2009 — 40 percent needs-based methodology and 60 percent formula.

d. Fiscal year 2009-2010 — 20 percent needs-based methodology and 80 percent formula.

e. Fiscal year 2010-2011 et seq. — 100 percent formula.<sup>39</sup>

The needs-based methodology is that used for distribution during fiscal year 2005-2006 and the formula is that recommended by the Secondary Road Fund Distribution Fund Advisory Committee which is based upon: area; rural population; daily vehicle miles traveled; earth surfaced, granular surfaced, and paved surfaced road miles, and length of bridges.

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

Farm-to-market roads are classified as secondary roads and are under the control and jurisdiction of the county board of supervisors in the county in which the road is located. Farm-to-market roads serve the principal traffic-generating arteries of the county and connect such areas to other farm-to-market roads and to primary roads.<sup>40</sup> Prior to fiscal year 2006-2007 moneys were apportioned to the counties in the same manner as Secondary Road Fund moneys were apportioned; 70 percent according to need and 30 percent according to area. For fiscal year 2006-2007 and subsequent fiscal years, the distributions from the Farm-To-Market Road Fund are calculated by using the methodology determined by the Secondary Road Fund Distribution Committee. The methodology is being phased in over a five-year period beginning July 1, 2006. The methodology used is as follows:

a. Fiscal year 2006-2007 — 80 percent needs-based methodology and 20 percent formula.

b. Fiscal year 2007-2008 — 60 percent needs-based methodology and 40 percent formula.

c. Fiscal year 2008-2009 — 40 percent needs-based methodology and 60 percent formula.

d. Fiscal year 2009-2010 — 20 percent needs-based methodology and 80 percent formula.

e. Fiscal year 2010-2011 et seq. — 100 percent formula.<sup>41</sup>

The needs-based methodology is that used for distribution during fiscal year 2005-2006 and the formula is that recommended by the Secondary Road Fund Distribution Fund Advisory Committee which is based upon: area; rural population;

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<sup>39</sup> Iowa Code §§ 312.3(1) and 312.3C. Iowa Admin. Code 761-102.2(2). For the final report of the advisory committee, see <http://publications.iowa.gov/archive/0002456> (last visited August 2007). For distributions prior to fiscal year 2006-2007, see 2005 Iowa Code §§ 307.22(6, 7) and 312.3. The Secondary Road Fund Distribution Committee consists of representatives appointed by the president of the Iowa County Engineers Association, the president of the Iowa County Supervisors Association, and the Department of Transportation.

<sup>40</sup> Iowa Code § 306.3(3).

<sup>41</sup> Iowa Code §§ 312.3C and 312.5. Iowa Admin. Code 761-102.2(2). For the final report of the advisory committee, see <http://publications.iowa.gov/archive/0002456> (last visited August 2007). For distributions prior to fiscal year 2006-2007, see 2005 Iowa Code §§ 307.22(6, 7) and 312.3. The Secondary Road Fund Distribution Committee consists of representatives appointed by the president of the Iowa County Engineers Association, the president of the Iowa County Supervisors Association, and the Department of Transportation.



daily vehicle miles traveled; earth surfaced, granular surfaced, and paved surfaced road miles; and length of bridges.<sup>42</sup>

A county has only three years to expend its allotment for farm-to-market roads. Any amount remaining at the end of this period is reapportioned among all counties.<sup>43</sup>

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

Used for the municipal street system, moneys in the Street Construction Fund of the Cities are apportioned among the cities in the ratio which the population of each city, in the most recent federal census, bears to the total population of all cities in the state.<sup>44</sup> An apportionment to a small 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>45</sup> Jurisdiction and control over the municipal street system is vested in the governing body of each municipality, except that DOT and the municipality exercise concurrent jurisdiction over extensions of primary roads which run through the municipality.<sup>46</sup> Funds received by a municipality are limited in use to construction, maintenance, and supervision of the public streets.<sup>47</sup>

## **III. Constitutional Restrictions on Use of Certain RUTF Revenues.**

### **A. Article VII, Section 8.**

The RUTF is somewhat unique among special funds in the state in that Article VII, section 8, of the Iowa Constitution limits the uses to which some, but not all, of its revenues may be put.

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 payment of interest on such bonds.*

Since the adoption of Article VII, section 8, by amendment in 1942, the scope and intent of the section have been the subject of several opinions by the Iowa Supreme Court and the Iowa Attorney General. Interpretations of constitutional or statutory provisions concerning RUTF by the Iowa Supreme Court are binding on the General Assembly, other governmental entities and officials, and citizens of the state until legislatively or judicially overruled. Attorney General's opinions, however, are treated somewhat differently.

Though courts often consider Attorney General's opinions, they are not bound by the opinions and often reach a different conclusion on an issue than does the Attorney General.<sup>48</sup> The Attorney General does expect state and local government officials to follow

<sup>42</sup> Iowa Code §§ 312.3C and 312.5. For distributions prior to fiscal year 2006-2007, see 2005 Iowa Code §§ 307.22(6, 7) and 312.3.

<sup>43</sup> Iowa Code § 310.27.

<sup>44</sup> Iowa Code § 312.3.

<sup>45</sup> Iowa Code § 312.3(2)(b).

<sup>46</sup> Iowa Code § 306.4.

<sup>47</sup> Iowa Code §§ 312.3 and 312.6.

<sup>48</sup> *Sioux City Comm. Sch. Dist. v. Bd. of Public Instruction*, 402 N.W.2d 739, 742 (Iowa 1987).



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official opinions of the Attorney General as they would a decision by a court of law.<sup>49</sup> Regarding the General Assembly, 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 not bound by the opinion of the Attorney General on an issue.<sup>50</sup>

## **B. Effect of Article VII, Section 8, on RUTF Expenditures.**

### **1. Expenditures Related to Highways.**

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

*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 fund, 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>51</sup>*

The key phrase used by the Court is "totally foreign to highways". An expenditure of moneys protected by Article VII, section 8 (registration and license fees and fuel taxes), will be analyzed in terms of whether the expenditure is related to highways. An expenditure will survive constitutional scrutiny if it bears some reasonable relationship to the construction, maintenance, or supervision of highways.

### **2. Construction, Maintenance, and Supervision Requirements.**

What constitutes "construction, maintenance, or supervision of highways" has also received a fairly broad interpretation by the Court and the Attorney General. The Court has held that the term "construction" includes "all things necessary to the complete accomplishment of a highway for all uses properly a part thereof."<sup>52</sup> Using this standard, the Court and the Attorney General have found a number of activities, including relocating utility facilities,<sup>53</sup> building highway rest areas,<sup>54</sup> and payment of tort claims against DOT,<sup>55</sup> to be constitutionally acceptable expenditures of protected moneys.

The term "supervision" has been found by the Attorney General to be quite broad and to encompass the supervision of the overall operation of the highway system.<sup>56</sup> On the other hand, the Court has found that Article VII, section 8, is unambiguous in its limitation on where RUTF moneys may be spent.<sup>57</sup>

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<sup>49</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).

<sup>50</sup> Id.

<sup>51</sup> Edge v. Brice, 113 N.W.2d 755, 759 (Iowa 1962).

<sup>52</sup> Id.

<sup>53</sup> Id. at 759-760.

<sup>54</sup> 1968 Op. Iowa Att'y Gen. 494, 501-502.

<sup>55</sup> 1984 Op. Iowa Att'y Gen. 158, 159.

<sup>56</sup> Id. at 159.

<sup>57</sup> Frost v. State, 172 N.W.2d 575, 583 (Iowa 1969). The Iowa Supreme Court held that the expenditure of primary road funds on a bridge project in which the moneys would be expended in another state clearly violated the amendment.



## C. Expenditures Not Constitutionally Restricted.

The uses to which revenues from the tax on motor fuel used for nonhighway purposes may be put are not subject to the constitutional limitation in Article VII, section 8, in the opinion of the Attorney General.<sup>58</sup> For example, moneys from the imposition of the motor vehicle fuel tax on watercraft are diverted to the Marine Fuel Tax Fund for boating projects and moneys from the imposition of the motor vehicle fuel tax on aircraft are diverted to the State Aviation Fund for aviation enhancement.

## D. Other Expenditures.

One issue that has yet to be settled by the Court is whether all moneys credited to RUTF are limited in use by Article VII, section 8. The language of the constitutional provision itself does not include the proceeds from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment in its limitation on spending for construction, maintenance, and supervision of highways.<sup>59</sup>

Several of the off-the-top expenditures and several standing appropriations specifically utilize use tax revenues as the funding source for items which arguably are not part of the construction, maintenance, or supervision of the highways in the state.<sup>60</sup> Because Article VII, section 8, does not mention the use tax in its use restrictions, this would appear to be constitutionally acceptable.<sup>61</sup>

However, the Attorney General has opined that Article VII, section 8, has the effect of protecting not only those moneys specifically mentioned in that provision but also those moneys that are commingled with the moneys mentioned in Article VII, section 8.<sup>62</sup> The Attorney General has also indicated that all allocations from RUTF must be used for highway-related purposes, notwithstanding that the particular funding was not specifically linked to a constitutionally protected funding source.<sup>63</sup>

The Attorney General's opinions make the validity of the commingled use-tax allocations, including the off-the-top allocations in Code section 312.2, and several of the annual appropriations made by the General Assembly, turn on whether the purposes for which the allocations or appropriations are made are highway-related in the constitutional sense. Although the Iowa Supreme Court has on several occasions discussed what constitutes a highway-related expenditure, the Court has not addressed whether these specific commingled use-tax allocations and annual appropriations by the General Assembly are for highway-related purposes.

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<sup>58</sup> 1973 Op. Iowa Att'y Gen. 349, 350. The opinion ties the constitutionality of the allocation of revenue collected on motor fuel not used for highway purposes with the validity of the estimate of how much fuel is used for nonhighway purposes.

<sup>59</sup> These sources accounted for \$265.1 million in RUTF in fiscal year 2006-2007.

<sup>60</sup> See Iowa Code § 423.43, where use tax revenue is diverted to the Iowa Comprehensive Petroleum Underground Storage Tank Fund, and Iowa Code § 312.2(14), where use tax revenue is diverted to fund public transit assistance.

<sup>61</sup> See *Frost v. State*, 172 N.W.2d 575, at 583, where the Iowa Supreme Court held that a statute which authorized the expenditure of moneys in 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." So far, the Iowa Supreme Court has not applied this rationale to the expenditure of commingled funds in RUTF.

<sup>62</sup> 1969 Op. Iowa Att'y Gen. 162, 165.

<sup>63</sup> 1991 Op. Iowa Att'y Gen. 9, 13. The Attorney General's opinion concluded that moneys from the Motor Vehicle Fraud Account could not be transferred to the General Fund of the State due to the constitutional limitations of Article VII, section 8.



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### **IV. Summary.**

Expenditures from RUTF, with few exceptions, have been dedicated by law to highway-related uses. Although a significant portion of the moneys in RUTF is subject to an explicit constitutional limitation regarding their expenditure, the Iowa Supreme Court has interpreted the limitation to apply only to expenditures which are "totally foreign to highways." This interpretation, together with the opinions of the Attorney General, has allowed the moneys in RUTF to be flexibly applied to a variety of highway-related uses.

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