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*With the compliments of the  
author. Edmund P. Learned*

State Gasoline Taxes

BY

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## PREFACE

The automobile as a means of transport is a product of the twentieth century. In order to provide good roads for automobile use, the several states of the United States have spent during the past few years and are now spending vast sums of money.

Oregon was the first state to adopt a tax on gasoline to provide revenue for building and maintaining roads. Since this adoption in 1919, many states have passed laws providing for gasoline taxes until now forty-four states have such a tax. A new tax which can sweep the country as this one has swept it deserves some attention. In this study, an analysis is made of the arguments for and against said tax. A detailed account of the development in use and of some of the chief problems caused by the use of this tax is given. A critical analysis of the provisions of the various laws is attempted. The best procedure of the various states is incorporated in a model gasoline tax law.

Acknowledgement is made of the many helpful suggestions made by Professors John Ise, Jens P. Jensen, and F. H. Guild of the University of Kansas, and by Professor S. L. Whitcomb, editor of this series of Studies.

E. P. L.

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# State Gasoline Taxes

## CHAPTER I

### ORIGIN AND PURPOSES OF THE GASOLINE TAX

#### I. PURPOSES OF TAXES

Practically all tax laws that are passed by state legislatures or by Congress are aimed to raise revenue or to serve as a means of social control. Conspicuous among the taxes primarily for revenue, are the income tax, the general property tax, and the internal revenue duties, though in the latter case, such taxes have been used, in part, to regulate the habits of the people. The gasoline tax has been used entirely for revenue purposes. However, it might be used for regulating the consumption of gasoline by the people.

#### II. FIRST PROPOSALS FOR GASOLINE TAXES AS SOURCES OF REVENUE

##### A. *By the Federal Government.*

The first important proposal for a gasoline tax as a source of revenue was made by President Wilson in his address to Congress on December 7, 1915, when he said, "A tax of one cent per gallon on gasoline and naphtha would yield at the present estimated production, \$10,000,000."<sup>1</sup> At that time the United States Government was having heavy expenses to meet. The European war had begun and there was a great deal of uncertainty, on the part of the government, as to how much revenue the tariff would yield.

The above recommendation of the President was not seriously considered; however, it did provoke some interesting comment in a few papers, such as the *Horseless Age*, the oldest automobile magazine in America. This magazine replied to President Wilson and Secretary McAdoo in the following words: "What gasoline is to automobiles, oats are to horses, so let's tax oats, too, and see what revenue we can get from

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1. *Congressional Record*, 64th Congress, 1st Session, Vol. 53, Part 1, page 98.

that source. A levy of three cents per bushel on oats would be equivalent ad valorem to one cent per gallon on gasoline. As the production of oats amounts to about 1,153,000,000 bushels per year, according to the Department of Agriculture, the revenue to be derived from the tax which we propose would amount to \$34,590,000, quite a tidy little sum and more than three times what the President hopes to get from his tax on gasoline."<sup>2</sup> This statement reflects with fair accuracy the sentiment of the people on the occasion of the first serious proposal of such a tax. Undoubtedly, many people felt that if revenue is what is wanted, even oats, horse feed, would yield more.

Again, in 1918, a tax on gasoline for revenue purposes was proposed. This time it appeared in the House Revenue Bill of 1918<sup>3</sup> which provided for a two cent per gallon tax on gasoline. However, this provision was not included in the final draft of the Revenue Bill of 1918.

#### B. *By Oregon in 1919.*

During the same year, 1918, agitation for such a tax began in the State of Oregon. The people of Oregon, through the initiative, decided in favor of a gasoline tax. So the first gasoline tax law was placed on the statute books of an American state in 1919 and became effective February 25, 1919.<sup>4</sup>

#### C. *Reasons for Consideration by States.*

While the general purpose of gasoline taxes was revenue, the specific purpose was revenue for the building and maintenance of roads. The automobile is a luxury of the Twentieth Century. Twenty-five years ago, the automobile industry amounted to very little. Mr. A. R. Hirsch, State Highway Engineer of Wisconsin, states<sup>5</sup> that in 1904 there were in operation in America about 58,000 automobiles. There were practically no motor trucks. In 1914, there were registered 1,711,339 automobiles and motor trucks. In 1919, there were

2. *Horseless Age*, 36: 524-25. (December 15, 1915.)

3. *House Report* 767, 65th Congress, 2nd Session.

4. *Laws of Oregon*, 1919, Chapter 159.

5. *Engineering News-Record*, 91:967. (December 13, 1923.)

registered 7,530,105 automobiles and motor trucks. At present, there are over 14,000,000 trucks and automobiles in use. In 1904, the rural highway expenditures of America are reliably computed to have been \$59,527,000; in 1914, \$240,264,000; in 1919, \$389,466,000; and in 1923, \$800,000,000. The road-bed for automobiles is furnished by the public. Automobiles for economical operation require a better type of road than the old horse-drawn vehicle demanded. The figures plainly show that roads cost money. Someone proposed that the people who use the roads should pay for them. Furthermore, some maintained that many people who did not live adjacent to the roads used them.

As a result of changed conditions, there developed a new theory of highway financing. The benefit district should not bear the whole cost of highways, since the people living in the district do not secure the whole gain. License fees for motor cars were increased and funds secured in this way were devoted to highway purposes. But there is a limit to the fair increase of license fees. If such fees are placed too high, they become an unfair burden on the parties who use their cars little and the burden becomes relatively light on cars that use the roads a great deal. A tax on gasoline measures far more accurately than a license fee the wear and tear on a highway from an automobile passing over the highway, because the amount of gasoline consumed by a car does bear a close relation to the weight of the car, the speed at which it is traveling, and the distance traveled. These last named factors bear a close relation to the wear and tear on the road.

#### *D. By Other States in 1919 and 1920.*

Other states, recognizing the above arguments and others which will be more carefully considered in the next chapter, followed the example of Oregon and passed gasoline tax laws. North Dakota's statute was approved March 6, 1919; that of New Mexico, March 17; that of Colorado, April 9. The following year, on March 23, Kentucky passed a gasoline tax law. In all these states, revenue was the aim and that revenue was to be used primarily for highway purposes.

### III. GASOLINE TAX AS A MEANS OF SOCIAL CONTROL

There is another purpose for which a gasoline tax might be used. However, this use has never been mentioned in any arguments in favor of or against gasoline tax measures. Geologists of the United States Geological Survey have reported that at the present rate of consumption the known oil supplies of the United States will last but little longer than twenty years. This possible shortage of oil in the United States is a serious economic and social problem. Many thoughtful men and women sincerely believe that the government should make an effort to stop the extravagant use and waste of oil products in the present and should attempt to save a part of the supply for the future. The important part of the oil product is the lubricants which constitute about five per cent of the refined product. Lubricating oils can be secured from oil shales of which the United States has a good supply, but the process of manufacture is very expensive. The time has gone by when kerosene was the main product of petroleum. Today gasoline is the chief product. Production of oil continues to mount higher and higher to meet the demand for gasoline. The resources are being depleted rapidly. The question is, will a gasoline tax reduce the consumption so as to allow partial conservation for the future?



## CHAPTER II

### ARGUMENTS FOR AND AGAINST THE GASOLINE TAX

Any comparatively new tax that can sweep the country as the gasoline tax has swept it, must have some very strong arguments back of it. Such a tax will encounter opposition also. In the case of the gasoline tax, oil men whose product is taxed, automobile producers in whose product the gasoline taxed is used, highway engineers who are promoting highways for the public good, and the ordinary consumer himself are equally interested.

#### I. ARGUMENTS FOR THE TAX

##### A. *It Measures Use of Road.*

Undoubtedly, the strongest argument in favor of the tax is that it measures the use of the road. There is a direct relationship between the use of highways by motor vehicles and the quantity of motor fuel consumed in furnishing the motive power thereof; as well as a direct relation between the weight of motor vehicles using such highways and the distance which such motor vehicles will travel by such motive power per unit of weight. It is deemed that the weight of the motor vehicle and the distance traveled have a direct bearing on the damage to the highways and the wear thereof. The speed also has an effect on the wear. The State of Maryland included such arguments as the above in the Preamble to the Maryland Statute.<sup>6</sup> Similar views were expressed by A. R. Hirsch, Highway Engineer of Wisconsin.<sup>7</sup> This same argument was used with great force in Mississippi, Connecticut, Kentucky, Washington, and many other states which reported to the Department of Highways of Nevada during the latter part of 1922, while that Department was studying the question of raising state highway funds by taxing gasoline.<sup>8</sup>

Mr. Hirsch in his article in the *Engineering News-Record*

6. Maryland Laws, 1922, Chapter 522.

7. *Engineering News-Record*, 91: 967-8. (Dec. 13, 1923.)

8. *Public Works*, 54: 126-7. (April, 1923.)

on "What Car Owners Should Pay for Road Building," discussed the various types of taxes on cars and car owners and indicated what he considered fair. His contention was that the motor vehicle owners of each state should each year pay for their highway service one half of the total amount made available that year to pay the cost of the state highway program, after deducting from said amount the total amount made available to pay the cost of the state's highway program in the year 1904. This proposal means that the owners of motor vehicles would pay one half of the cost imposed upon government by their ownership of motor vehicles. Translated into national figures, this formula means that, on the basis of a total highway expenditure of \$200,000,000 in 1914 and \$1,000,000,000 in 1923, the motorist should have paid \$400,000,000 in 1923 for the use of highways. As a matter of fact, motorists only paid \$200,000,000. This other \$200,000,000 which owners of motor vehicles did not pay must come from taxes. Mr. Hirsch looks upon the gasoline tax as one source of this revenue. "There should be a valuation tax upon motor vehicles," he says, "if there is to be a valuation tax upon any class of personal property." However, he sees nothing fair about a horse-power tax. "Horse-power bears little or no relation to the speed, the weight, the value, or the use of a motor vehicle. There are at least thirty-two passenger car models on the American market which have the same or less horse-power than the Ford. These thirty-two models weigh from 1,600 to 3,500 pounds and retail at \$500 to \$2,500." Licensing by weight he considers an attempt to classify the relative destructiveness of various cars and he believes in a graduated tax based on weight classification. But the best tax of all is the gasoline tax, because "the consumption of gasoline varies with the weight, speed, and the mileage of the motor vehicle."

A great many writers on the subject and many legislators believe, as has been noted above, that the advent of the automobile brought with it increased costs for road-bed, and that the gasoline tax is an accurate measure of the compensation

to be paid by motorists for the use of facilities provided at great cost for the class for whose needs they are essential. This argument has had great force with the rural population. The concrete and other hard surface highways which pass their farms cost a great deal of money, and the farmers feel that the motorists get more good out of the highways than they do. Most farmers will admit that they get some benefit but not so much as commonly supposed. In South Carolina, the tax on gasoline was imposed by the Legislature at its session in 1922 in response to the demand that the tax on real property be lessened and that the users of gasoline contribute to the construction and maintenance of the roads.<sup>10</sup>

In Colorado, the argument that good roads were needed on account of automobiles and that the gasoline tax helped collect the cost of good roads from those who used the roads was used with much effect. There, the belief was held that the adjacent property owner is not the only one who benefits.

*B. It Helps put Competition between Railroads and Busses on a Fair Basis.*

The above argument on use has gained even greater strength with the spread of bus transportation. The rural population objects to paying for roads for busses to ruin. Railroads want to see bus lines taxed in every way possible so as to put competition on a fair basis. The railroads contend that they pay taxes to the state on their right-of-way and part of said taxes are used in such a way (for road purposes by state appropriation) as to furnish free right-of-way to their bus line competitors. The railroads also favor other special taxes on the bus line.

*C. It Secures Revenue from Tourists.*

In Oregon, people argued that the gasoline tax has the advantage of procuring some revenue from the tourist who is exempt from motor vehicle fees. This same view must have been held in Washington. The law there provides that no

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10. *Public Works*, 54: 126-7. (April, 1923.)

tourist may bring into the state more than twenty gallons of gasoline, the amount for which he is exempt. The California State Automobile Association also used this argument in its campaign in favor of the gasoline tax. It is a fact that most states which tourists visit in cars for the purpose of enjoying scenery have such taxes.

*D. It is Convenient to Pay.*

Professor Seligman of Columbia University in a discussion on "The Tax Situation,"<sup>11</sup> said, "A tax on spirits, on tobacco, or on gasoline is worth hundreds of taxes on multitudinous articles where the difficulties of collection are considerable. The economy of taxation is a canon not to be neglected." The costs of collection are low, as is shown below in Chapter IV. If one is going to test the gasoline tax by the Canons of Taxation of Adam Smith, one of which, Professor Seligman has just referred to, one would have to note that the gasoline tax is an easy tax to pay. It is convenient. Payments are made a little at a time. In fact, it is more convenient to pay than any other form of motor vehicle taxation. The amount of the tax is certain. Legislators intend that this tax shall fall upon the consumer, and some states provide that when gasoline is sold a separate bill for the tax or an itemized statement shall be rendered. Whether the legislators accomplish their aim will be more adequately considered in the chapter on incidence.

*E. It is Liked by the People.*

Consumers of gasoline generally seem to like the tax. At least, they do not object to it. *Municipal and County Engineering*, in editorial comment, reflects pretty well public opinion in regard to such taxes when it says, "A popular tax is an unheard of thing, yet the gasoline tax for highway improvement purposes arouses so little opposition, where it is properly formulated and administered and well understood, that it may fairly be called popular. . . . Motorists generally say they don't mind paying the tax as long as the money goes for better roads. They regard it as an investment which

11. *North American Review*, 214: 145-156. (August, 1921.)

will pay big dividends, as the highway system develops, in the form of reduced operating and vehicle upkeep costs."<sup>12</sup> The people want good highways. They realize that they will have to pay for them and the gasoline tax seems to be one of the most equitable ways to raise money for highway purposes. Arizona, Arkansas, Colorado, Connecticut, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, South Dakota, and Washington, through their highway officials, reported that the tax was well liked in their states and that there was little or no opposition to it.<sup>13</sup>

#### *F. It is Sustained by the Courts.*

The constitutionality of this tax has been established by the following decisions: *Altitude Oil Co. v. People*, 202 Pacific 180; *Amos v. Gunn*, 94 Southern 615; *Askren v. Continental Oil Co.*, 252 U. S. 444; *Bowman v. Continental Oil Co.*, 41 Supreme Court 606; *In re opinion of the Justices*, 121 Atlantic 902; *Pierce Oil Corporation v. Hopkins*, 282 Federal 253; *Standard Oil v. Graves*, 249 U. S. 389; *Standard Oil Co. v. Brodie et al.*, 239 Southwestern 753; *State v. Hart*, 217 Pacific 45; *State v. Liberty Oil Co.*, 97 Southern 438. Analysis of these and later cases appears in the following chapter.

## II. ARGUMENTS AGAINST THE TAX

### *A. It is Unjust unless there be a General Sales Tax.*

Arguments against this tax come from varied classes of people. The oil industry is naturally interested because one of their products, gasoline, is taxed. It cannot be said that there is uniformity of opinion among this group, though there seems to be more outspoken opposition than advocacy. The chief argument is that a sales tax on gasoline is unfair unless there be a general sales tax.<sup>14</sup> This argument is worth very little consideration. The comment of Professor Seligman, quoted before, would dispose of a great deal of its strength.

12. *Municipal and County Engineering*, 64: 211. (June, 1923.)

13. For these statements, see *Public Works*, 54: 126-127. (April, 1923.)

14. *National Petroleum News*, 14:35. (Oct. 11, 1922.)

*National Petroleum News*, 15:80. (May 2, 1923.)

A sales tax on a single commodity would not be, in most cases, as unequal in the effect on either consumers or business men as a general sales tax would be.

*B. It should be Resisted on General Principles.*

Another argument used by oil men and oil magazines is that the oil industry should resist gasoline taxes because it is just another tax placed on the industry and every tax successfully added makes it that much easier to add some more taxes. On the other hand, Mr. Nicholas, president of the National Petroleum Marketing Association, says, "The efforts of the jobbers should be concentrated on seeing to it that if such taxes and inspection laws were put in effect, they should be so framed as to make as little difficulty as possible in collecting them. . . . Good roads are desirable from the oil man's standpoint and they help the market for gasoline."<sup>15</sup>

*C. It is Spent in Wrong Ways.*

A very significant part of the objection on the part of oil men comes from the men in those states where a part of the proceeds of the tax goes into the General Fund or some special fund other than the road fund. The objection to using funds secured by means of a gasoline tax for other purposes than roads is sound. The argument of discrimination, number one above, used as it often is when the proceeds are applied for general fund purposes, might not get far in court, but still it seems just. While one might not advocate a general sales tax, he might advocate one on selected commodities. Yet, if a state is going to tax sales of some commodities for general revenue purposes, there is no legitimate reason why gasoline should be selected alone even though a gasoline tax is a good revenue yielder, except as the state by means of the tax wants to increase the price of a commodity, reduce the demand, and conserve a portion of the supply for the future. When the proceeds of the gasoline tax are used for a special purpose such as highway development, and when the tax is really paid

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15. *National Petroleum News*, 15:32. (Mar. 14, 1923.)

by the man who gets the benefit, the consumer of gasoline, the tax should not be condemned and is not so condemned by most oil men.

As a matter of fact, the only opposition that most oil producers and dealers now make to the gasoline tax is with reference to the application of the funds. They desire to see the money spent for roads, and in the most efficient way. The Standard Oil Company of Indiana has even published advertisements recently which indirectly endorse the gasoline tax as a means of securing better roads.

*D. It would Increase the Number of State Employees.*

Michigan jobbers claimed that such a tax would increase the number of state employees. This argument is worth very little, because the increase in number of employees is small and the actual cost of collection is small as shown below in Chapter IV.

*E. It is Hard to Administer.*

South Carolina oil dealers say the tax has been a source of confusion.<sup>16</sup> Federal authorities have refused to pay the tax on the ground the federal government was exempt from state taxation; yet the State of South Carolina collects the tax from the oil companies regardless of whether or not the oil company can pass the tax on to the consumer. That the oil men cannot pass the burden to the consumer in every case, as the legislators intended, is no proof that the tax is bad. However, many states either in original law or by amendment have made provisions for exemption of the federal government.

*F. It is a Tax on Essential Transportation.*

The South Carolina Petroleum Jobbers Association<sup>17</sup> also argues that a tax on gasoline is a tax on essential transportation. Motor trucks carry nearly half the freight of the country. To cause their owners to pay more for gasoline on account of a tax merely adds an additional burden on an al-

16. *National Petroleum News*, 14:35. (Oct. 11, 1922.)

ready heavy load. In reality this gasoline tax should be no harder on trucks, than railroad taxes on roadbed are on railroads. Furthermore, much of the truck business would not be possible, except for good roads provided out of proceeds of gasoline taxes.

*G. It is Objected to by City Tax Payers.*

Mr. John A. Zangerle, auditor of Cuyahoga County, Ohio, is quoted as follows:<sup>17</sup> "To my mind, there is no justification for such an increased burden on automobiles. Nor is there any necessary connection or relation in the payment of a tax for gas consumption on the streets of a city, for the improvement of township roads or vice versa." This quotation is the only one discovered thus far that virtually says city people are paying too much for country roads when they are subject to a gasoline tax. City folks enjoy the country roads too much to complain much. Mr. Zangerle also contends that abutting property really gets the bulk of the benefit and not the motorist.

When the new Kansas law was under consideration in January and February, 1925, some officials of the League of Kansas Municipalities tried to get the House and Senate committees to change the bill so that a share of the revenue received from the tax would go to the cities for street purposes. They did not argue that there was no relationship between gasoline sold in urban centers and the use of rural roads, but they argued instead, that all the revenue collected from gasoline sold in a city went to support rural roads, whereas some of it should be used to maintain the city streets which were being ruined by vehicles that burned gasoline on which the tax was paid.

"Motor fuel taxes discriminate against motor vehicles propelled by internal combustion engines and in favor of those driven by steam," says T. Wilbur Thornhill of Charleston, South Carolina. This statement is true, though it is not of importance because the number of such cars is small. And

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17. *National Petroleum News*, 15:114. (Mar. 14, 1923.)



further, no claim is made that the gasoline tax is perfect, but only that it is less imperfect than any other measure of road use.<sup>18</sup>

#### H. It is Disapproved by Automobile Men.

The Motor Vehicle Conference Committee representing the American Automobile Association, Motor and Accessory Manufacturers' Association, National Automobile Chamber of Commerce, National Automobile Dealers' Association, and the Rubber Association of America, while admitting that gasoline consumption taxes are somewhat in proportion to the use of the road and just on that score, still objects to them because they are additional taxes on automobile owners and not substitutes for existing taxes.<sup>19</sup> This committee also believes that the gasoline tax should be limited to raising money for maintenance and should not be used for original cost of building. It gives no reason for the latter idea in the publication cited above, nor did it give any in private correspondence. It must fear that an attempt to cover cost of original building would cause a tax so high that it might reduce the sale of automobiles and parts. This point will be touched upon further in the chapter on "Incidence of Gasoline Taxes."

The arguments for seem to be stronger than the arguments against. The arguments for come from a broader section of the population than do the arguments against. Those who are opposed are afraid of possible effects on their business and so far as numbers are concerned they represent a small part of the population. The gasoline tax continues to grow in favor and has been endorsed by the Michigan Committee of Inquiry into Taxation, reporting in 1923; the New York Special Committee on Taxation and Retrenchment, reporting March 1, 1922; the Tax Investigation Committee of the State of Washington, reporting in 1922; the Joint Legislative Committee on Taxation of Iowa, reporting in 1923; and the Oregon Committee on Tax Investigation.<sup>20</sup> These indorsements are significant because they come from widely different parts

18. *National Petroleum News*, 15:97. (Feb. 14, 1923.)

19. See Pamphlet, *Special Taxation for Motor Vehicles*.

20. Bulletin of National Tax Association. (April, 1923.)

of the country, and because they represent the judgment of practical legislators who have to consider the temper of the people and also the judgment of expert tax authorities who were heard by or were members of these committees. These reports indicate the trend of the times.

## CHAPTER III

### THE SPREAD AND DEVELOPMENT OF THE GASOLINE TAX

Thus far the discussion has centered around the beginning of the gasoline tax and the arguments which have made it so attractive that other states have adopted it. Now, a brief summary of the enactments by the various states will be made.

#### I. MORE STATES ADOPT GASOLINE TAXES

##### A. *In 1921 and 1922.*

At the beginning of the year 1921, gasoline taxes had been enacted in five states of the union; namely, Colorado, Kentucky, New Mexico, North Dakota, and Oregon. The rate in all these states was one cent except in New Mexico where it was two cents. Eleven new states were added to the roll of states using this tax in the year 1921. The Governor of Connecticut approved a one cent tax on January 14; the Governor of North Carolina, a similar tax on March 3. These governors were soon followed by those of the states specified below in which states the governors approved gasoline taxes of one cent:<sup>21</sup> Montana, March 15; South Dakota, March 12; Arizona, March 17; Arkansas, March 29; Pennsylvania, May 20; Florida, June 10; Georgia, August 10. Louisiana and Washington also provided for one cent taxes the same year. The following year, February 23, South Carolina provided a two cent tax. Mississippi, March 25, and Maryland, April 13, provided one cent taxes.

During the year 1921, New Mexico's Legislature passed and the Governor approved, March 10, a new law to meet the requirements of the United States Supreme Court as per decision quoted later in this chapter. The rate was reduced by this same law from two cents to one cent. Oregon increased the rate from one cent to two cents in 1921.

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21. All material on laws is taken from the Session Laws themselves, unless otherwise stated. See Bibliography for laws.

*B. In 1923 and 1924.*

However, the year 1923 is the record breaker, both for new laws and rate increases. A two cent tax was approved in Alabama, February 10; a one cent tax in Wyoming, February 26; a two and one-half cent tax in Utah, March 8; a one cent tax in Oklahoma, March 9; a two cent tax in Indiana, March 9; a two cent tax in Idaho, March 13; a two cent tax in Nevada, March 20; a one cent tax for 1923 and a two cent tax thereafter in Delaware, March 22; a one cent tax in Vermont, March 22; a one cent tax in Texas, March 24; a two cent tax in Tennessee, March 24; a three cent tax in Virginia, March 26; a one cent tax in Maine, April 7; a two cent tax in West Virginia, April 23 (became a law without the Governor's signature); a one cent tax for 1923 and a two cent tax thereafter in New Hampshire, May 4; and a two cent tax in California, May 30.

The significant fact about the enactments of 1923 is that so many states began with higher rates. Increases in rates were provided for by many state legislatures. Arizona, Arkansas, Florida, Georgia, and North Carolina increased the tax rate from one cent to three cents per gallon; Colorado, Maryland, South Dakota, Washington, Montana, and Pennsylvania increased it from one cent to two cents. Oregon and South Carolina increased the rate from two to three cents. The Virginia law provided that the rate should be two cents at the beginning and three cents after July, 1923. In 1924, the rate was increased from one cent to two and one-half cents in Oklahoma, from three to four cents in Arkansas, and from one cent to three cents in Mississippi and Kentucky.

*C. In 1925.*

Nine more states adopted new gasoline tax laws in 1925. The rate chosen in each case was two cents with the exception of one state, Rhode Island. The people of Missouri amended their State Constitution in the November, 1924, election so that they could have a gasoline tax law effective Jan. 1, 1925. The Michigan Legislature passed a law which was approved Jan. 29, 1925, and made effective Feb. 15, 1925. The Kansas Law was published by March 5, 1925, and made effective May

1, 1925. Nebraska was next with her law, approved March 3, 1925. Rhode Island's governor approved a one cent tax on April 29, 1925. Wisconsin and Ohio also adopted two cent taxes during this period. The Iowa law was made effective on April 16, 1925, and the Minnesota law on May 1.

A number of important rate changes were made by the 1925 legislative sessions. Idaho, South Dakota, and Tennessee raised the gasoline tax rate from two to three cents. The rate in New Mexico was raised from one cent to three cents; in North Carolina and Florida from three to four cents; in Nevada from two to four cents; in South Carolina from three to five cents; in Utah, from two and one-half cents to three and one-half cents; and in Wyoming from one cent to three and one-half cents.

The following table shows the schedule of rates in effect on July 1, 1925.

TABLE I.  
Gasoline Tax Rates in Effect July 1, 1925.

1. Alabama	2 cents	23. Nebraska	2 cents
2. Arizona	3 cents	24. Nevada	4 cents
3. Arkansas	4 cents	25. New Hampshire	2 cents
4. California	2 cents	26. New Mexico	3 cents
5. Colorado	2 cents	27. North Carolina	4 cents
6. Connecticut	1 cent	28. North Dakota	1 cent
7. Delaware	2 cents	29. Ohio	2 cents
8. Florida	4 cents	30. Oklahoma	3 cents
9. Georgia	3 cents	31. Oregon	3 cents
10. Idaho	3 cents	32. Pennsylvania	2 cents
11. Indiana	3 cents	33. Rhode Island	1 cent
12. Iowa	2 cents	34. South Carolina	5 cents
13. Kansas	2 cents	35. South Dakota	3 cents
14. Kentucky	3 cents	36. Tennessee	3 cents
15. Louisiana	2 cents	37. Texas	1 cent
16. Maine <sup>1</sup>	3 cents	38. Utah	3½ cents
17. Maryland	2 cents	39. Vermont	2 cents
18. Michigan	2 cents	40. Virginia	3 cents
19. Minnesota	2 cents	41. Washington	2 cents
20. Mississippi	3 cents	42. West Virginia	2 cents
21. Missouri	2 cents	43. Wisconsin	2 cents
22. Montana	2 cents	44. Wyoming	2½ cents

<sup>1</sup>Effective July 11.

One state has a five cent rate. Four have four cent rates; one, three and one-half cent; thirteen, three cent; one, two and one-half cent; twenty, two cent; and four, one cent taxes. Nearly half the states have rates in excess of two cents. The two cent tax is the most popular rate now, but it is very probable that the most used rate in the future will be three or perhaps four cents. The three cent rate is now used in all but two of the states which first developed the gasoline tax. The trend is constantly toward higher rates, and perhaps the prediction of Mr. Hirsch<sup>22</sup> of Wisconsin that a five or ten cent tax rate will be needed by some states may not be so far wrong as one might expect at first thought.

## II. LEGAL DEVELOPMENTS

### A. *In the United States Supreme Court.*

This tax like other taxes has encountered legal difficulties in its development among the states. There would have been more cases, probably, had it not been for the early arrival of the matter before the Supreme Court of the United States. The first case to come before the Supreme Court was *Askren v. Continental Oil Co.*, 252 U. S. 444. The suit was brought in the United States District Court for the District of New Mexico by the Continental Oil Company, the Sinclair Refining Company, and the Texas Company, for a temporary injunction to restrain the State, particularly Attorney General Askren, from enforcing the provisions of the law,<sup>23</sup> which provided for an excise tax of two cents per gallon upon the sale or use of gasoline and a license tax of fifty dollars per annum to be paid by the distributor and five dollars per annum to be paid by retail dealers therein. The temporary injunction was granted and a direct appeal was taken to the Supreme Court of the United States. The New Mexico act defined as a distributor: "Every person, corporation, firm, co-partnership and association who sells gasoline from tank cars, barrels or packages not purchased from a licensed distributor

22. *Engineering News-Record*, 91:968. (Dec. 13, 1923.)

23. Session Laws of New Mexico, 1919, Chapter 93.

of gasoline in this state." A retailer was: "A person other than a distributor who sells gasoline in quantities of fifty gallons or less." Failure to comply with the act was made punishable by fine and forfeiture of license. The oil companies involved conducted two classes of business: (1) shipping into the state in tank cars and in barrels and packages containing not less than two five gallon cans, selling the contents in the State of New Mexico in the original unbroken tanks, barrels, and packages; (2) shipping into the state in tank cars and selling gasoline from tank cars, barrels, and packages in such quantities as the purchaser required.

As to the first class of business, the Supreme Court held in the decision of Aug. 19, 1920, that the tax upon the sale of gasoline brought into the state in tank cars and the original package and thus sold is beyond the taxing power of the state; that the direct and necessary effect of such legislation was to impose a burden upon interstate commerce and was a violation of the Federal Constitution, as it provided for fees in excess of the cost of collection, on which point the court had expressed an opinion in *Standard Oil v. Graves*, 249 U. S. Reports 389. As to selling gasoline in retail quantities to suit the purchaser, the court held that a business of this sort, although the gasoline is brought into the state in interstate commerce, is properly taxable under the laws of the state. In this case the court was unable to determine from the bill the relative importance of the non-taxable part of the oil companies' business as compared with that which is taxable, so the court reserved judgment upon the question of whether the Act was separable and capable of being sustained, so far as it imposed a tax upon business legitimately taxable."

The question of separability was decided by the court June 6, 1921, in *Bowman, Attorney General of New Mexico, v. Continental Oil Co.*, 41 Supreme Court Report 606. Bowman, who had succeeded Askren as Attorney General, was substituted for Askren in the previous case. The amended bill of the Continental Oil Company showed that in addition to buying and selling gasoline, it used gasoline at each of its thirty-seven

24. See comment of W. J. O'Leary in *Public Roads*, 4:12. (Sept., 1921.)

distributing stations in New Mexico in the operation of its automobile tank wagons and otherwise; that under the terms of the New Mexico Act it was prohibited from using this gasoline except upon the payment of the excise tax of two cents per gallon. The company urged that such a tax was void under section one of article eight of the state constitution because not levied in proportion to the value of gasoline; that the imposition of the tax denied the company the equal protection of the laws and amounted to a taking of its property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution; and further, was in violation of the commerce clause of the Constitution. The business of the Continental Oil Company for the years 1918 to 1920 amounted to 94.5 per cent sold in bulk or from broken packages and 5.5 per cent sold in original containers. The company consumed eight per cent of its total sales in its own business. Similar figures were presented for the other companies.

The Supreme Court held that the tax did not violate the provision of the State constitution which reads: "Taxes levied upon tangible property shall be in proportion to the value thereof and taxes shall be equal and uniform upon subjects of taxation of the same class." The Court held that a tax upon the sale of gasoline sold or used "in the state is not property taxation, but in effect, as in name, an excise tax;" and since the tax operated "impartially upon all and with territorial uniformity throughout the State," it was "equal and uniform upon the subjects of taxation of the same class." The question of the separability of the annual license tax for each distributing station was decided against the state as the subject taxed was not in its nature divisible. The provisions of the New Mexico statute were declared not capable of separation so as to confine them to domestic trade and leave interstate commerce exempt, and so null and void. However, the court added that the state might impose a license tax upon the distribution and sale of gasoline in domestic commerce if it did not make its payment a condition of carrying on interstate commerce. The New Mexico Legislature in anticipation of this decision in 1921 amended its former law so as to



exempt interstate commerce, and provided for the payment of the two cent tax previously enacted except where it affected interstate commerce, and provided that from the date of the 1921 law on the rate should be one cent instead of two cents. These two cases have been considered at great length because they were the ones heard before the Supreme Court of the United States and furnished the precedent for nearly all the later cases in lower courts.

*B. In the Circuit Courts of Appeal.*

In *Pierce Oil Corporation v. Hopkins, County Clerk et al.*, 282 Fed. 253, heard in the Circuit Court of Appeals, 8th Circuit, July 5, 1922, on appeal from the District Court of the United States for the Western District of Arkansas, the court held that the Arkansas tax did not violate the Fourteenth Amendment to the Federal Constitution. The Oil Corporation claimed that it did because it made the oil company liable for the debt of another, the purchaser, when the seller, the oil company, had to pay the tax. The court held that the tax is not a levy against the seller, but is one against the purchaser, and that the oil company is but the agent for the state in collection and, except for the tax, the oil companies may charge customers whatever they please. The court ruled again, following the decisions quoted above, that the tax is an excise tax on the privilege of selling goods within the state and it is within the power of the state to levy such a tax.

*C. In the State Courts.*

In *Altitude Oil Co. v. People*, 202 Pacific 180, the Supreme Court of Colorado again held that a gasoline tax was an excise tax and not a property tax, and was in no sense discriminatory, as the tax applied to all sales of gasoline and affected all dealers in proportion to their sales. The Supreme Court of Florida ruled the same way in *Amos v. Gunn*, 94 Southern 615. The Maine Supreme Court in an opinion for the legislature, *In re Opinion of the Justices*, 121 Atlantic Reporter 902, said a property tax on gasoline would violate the constitution, but an excise tax on the business dealing in gas would be valid, provided the tax is not confiscatory. The Supreme

Court of Arkansas in *Standard Oil Co. v. Brodie et al.*, 239 Southwestern 753, said in interpreting the statute, "The thing which is really taxed is the use of the vehicle of the character described upon the public highway and the extent of the use is measured by the quantity of fuel consumed, and the tax is imposed according to the extent of the use as thus measured." The tax upon the article used does not constitute a tax on the article itself, for the tax is not upon the article but upon the use of it on the public highway. The court further declared that the Arkansas law did not violate the "Due Process" clause of the Federal Constitution, nor did it involve the payment of a fee, nor the performance of any unreasonable task.

The Louisiana Constitution of 1921, Art. 10, Sec. 21, provided for a levy of a tax on gasoline. In *State v. Liberty Oil Co.*, 97 Southern 438, the district court held that Act 81, 1921, imposing a two cent tax on sales of gasoline, to be paid by dealers, was a license law and invalid under Art. 10, Sec. 21, of the Constitution, which contemplated that the burden of the tax should be placed on the ultimate consumer. The District Judge, while holding part of the law unconstitutional, held that enough of the law was left to allow collection of taxes levied. The Supreme Court affirmed his decision on July 11, 1923. Act 137 of 1922 Session of Louisiana Legislature was enacted so as to make the gasoline law conform to the constitutional mandate.

During the latter part of 1924 and the first part of 1925, several more cases have appeared in regard to gasoline taxes. *Miller v. People*, 230 Pacific 603, was heard by the Supreme Court of Colorado and a decision rendered on July 7, 1924. A rehearing was denied on November 10, 1924. In this case the State of Colorado sued to recover one cent a gallon on all petroleum products sold by Miller and five other defendants. The defendants sold most of the gasoline to consumers who used the gas for power purposes in propelling motor vehicles. Defendants showed that they had not collected tax from purchasers of gasoline and consequently sold the gasoline at one cent per gallon less than their competitors. The defendants specifically contended that the tax is levied and imposed not

upon dealers, but upon the person who buys and actually uses the petroleum products for the designated statutory purposes. The court held that though the ultimate payment of the tax is to be made by one who makes the actual use of the product for the specified purpose, this does not prevent the lawmaking power from imposing the tax upon the seller or dealer with the privilege given to the latter to protect himself by passing the tax on to the user. The dealer who first receives petroleum products in Colorado, which he sells, offers, or holds himself ready to sell or offer to a consumer is prima facie liable for the amount of the tax. If it be true that some of the product is sold and used for some other purpose than the statutory purpose, it is incumbent upon the dealer (because he only has the power of ascertainment) if he wishes to escape liability, to show, and the burden is upon him to show, how much of the product he sells for non-taxable uses. The court held that any other construction would enable a dealer to nullify the tax statute and prevent the state from collecting the tax. This case reaffirms in a different state some of the same principles as were outlined above in *Standard Oil Company v. Brodie*, 153 Ark. 114; *Pierce Oil Corporation v. Hopkins*, 264 U. S. 137; and *Texas Company v. Brown*, 258 U. S. 466.

In *Gaffill v. Bracken*, State Auditor of Indiana, 145 N. E. 312, a number of old issues and some new ones were passed upon by the Supreme Court of Indiana on November 7, 1924. Gaffill tried by injunction to keep Bracken from enforcing the two cent gasoline tax in Indiana. The lower court sustained a demurrer to complaint and dismissed the case. Appellant assigned as error that the trial court erred in sustaining the demurrer to his complaint. The complaint is too long to print here but such facts will be given as are necessary to understand the decision of court. Gaffill first objected that the license fee thus required by statute (two cents per gallon) constituted a tax on property. The court settled this by saying that it was not the gasoline that was taxed, but only the use made of it in the state. Complainant further objected that those companies which were required to collect and pay the tax were required to do something for which they received no

compensation and that this constituted taking property without due process of law. The court replied that nobody was required to sell gasoline or to collect the tax, unless he makes sales, but the state has power to regulate the business of selling gasoline and may impose a burden on those who voluntarily engage in the business of selling that article. Appellant argued that tax was unfair as it did not affect vehicles propelled by other power. Court stated that the state legislature had the power to classify subjects for taxation and that power was not subject to control of the courts. A number of other issues were decided by this case but they are not pertinent to the present discussion.

The most important of the recent cases is that of *State v. Sunburst Refining Company*, 235 Pacific 428, decided by the Supreme Court of Montana, April 4, 1925. Rehearing was denied April 21, 1925. This case is distinctly important because the court, following the Supreme Court of the United States in *Sonneborn Brothers v. Cureton*, 262 U. S. 506, establishes what gasoline coming into a state in interstate commerce may be taxed. This Montana decision plus the *Sonneborn Bros.* decision should be of great aid to administrative officers in helping them determine what is taxable under similar laws. Four classes of interstate commerce transactions were brought out and discussed in *Sonneborn Bros. v. Cureton*. They are: (1) Sales of oil made in Texas, which when sold was not in Texas. (2) Sales of oil to be delivered from Texas out of the State. (3) Sales of oil arising from oil shipped into Texas and afterwards sold from storerooms in unbroken original packages. (4) Sales of oil in Texas from broken packages. The tax under consideration in Texas was the occupation tax measured by sales of oil. Chief Justice Taft in his decision reiterated the stand of the Supreme Court that classes one and two were not taxable as in following cases: *Standard Oil v. Graves*, 249 U. S. 389; *Askren v. Continental Oil Company*, 252 U. S. 444; *Texas Oil Company v. Brown*, 258 U. S. 466. The fourth class was admitted as taxable by all parties and was, therefore, not an issue. The third class, then, was the vital class in the case. *Sonneborn Bros.*' counsel argued that a tax on oil sold in the state in the orig-

inal unbroken packages and sold after it was stored in the state, constituted a burden upon or regulation of interstate commerce and was, therefore, a violation of the Commerce Clause of the Federal Constitution. In answering their contention, Chief Justice Taft, for the court, said: "We think it is neither. The oil had come to a state of rest in the warehouse of the appellants and had become a part of their stock with which they proposed to do business as wholesale dealers in the state. The interstate transaction was at an end, and whether in the original packages or not, a state tax upon the oil as property, or upon its sale in the state, if the state law levied the same tax on all oil or sales of it, without regard to origin, would be neither a regulation nor a burden of the interstate commerce of which this oil had been the subject." In other words, if a commodity is ordered by a citizen of a state, after the article has been imported into the state, then, even though the article be delivered in the original package, it is taxable.

The analysis of *Sonneborn Bros. v Cureton* is necessary if one is to understand the decision of the Montana Court in *State v. Sunburst Refining Company*, 235 Pacific 428. The Montana decision is quoted in part as follows:

"In the Complaint herein plaintiff alleges that the Sunburst Refining Company, a Montana corporation, with its principal place of business at Great Falls, manufactured and sold in this state during the quarter ending September 30, 1923, 270,740 gallons of gasoline distillate, and during the next succeeding quarter 337,332 gallons; that it did not make the quarterly reports within the time prescribed by law and failed and refused to pay the license tax imposed by the law. Judgment is sought for the amount of the tax due, interest thereon, and a penalty.

"The answer of the defendant Refining Company admits all the material allegations of the complaint, and by way of special defense sets forth that during the period mentioned certain corporations (naming them), organized under the laws of sister states of the Union, were engaged in manufacturing gasoline and distillate in such other states and in shipping their products into this state in original packages; that cor-

porations organized under the laws of this state, and individuals and concerns were engaged in business in this state, purchasing gasoline and distillate in other states and shipping the same into this state in original packages; that in the conduct of such business these corporations, foreign and domestic, and the individuals and concerns referred to, received such gasoline and distillate, stored them in warehouses and depots at distributing points in this state, and thereafter sold such products in the original packages and delivered them from the warehouses and depots to their customers in this state and thus entered into direct competition with the defendant herein; and that, if the statute imposing the license tax is enforced, the effect of such enforcement will be an unjust, unreasonable and arbitrary discrimination against this defendant and its business, and in favor of its competitors and their business.

“Upon these pleadings judgment was rendered and entered for the amount of the tax found to be due, with interest, and from that judgment defendant appealed. The state prosecuted a cross-appeal from that part of the judgment which denied to it the right to recover the penalty demanded.”

The court then said:

“Our original gasoline license tax statute was enacted in 1921 (chapter 156, Laws of 1921), and is found in sections 2381-2396, Revised Codes of 1921. In 1923 sections 2382 and 2383 and 2392 were amended, and sections 2393 and 2394 were repealed (chapter 150, Laws of 1923), and this was the state of the law at the time this cause of action accrued. Section 2381 provides:

“The term “distributor” means and includes every person who engages in the business in this state of refining, manufacturing, producing, or compounding gasoline or distillate, and selling the same in this state; and also every person who engages in the business in this state of shipping, transporting or importing any gasoline or distillate into, and making original sales of the same in this state. The term “dealer” means and includes every person, other than a distributor, who engages in the business in this state, of distributing or selling gasoline or distillate within the state.’

“Section 2382, as amended, provides that every distributor engaged in conducting business in this state shall pay each year—

‘a license tax for engaging in and carrying on such business in this state, equal to two cents for each gallon of gasoline, and two cents for each gallon of distillate refined, manufactured, produced, or compounded by such distributor and sold by him in this state, or shipped, transported or imported by such distributor into, and distributed and sold by him within this state, during such year: Provided, however, that no gasoline or distillate distributed or sold by any such distributor in the original packages in which the same was shipped, transported or imported, into this state, shall be included or considered in determining the amount of such license tax.’

“Section 2383, as amended, provides that every dealer shall pay each year—

‘a license tax for engaging in such business in this state, equal to two cents for each gallon of gasoline and two cents for each gallon of distillate sold or distributed by such dealer in this state during such year: Provided, however, that no gasoline or distillate sold (or distributed) by such dealer which, when purchased by him was contained in containers or packages other than the original containers or packages in which the same was shipped, transported or imported into this state, shall be included or considered in determining the amount of such license tax to be paid by such dealer, but only such gasoline and distillate as was shipped, transported or imported into this state and purchased by such dealer in the original package in which so shipped, transported or imported into this state, and then resold by such dealer after the breaking of such original packages by him, shall be included or considered for the purpose of computing the amount of such license tax’.”

The court, after stating above facts, proceeded to give examples of the way in which the law works or would work if followed literally. A company producing gasoline in Montana would pay a tax on every gallon so produced, but another company producing its gasoline just across the state line and bringing it into Montana and storing it and later selling it would be exempt from the tax. Or another case, A and B, both retail dealers, sell gasoline in the original package in the same community. A sells Montana made gasoline and B

sells Wyoming gasoline. A pays a tax; B is exempt. Another case possible under the law would be one in which A sold Montana gasoline to B, a wholesaler, who sold it to C, a retailer. In each case, according to the definition of distributor, a tax should be paid. The tax by the time it reached the consumer would amount to six cents. However, if the gasoline had been purchased from a producer in Wyoming, it would have been exempt during the remaining distributive steps. The court then said:

“(1) No one could have the temerity to say that in its practical operation the statute does not discriminate against the manufacturer of or dealer in Montana-manufactured gasoline or distillate. But it is not sufficient, to condemn the statute, that it merely discriminates against some distributors or dealers. Exact equal protection of the law is seldom, if ever, obtained; and because of the very frailty of human agencies, the authorities all recognize the right of the legislative branch of government to make reasonable classifications of subjects, for property or occupation taxes (*Hilger v. Moore*, 56 Mont. 146, 182 P. 477), and if the classification is reasonable, and if all of the subjects within a given class are recorded the same treatment, the legislation cannot be said to deny to any one within such class the equal protection of the law, even though the burden imposed upon him may be more onerous than that imposed upon a member of another class. *Quong Wing v. Kirkendall*, 39 Mont. 64, 101 P. 250; s. c., 223 U. S. 59, 32 S. Ct. 192, 56 L. Ed. 350. But to justify such discriminatory legislation, and avoid the condemnation of the Fourteenth Amendment to the Federal Constitution, the classification must be reasonable—that is, must be based upon substantial distinctions which really make one class different from another. *State ex rel. Northern Pac. Ry. Co. v. Duncan*, 68 Mont. 420, 219 P. 638.”

The court says that “the only ground on which the Attorney General seeks to justify the classification is that the statute discriminates only between a business which is a lawful subject of license tax, and one which is not, and this contention has its foundation in the assumption that a license tax imposed upon any one who sells in the original packages gasoline or



distillate shipped into this state from another state, would constitute a burden upon or a regulation of interstate commerce. If this assumption were justified, the argument in support of it would be unanswerable, but since the assumption is altogether unwarranted, the argument falls of its own weight."

Prior to 1923, there may have been some justification for this view. But this question was finally set at rest by the Supreme Court of the U. S. in *Sonneborn Bros. v. Cureton*, 262 U. S. 506, quoted above so as to prepare for a review of this decision. The court finally held that in its practical operations, the law was "such an arbitrary, unjust and unreasonable discrimination against those dealing in Montana-manufactured gasoline and distillate as to deny to them the equal protection of the law. The judgment in so far as it operates against this defendant, is reversed, and the cause is remanded, with directions to enter judgment in favor of the defendant. The judgment, so far as it denies to the state the right to recover the penalty, is affirmed."

### III. DEVELOPMENT OF TAX AS A SOURCE OF REVENUE

Table II shows the gasoline tax by years among the various states. These data were secured by questionnaires sent to officials of the several states in August, 1924, and May, 1925. Where material was secured from other published sources, acknowledgement is made in the table except for many figures on 1924 revenues which were taken from the back cover page of *Public Roads* for April, 1925.

No little difficulty was encountered in securing comparable data on revenues. Figures for 1919, 1920, 1921 are incomplete. The states failed to send satisfactory or sufficient material. The other years are rather complete.

The table plainly shows the great increase in gasoline tax revenues which has taken place as the rates have risen and as new states were added to the list. It also shows in part why the average proportion of highway income from motor vehicle to highway expense has risen from 20% in 1921 to 30% in 1923.

TABLE II.  
GROSS GASOLINE TAX YIELD BY YEARS AMONG THE  
VARIOUS STATES\*

STATES	1921		1922		1923		1924	
	Rate ¢	Yield	Rate ¢	Yield	Rate ¢	Yield	Rate ¢	Yield
Alabama . . .					2	1133085	2	1738661
Arizona . . .	1	87928	1	174606	3	422693	3	730846
Arkansas . . .	1	52144	1	208076 <sup>2</sup>	3	1219199	4	2768535
California . . .					2	2518898 <sup>1</sup>	2	11000000 <sup>3</sup>
Colorado . . .	1	566490	1	644866	2	846350 <sup>1</sup>	2	1725957
Connecticut . . .	1	222000	1	734000	1	880000 <sup>3</sup>	1	978283
Delaware . . .					1	88579	2	304392
Florida . . . .	1	228056	1	693221	3	1640000	3	3658677
Georgia . . . .	1	113663	1	793189	3	962987	3	4527471
Idaho . . . . .					2	396487	2	545672
Indiana . . . .					2	2900000 <sup>3</sup>	2	4925372
Kentucky . . .	1	411939	1	448193	1	586188	3	1660938
Louisiana . . .			1	536795	2	754438	2	1335320
Maine . . . . .					1	285000 <sup>3</sup>	1	522250
Maryland . . . .			1	360028	2	688304 <sup>1</sup>	2	1588422
Mississippi . . .			1	230000 <sup>3</sup>	1	467855	3	1648748
Montana . . . .	1	173168	1	248652	2	441258	2	619295
Nevada . . . . .					2	120929	2	162596
N. Hampshire					1	163064 <sup>1</sup>	2	587845
N. Mexico . . .			1	183089 <sup>2</sup>	1	152950	1	194983
N. Carolina . . .	1	449979	1	778497 <sup>2</sup>	3	2900000 <sup>3</sup>	3	4529048
N. Dakota <sup>4</sup> . . .	1	174951	1	128165	1	193604	1	442969
Oklahoma . . .					1	599000	1-2½	2983501
Oregon . . . . .	2	1004376	2	1182358	3	2046951	3	2698778
Pennsylvania	1	835822	1	2683527	2	5490522	2	9089541
S. Carolina . . .			2	750000	3	1511452 <sup>1</sup>	3	2100000 <sup>3</sup>
S. Dakota . . .			1	456233	2	655331	2	1205155
Tennessee . . .					2	812357	2	1812235
Texas . . . . .					1	1215623 <sup>1</sup>	1	3892769
Utah . . . . .					2½	400000 <sup>3</sup>	2½	600000 <sup>2</sup>
Vermont . . . .					1	168172	1	230000 <sup>3</sup>
Virginia . . . .					2-3	1500000 <sup>3</sup>	3	3313188
Washington . . .	1	411849	1	948546	2	1187371	2	2635411
W. Virginia . . .					2	400000 <sup>3</sup>	2	1231944
Wyoming . . . .					1	140000 <sup>3</sup>	1	200319
TOTALS . . . .		4732365		12182041		35888642		78189121

\*The yield for 1919 in North Dakota was \$12,652, and for 1920, \$362,872. In 1919, the yield in Oregon was \$342,965, and in 1920, \$464,084.

<sup>1</sup>From Table IV, Gasoline Taxes, 1923, in *Public Roads*, Vol. 5, No. 2, (April, 1924.)

<sup>2</sup>From table given by J. W. Martin in *Bulletin National Tax Association*, Dec., 1923, p. 84.

<sup>3</sup>Approximate.

<sup>4</sup>For fiscal year, July 1 to June 30.

## CHAPTER IV

### ADMINISTRATION OF THE GASOLINE TAX

The gasoline tax must be collected by someone in official capacity in the various states. As will be shown, presently, there is little uniformity between the states as to which officer shall collect the tax. Another provision of the laws which shows some variation concerns the party from whom the tax shall be collected. The rate of the tax and the time of payment are provided by the laws, but must be administered by the officers.

The administrative officers are authorized by law in most states to provide certificates, licenses, and record sheets to those from whom they collect the tax, and in many cases to place distributors or dealers under bond. If the distributor or dealer fails to make reports and payments properly, penalties are provided by law, such penalties being handled by the administrative officer or some special officer.

#### I. STATE OFFICER RESPONSIBLE FOR ADMINISTRATION

Table III below will show the state office responsible for administration in each of the states having the gasoline tax.

TABLE III

State Office Responsible for Administration of the Gasoline Tax

State Office	States
State Tax Commission or Tax Commissioner	Alabama
	Kentucky
	Nevada
	North Dakota
	South Carolina
	West Virginia
State Auditor	Arkansas
	Indiana
	Maine
	Mississippi
	Oklahoma
	Pennsylvania
	South Dakota

Secretary of State	Arizona
	Michigan
	North Carolina
	Oregon
	Utah
	Vermont
Comptroller	Virginia
	Florida
	Georgia
	Maryland
	New Mexico
State Treasurer	Texas
	Delaware
	Iowa
	Wisconsin
Commissioner of Motor Vehicles	Wyoming
	Connecticut
State Oil Inspector	New Hampshire
	Colorado
	Kansas
	Minnesota
Supervisor of Public Accounts	Missouri
	Louisiana
Commissioner of Law Enforcement	Idaho
State Commissioner of Highways	Tennessee
Director of Licenses	Washington
Board of Equalization	California
	Montana
Secretary of Dept. of Agriculture	Nebraska
State Board of Public Roads	Rhode Island

#### A. *Comment on Administration.*

The above table taken by itself, will not tell the whole story in regard to the administrative officer in each state, for in many cases other officers cooperate. In Arkansas, all reports are made to the State Auditor who is primarily responsible, but all money is paid to the State Treasurer, and the State Oil Inspector is expected to examine records of manufacturers and wholesalers quarterly. The California law requires that every distributor shall secure a license from the State Board

of Equalization, which license shall be valid until revoked. This board inspects the records of the distributor and assesses the taxes which are paid to the State Comptroller. Montana requires the report to be made to the State Board of Equalization and the tax to be paid to the State Treasurer. New Mexico provides that a license to do business shall be secured from the Secretary of State, but the actual administration of the tax is in the hands of the State Comptroller. The Secretary of State administers the tax in North Carolina and makes the payments to the State Treasurer. In North Dakota, the State Tax Commissioner assesses the tax on the basis of figures furnished by the State Chemist (formerly by the State Oil Inspector) and the tax is paid to the State Treasurer. The oil inspectors of Oklahoma furnish the data for the State Auditor who administers the tax. The figures for basis of assessment in South Carolina come from the Commissioner of Agriculture, Commerce, and Industry who turns them over to the Tax Commission which assesses the tax which is paid to the State Treasurer. The State Auditor of South Dakota assesses the tax while payment is made to the State Treasurer. Under the original law of South Dakota, the State Inspector of Petroleum Products, the Attorney-General, and the State Sheriff were included among the administrative officers. Too much division of labor probably accounts for the change in the later act. Washington provides that the Director of Licenses shall assess the tax and that the payment shall be made to the State Treasurer.

#### *B. The Officer Who Should Be Responsible.*

The duties of the administrative officers in each state, usually, are the preparation of correct forms and blanks for reports, inspection for assessment purposes and the checking up of law violations, the collection or receipt of tax payments, and the distribution of the proceeds according to law. It is plainly evident that there is no uniformity among the states as to which state officer should be primarily responsible. This is to be expected and need not be condemned. The title of an officer does not show, in every case, what his duties are. One office in one state may perform the functions which are performed

by an entirely different office in another state. That division of responsibility as applied in one state may be as wise as in another. The real test as to whether one office or another should handle the administration of the tax should be how well the office succeeds in its task. Is the tax administered in a convenient way for all concerned, and is it done with a minimum expense? Responsibility should not be so divided that no one officer is really responsible. As has been noted above, states have changed the administrative officers in some cases in order to secure more efficient administration.

## II. CLASS OF BUSINESS FROM WHICH THE TAX IS COLLECTED

Who shall pay the tax, the manufacturer, original importer, distributor, wholesaler, retailer? The method used varies from state to state. Table IV below shows in tabular form the class of business from which tax is collected. The laws of the various states use the term dealer and distributor in a number of different ways. The distributor may mean original importer or manufacturer or the retail dealer who sells for purposes of use and not resale, or the term dealer may mean the same thing. The interpretation or definition of terms as used in the state statute governs the classification. As will be shown following the table, even this classification needs considerable explanation.

### A. *Comment on "point" of Collection.*

The Alabama law provides that the tax shall be laid on every distributor and retail dealer; provided, however, that the tax be paid only once. The distributor is defined as a wholesaler, and the retail dealer as one who sells from broken packages. Every distributor and retail dealer must register with the State Tax Commission and also keep books, documents, or papers to show clearly the amount of sales of gasoline. In the case of Arkansas, manufacturers and wholesale dealers are supposed to pay the tax, though the wholesaler need not pay the tax upon such gasoline as he may have pur-

TABLE IV.  
Class of Business from which Tax is Collected

Class of Business	States
Importer or Manufacturer	Arizona
	Arkansas
	California
	Connecticut
	Delaware
	Florida
	Georgia
	Idaho
	Iowa
	Kansas
	Louisiana
	Maine
	Maryland
	Michigan
	Minnesota
	Montana
	Nebraska
	Nevada
	North Dakota
	Oklahoma
	Oregon
	Rhode Island
	South Dakota
Tennessee	
Texas	
Utah	
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	
Wyoming	
Retailer	Colorado
	Kentucky
	New Hampshire
	North Carolina
	Pennsylvania
Wholesaler or Retailer	Alabama
	Indiana
	Mississippi
	Missouri
	New Mexico
South Carolina	

chased from an Arkansas manufacturer. The wholesaler is also an importer of gasoline. The State Oil Inspector examines the records of every manufacturer and wholesale dealer quarterly and sends copies of the report to the Auditor and to the Treasurer of State. The California law levies the tax against the "distributor." This term is broadly defined so as to include all importers, manufacturers, wholesalers, and retailers. The bulk of the tax is collected through the importer and the manufacturer. Delaware uses the term "dealer" in her statute, but defines dealer as importer or manufacturer. The Kentucky law provides that the retail distributor shall pay the tax; however, through agreement with administrative authorities, much of the tax is collected through wholesalers of gasoline. Either wholesaler or retailer may pay the tax in Mississippi, though the retail dealer shall not be required to pay tax on gasoline to be re-sold by him at retail when it may be paid by the distributor; nor shall distributor pay such tax when retailer pays it. North Carolina puts the tax on the retailer unless the wholesale dealer shall have paid voluntarily. Oklahoma is in a class by herself. She provides that the Oil Inspector shall inspect the gasoline either imported or manufactured in the state. The company selling such product shall inform the Inspector who the consignee is. The Oil Inspector notifies the State Auditor who the consignee (the first recipient after inspection) is and that party then becomes liable for the tax.

*B. The Class of Business from which the Tax Should be Collected.*

The bulk of the states collect the tax from the importer or the manufacturer. In only five states does the law provide that the retailer pay the tax, and in one of those, Kentucky, actual procedure allows the wholesaler to assume payment. The practice of those states which collect from both importer and manufacturer is the best. "Importer" in such cases should include any person, firm, copartnership, corporation, or other business association, which imports or causes to be imported into the State, gasoline, distillate, benzine, naptha,



liberty fuel, and such other volatile and inflammable liquids produced or compounded for operating or propelling motor vehicles. The manufacturer would be defined as any person, firm, corporation, copartnership, or business association which produces, refines, manufactures, or compounds such fuel in the state. Of course, any fuel to be sold in interstate commerce would be exempt. Such a classification would reach for taxing purposes all fuel subject to the tax except that brought into the state by the consumers themselves. The amount of fuel coming in in that way is very small.

Such a method of collecting the tax has many advantages. It reduces the number of accounts to be kept by the state administrative office and also reduces the amount of inspection work on the part of that office. The importer or the manufacturer is at the "point of greatest concentration" of the product taxed. It is far easier to tax the first sale in the state than the last sale. Looked at from the social point of view, less total effort is spent in preparing reports by importers and manufacturers than would be spent if each retailer were required to report his sales. Society gains because less labor is spent in producing the object desired.

### III. REPORTS AND PENALTIES

#### A. *Reports and Payments.*

Five states—California, Montana, Tennessee, Georgia and Pennsylvania—require quarterly reports of gasoline sales. All other states require monthly reports of sales. In California, reports are made within twenty days after the close of the quarter and in the other states named, quarterly within thirty days after close of quarter. All states require the payment of the tax with the report except Connecticut, Maine, New Hampshire, South Carolina, and California. In California, payment of tax is due within forty days after the close of a quarter. In Colorado, the tax is paid when the inspection fee is collected. The following table gives the data for the remaining states.

TABLE V.

Date Report and Payments are Due on Gasoline Tax Among the States.<sup>1</sup>

Date of Report and Payment	States
Report 1st of month Payment at report	Kentucky
Report 10th of month Payment at report	New Mexico
	Arizona
	Florida
	Idaho
	Indiana
	Maine <sup>1</sup>
	Missouri <sup>2</sup>
	Nebraska
	Nevada
Report on or before 15th of the month Payment at report	New Hampshire <sup>3</sup>
	Oklahoma
	Oregon
	Rhode Island
	South Dakota <sup>3</sup>
	Utah
	Washintgon
	Wisconsin
	Wyoming
	Alabama
	Arkansas
	Iowa
Report on or before 20th of the month Payment at report	Louisiana
	Michigan
	Minnesota <sup>2</sup>
	Mississippi
	North Carolina
	Virginia
Report 25th of month Payment at report	Kansas
	South Carolina
	Texas
Report on or before last day of month Payment at report	Delaware
	Maryland
	Vermont
	West Virginia

1. The report is for sales of the preceding month.

2. Payment by 25th of the month.

3. Pay 1st of following month.

## B. Penalties for Failure to Report and Pay.

TABLE VI.

Penalties for Failure to Report as Provided by Laws of Various States.

FINE	State
\$1—\$100	New Hampshire
	North Carolina
	South Carolina
\$1—\$500	Iowa
	Kansas
	Michigan
	Nebraska
	Nevada
	South Dakota
\$1—\$1,000	Arizona
	Colorado
	Delaware
	Maryland
	Montana
	Oregon
	Pennsylvania
	Rhode Island
West Virginia	
\$1—\$2,000	Connecticut
	Maine
\$1—\$5,000	Florida
\$25—\$100	Mississippi
\$25—\$1,000	Arkansas
\$50—\$200	Alabama
	Kentucky <sup>1</sup>
\$50—\$500	Oklahoma
\$100—\$500	North Dakota
\$100—\$1,000	Indiana
	New Mexico
\$500—\$1,000	California
	Wyoming
\$500—\$2,000	Vermont

1. Fine for failure to allow inspection.

Additional jail sentence is imposed by several states. North Carolina, Arizona, Delaware, Maryland, Montana, Nebraska

Oregon, Pennsylvania, West Virginia, California, Wyoming, Indiana, and Nevada provide a maximum jail sentence of six months. The South Carolina law fixes a sentence not to exceed thirty days; the South Dakota law, sixty days; Oklahoma law, ninety days; and North Dakota law, one year.

Not all states make failure to pay or to report a misdemeanor and punishable by fine or jail sentence or both. But most all states fix some penalty and some provide penalties other than fines. Alabama, for instance, provides that if the monthly return is not made, the State Tax Commission shall secure the information and assess the tax plus 25 per cent. California adds 25 per cent of the tax due to the assessment and then collects 7 per cent interest per annum on this sum till paid. Utah provides a similar penalty with 12 per cent interest per annum. Colorado, Florida, Pennsylvania, South Carolina, and West Virginia add 10 per cent of the amount of the tax due to the bill. Colorado in addition to the 10 per cent penalty charges on the whole sum 2 per cent a month. Kentucky adds a 20 per cent penalty. In Tennessee, 50 per cent of the tax is added and 6 per cent interest is charged on this sum. Idaho, North Carolina, and Virginia charge double the assessment in case of neglect to return report, provided it is willful neglect. Mississippi, New Mexico, and North Dakota add a 5 per cent penalty. Texas adds a 10 per cent penalty and charges 8 per cent interest until paid. Oklahoma merely charges 18 per cent interest on what is overdue. In Alabama, Colorado, and Mississippi, the delinquent dealer may be enjoined. License to do business may be revoked in California, Florida, New Mexico. No license may be issued to a delinquent dealer in Utah. It is unlawful to continue in the business of selling gasoline in Wyoming if the dealer has not paid the tax. Colorado and Wyoming provide that the court may appoint a receiver for the business if the tax is delinquent. Failure to register subjects a dealer in Kentucky to a fine of not less than \$50 nor more than \$200. Every week that he remains unregistered constitutes a separate offense. For delinquency, in Louisiana, 2 per cent per month on amount of tax is added and also 10 per cent attorney's fees on the sum of both the tax and the penalties, in all cases

wherein attorney is called on to assist in collection. North Dakota has a rather complicated penalty schedule. Taxes unpaid for thirty days become delinquent. Penalty of 5 per cent immediately accrues, with 1 per cent for each month the tax continues unpaid. Such claim constitutes a lien on property. For failure to furnish data upon demand to the State Chemist, a penalty of 10 per cent of the tax is added to it after assessment. Failure to make return of information is punishable by a fine of not less than \$100; and each day's continuance of the failure shall constitute a new offense. South Dakota fixes a penalty of 20 per cent if tax is unpaid. The tax due plus the penalty shall bear interest at the rate of 12 per cent per year.

The penalty feature of gasoline tax laws is not as important as it might seem. Utah and Idaho stated in reply to questionnaire that they had never found it necessary to penalize anyone. Tennessee, Mississippi, Missouri, and Montana have used or expect to use penalties provided by law. Most states report general satisfaction and no trouble in enforcement of the law.

#### IV. COST OF COLLECTION

Another important phase of any tax and one that often shows whether the administration is efficient or not, is the cost of collection. Our inquiry, directed to the administrative officer of each of the states, included an item on costs of collection. The replies do not lend themselves very well to tabular presentation, so they will be given in running account. The Alabama State Tax Commission, through F. C. Marquis, Associate Member, reports that they collected \$1,886,568.03 in gasoline taxes from March, 1923, to June, 1924, at a cost of collection of \$16,698, or at a cost of less than one per cent. From April 1 to Dec. 31, 1923, Arkansas collected \$1,176,798.93 at a cost of \$11,800.72, and in the year 1924, that state collected in excess of \$955,000 at a cost of \$7,059.62. Mr. Cooper of California says, "The cost of collection is very nominal, being simply the cost of assessment roll of 150 pages, the notices to distributors, postage, etc. The State Board of

Equalization makes the Assessment without extra help, and the State Controller's Office collects such assessment through its Franchise Tax Department, without extra help".<sup>25</sup> Robbins B. Stoeckel, Commissioner of Motor Vehicles of Connecticut, says, "The work of collection is so interwoven with the licensing of stations that the cost of collecting the tax is necessarily approximated, and is probably about 2%." Delaware reports costs of \$35.00 for eight months in 1923 and \$30.00 for six months of 1924. During that time they have collected over \$200,000 in taxes. Florida has an annual charge of \$3,600 which for the amount collected is slightly better than one-tenth of one per cent. Idaho reports costs of collection of \$6,580.94 in 1923 and \$3,167.16 for 1924, which is slightly less than 2% of the amount collected. Indiana spent \$6,460.96 to collect \$4,554,544.18 from June 1, 1923, to June 1, 1924. Louisiana appropriates \$7,500.00 per annum to cover cost of collection of gasoline tax. Maine spent \$148.86 in a year to collect a tax of \$451,466.70. Aileen Walker, State Treasurer of Montana, reports that the cost of collection is about one-sixteenth of one per cent. N. B. Milligan, Secretary of the State Tax Commission of Nevada, says, "No account of the cost of collection as the additional clerical work and printing paid for from support fund of Tax Commission. Future audit and clerical work require some cost; this will be provided for by the 1925 legislature." W. N. Everett, Secretary of State of North Carolina says: "Due to the fact that this tax is paid direct to us by the big companies, the total cost of collection is approximately \$5,000.00. If it had to be collected from the distributors at the curb, it is hard to tell what the cost of collection would be." North Carolina used \$5,000 in collecting nearly \$4,000,000 during the fiscal year ending June 30, 1924. Oklahoma reports cost of \$12,000 to collect better than \$2,000,000. The figures for Oregon indicate a cost of from one-fifth to one-fourth of one per cent. South Dakota finds the tax collection cost to be less than one per cent. Tennessee collected \$812,356.68 at a cost of \$10,854.32 in 1923 and \$731,110.23

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25. Private Correspondence. All quotations on costs are from same source.

up to July 1, 1924, at a cost of \$6,719.22. Charles Heiner, Deputy Secretary of State of Utah, reports that \$100 per month for services of one clerk constitutes the total cost in Utah. "The cost of collection in Vermont has been less than \$300 from April 1, 1923, to Aug. 5, 1923," according to A. H. Grant, Secretary of State. "The cost of collection has been comparatively small" in Virginia, according to the Secretary of the Commonwealth. \$7,500.00 a year is the cost in West Virginia. Georgia officials claim they have no cost of collection as two clerks work harder than formerly. New Hampshire claims to have no additional costs, North Dakota says the costs are low, and New Mexico, Washington, and Texas did not report, though N. K. Brown<sup>26</sup> reports that New Mexico collected, in 1922, \$130,000 from distributors at practically no additional expense. No separate account of collection cost is kept in Maryland. The costs of collection in Arizona vary between \$1,500 and \$3,500 per year.

A large number of the states report no cost of collection. Of course, no tax can be collected without cost. Even though there may be no additional expenditure and even if clerks do work a little harder, yet there is cost. That cost may be charged against other taxes. The time spent by any clerk on gasoline tax business is gasoline tax cost of collection. This time or sum may be so small that it is not worth elaborate cost analysis. An examination of the data presented shows that this tax does not have a high cost of collection. In very few cases does it exceed one per cent and in most cases it is considerably less than one per cent.

The New York Tax Commission in its Annual Report for 1923, on page 50, shows some costs of collecting taxes. The Report says that for the year 1923, the cost of collecting the inheritance tax was 3.51 per cent of the revenue received whereas, the personal income tax was 2.05 per cent of the revenue received; the mortgage tax, 1.2 per cent of the revenue received; and the motor vehicle license revenues, 3.59 per cent of revenues received. The cost of collecting the General Property Tax is not known. The Commissioner of Inter-

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26. *Engineering and Contracting*, 59:530. (Mar. 7, 1923.)

nal Revenue of the United States in his Annual Report for 1922 states on page 9 that the cost of collecting the Income Tax in that year was 1.3 per cent of revenue received. When the cost of collecting these taxes is compared with the cost of collecting the gasoline taxes, the comparison shows that the gasoline tax is an economical tax to collect.



## CHAPTER V

### EXEMPTIONS FROM GASOLINE TAX AND DISTRIBUTION OF RECEIPTS

Two of the most important problems in connection with the gasoline tax as it is found among the various states are the questions of who and what shall be exempt from the tax, and what shall be done with the proceeds of the tax once they are collected. The problem of exemptions will be first considered. The type of exemptions, and whether or not there should be exemptions at all will be discussed. Then the important matter of the distribution of the proceeds will be considered. That subject is the most important one in connection with gasoline taxes.

#### I. EXEMPTIONS

##### A. *Sales in Interstate Commerce.*

All states exempt gasoline brought into the state and sold in the original package or container. This policy is in line with the decision of the United States Supreme Court in the case of *Bowman v. Continental Oil Company*, quoted above in Chapter III.

##### B. *Other Classes of Sales.*

In some states, the law is entitled an act to tax motor fuel. When the title of the law is so stated, the law provides exemption for kerosene oil, distillates, fuel oil, gas oil, crude oil, smudge oil, and residuum. Such exemption is provided in Alabama, Colorado, and Florida.

Arizona exempts gasoline or other distillates of crude petroleum purchased for any other purpose than use in motor propelled or motor driven vehicles. The Arizona law further exempts gasoline used in farm tractors, farm machinery and implements, and such motor propelled or motor driven vehicles as run only upon rails or tracks. The California law provides for practically the same exemption by specifying that only the fuel used in motor vehicles operated upon the state highways is taxable. In Idaho, any person who shall buy and

use any motor fuels for purposes other than the operation of motors, motor vehicles, tractors or other engines shall be reimbursed the amount of the tax paid by him. The New Hampshire law states that whenever any person shall purchase any fuels for any purposes other than for the propulsion of motor vehicles upon highways, he may be granted a refund of the tax paid. Delaware provides that any person buying motor vehicle fuel for purpose of operating or propelling stationary gas engines, tractor used for agricultural purposes, motor boats, air planes or air craft, or any person who shall purchase any of the fuels for cleaning or dyeing, or for commercial use except in motor vehicles operated on the highways of the state, shall be reimbursed for the tax paid thereon. Practically the same wording is used in the statutes of Indiana, Nevada, South Dakota, Maryland, Virginia and Washington, though the last two do have slight variations. The Virginia law allows exemptions only when purchase is in lots of five gallons or more. Virginia further exempts the gasoline used in motor equipment belonging to the cities and towns and used exclusively in municipal activities. The State of Washington has an interesting exemption which provides that a tourist or a traveller, coming into the state in a motor vehicle, may transport for his own use only, not more than twenty gallons of liquid fuel at one time, to be used in his own machine.

North Dakota exempts gasoline used for household purposes. Gasoline for use in road rollers, street sprinklers, fire engines, fire department apparatus, police patrol wagons, ambulances owned by municipalities or hospitals, agricultural tractors, and such vehicles as run only on rails or tracks is exempt from the tax in Connecticut.

There is no attempt to make the discussion of exemptions complete as regards each state. Only enough data are given to show what the main exemptions are.

### *C. Methods of Administering Exemptions.*

An important problem arises in connection with exemptions. Shall the exemption be made at the time of purchase of gasoline, or by means of a refund?

Most of the states which allow exemptions from the tax

for gasoline used in certain ways provide that the purchaser shall pay the tax and apply later to the proper state authority for a refund. This method is followed by California, Delaware, Idaho, Indiana, Nevada, New Hampshire, Oregon, Virginia, Washington, Maryland, and South Dakota. Usually, the purchaser presents the original invoice and other affidavits properly signed and duly witnessed, as to the purpose of such use of gasoline, to the administrative officer of the state, who on presentation of such papers makes the actual refund. Another method of providing the refund and making the exemption is described in a letter of V. E. Funk of Lexington, Kentucky, to John D. Williams, Director of the Indiana Highway Commission:<sup>27</sup> ".....In regard to the rebate on taxes paid for gasoline exempt from taxation, this could be taken care of by the consumer filling out proper forms to the retailer as for what purpose gasoline is to be used. This in turn should be filed by the retailer with the proper state official for his rebate." This latter method is one in which the retailer virtually allows the exemption and merely presents the proper forms to the state authorities so as to receive a refund or to reduce the amount of the tax due on his sales.

Of the two methods of making exemptions described, the former is the better. By the latter method, there would be danger of collusion between the retailer and the purchaser for the purpose of avoiding the tax. There is a distinct advantage in having a state office pass on exemptions and refunds. The local retailer would have no troubles with his customers over exemptions. A disinterested party, the state officer, could decide the matter better than the local retailer who might desire to do as the customer desired in order to keep his patronage. The state officer has only the facts to face and no local problems or competition. A state officer can and probably will adopt more uniform practices than local retailers would. Unless purchases are in excess of ten gallons, no exemption should be allowed. If the amount purchased is greater than that amount, let the purchaser apply to the state officer for the refund. An additional advantage of the

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27. *Engineering and Contracting*, 59:530. (Mar. 7, 1923.)

method of applying to the state officer for refund is that many people would not take the trouble to secure the refund. This would not seriously injure the gasoline consuming public either. Those persons who use a great deal of gasoline in ways that are exempt would probably secure the refund, but those who use little gasoline in such ways and whose refund would be small, probably would not trouble themselves to secure the rebate.

#### *D. Should There Be Exemptions?*

This is the most important question in regard to exemptions from the tax. The argument of those who contend that no exemptions are necessary is that the volume of such exemptions is so small that it is not worth while to trouble with them. Furthermore, the policy of no exemptions limits the possibility of evasion of the tax through false statement in regard to the use of gasoline. Another argument that could be advanced in favor of no exemptions is that of the conservationist who believes that increased prices of gasoline, caused by the gasoline tax, have a tendency to reduce consumption and to conserve the gasoline for future uses. From his point of view conservation rather than consumption is desirable.

On the other hand, many people argue that there is no relation between the amount of gasoline used in a dry cleaning establishment and the use of roads. The main argument in favor of a gasoline tax has been that it measures better than anything else the use of the road. Why, then, tax gasoline that is used in ways that do not affect the roads?

As long as most of the gasoline is used in vehicles that travel the highways of the state, there should be no exemptions on sales of gasoline except those in interstate commerce. This method will eliminate most of the possible evasion of the tax, and also some administrative effort. Since the amount of these exemptions is small, the payment of the tax by all will work no substantial injustice on gasoline consumers and will avoid much petty work for the state officials and also the retailers of gasoline.

## II. DISTRIBUTION OF THE PROCEEDS

Another important problem of the gasoline tax is the problem of the distribution of the revenues from the tax. The method of distribution is important because it has much to do with the popularity of the tax. Here, one encounters the political influences in the framing of gasoline tax legislation. Table VII below shows the general distribution of funds collected by gasoline taxes.

TABLE VII.

A. *Parties to Distribution of Gasoline Tax Revenue.*<sup>3</sup>

Distribution	States
All to State Highway Fund or Equivalent	1. Arkansas
	2. Connecticut
	3. Delaware
	4. Idaho
	5. Kentucky
	6. Louisiana
	7. Maryland <sup>1</sup>
	8. Minnesota
	9. Missouri
	10. Nebraska
	11. New Hampshire
	12. New Mexico
	13. North Carolina <sup>2</sup>
	14. Oregon
	15. Rhode Island
	16. South Dakota
	17. Tennessee
	18. Utah
	19. Vermont
	20. Washington
	21. West Virginia
Part to State Highway and Part to County Highway Funds	1. Arizona
	2. California
	3. Colorado
	4. Florida
	5. Indiana
	6. Kansas.
	7. Maine
	8. Michigan
	9. Mississippi
	10. Nevada
	11. Oklahoma
12. Pennsylvania	

	13. South Carolina
	14. Virginia
	15. Wisconsin
Used for Other Purposes, in part, than Road Building	1. Georgia
	2. Montana
	3. North Dakota
	4. Texas
All to County	1. Alabama
	2. Wyoming

1. One fifth of all revenues to City of Baltimore.

2. As of Jan. 1, 1925

3. Since this table was set, information has been received that shows Iowa gives one-third to the primary road-fund, one-third to county road-fund, one-third to township road-fund.

### B. *Proceeds to the State.*

Very little comment is needed in regard to that group of states where all the proceeds of the tax are placed in the State Highway Fund. The Connecticut law provides that the proceeds shall be expended under the direction of the State Highway Commission for Public Roads. Delaware gives all the revenue to state highways except \$3,000 which the State Treasurer retains for refunds provided by the exemption clause. In Louisiana, enforcement expenses not to exceed \$15,000 annually may be appropriated by the legislature. The remainder of the receipts from the gasoline tax constitutes the General Highway Fund. Maine allots fifty per cent of the revenue for the maintenance of state and state aid highways and bridges; the balance is added to a fund for the construction of third class highways.\* In Maryland, one-fifth of the net receipts is given to the city of Baltimore and four-fifths to the State Road Fund. New Hampshire funds are for the maintenance of highways. After deductions for costs of collection, the Vermont law puts the balance of the money to the credit of a "Surface Fund" or a "Dust Laying Fund" to be expended under the supervision of the State Highway Board in re-surfacing the main thoroughfares and state roads. All gasoline taxes collected under the West Virginia act are paid into the state treasury for reconstruction and repair of roads and highways, and for payment of the interest on state bonds

\* The 1925 Maine law appropriates 16 2-3 per cent of all money received for maintenance of state and state-aid highways; 16 2-3 per cent for construction of third class highways; 33 1-3 per cent for construction of state aid highways; 33 1-3 per cent for construction or reconstruction of state highways.

issued for road purposes. The Missouri Highway Commission desires to use gasoline tax funds for maintenance. The 1925 New Mexico law gives all the funds to the Highway Commission. Formerly \$15,000 a year was appropriated for the State Fish Hatchery Fund. A Gasoline Highway Fund is established by the new Nebraska statute. On the first of each month, the balance remaining in the fund after deductions for refunds and expenses shall be transferred by the State Treasurer to the Department of Public Works. This Department is to place the money in a special fund for the improvement, including construction and maintenance, of the State and Federal Highway System. Some of the fund may be distributed to the counties when used in conjunction with Federal Aid money.

The remaining states in this class in their laws simply place the proceeds of the tax in the state highway fund and add no qualifying clauses, or they assign the funds to the highway department and refer to other general statutes which govern highway expenditures.

### *C. Proceeds to State and County.*

#### 1. Method of Distribution.

The next large group of states includes those that divide the yield of the tax between the state and the various counties.

The Arizona law provides for distribution of fifty per cent of the tax collected to the county in which it is collected. The half to the counties is paid to the county treasurers in proportion to the amount of such tax received from the respective counties. The other fifty per cent is paid to the State Treasurer, twenty-five per cent of which the Treasurer credits to the State Highway Department and seventy-five per cent to the County Highway Seventy-five Per Cent Fund. The State of Arizona supervises the expenditure of half of the tax proceeds, the part which is in the State Highway Fund and that which is in the County Highway Seventy-five Per Cent Fund. Under the one cent tax law in Arizona all the money went to the State Highway Fund. In Arkansas, prior to 1924, seventy-five per cent of the receipts was credited to a fund

designated as the County Highway and Improvement Fund and twenty-five per cent was credited to the State Highway Improvement Fund. The County Fund was distributed according to the per cent which the population of each county bears to the total population of the state. Beginning with Jan. 1, 1924, all funds are spent under the direction of the highway department. In California, half of the money is paid into the State Highway Maintenance Fund and half is paid to the counties in the proportion which the number of vehicles registered in each county bears to the total number registered in the state, for a special road improvement fund. Colorado keeps half the revenues for the State Highway Fund and the balance is apportioned on the first day of January and of July among the several counties of the state according to the mileage of state routes and state highways. Under the 1925 law, one-fourth of the revenue received in Florida is divided equally among the counties and the other three-fourths is to be used by the State Road Department. The 1923 law gave two-thirds to the state and one-third to the counties. The original law of Florida gave all the revenue from the gasoline tax to the State Road Fund.

In Indiana, the original law provided that the proceeds of the tax should be paid into the State Highway Fund. In October, 1923, \$500,000 was paid to the counties, and in October, 1924, \$1,000,000 was paid to the counties. The share to the counties was divided as follows: One-half divided equally among the counties, one-half divided in the proportion which the number of miles of free gravel, or macadam and county unit roads in the county bears to the whole number of such roads in the state. By amendment, approved March 12, 1925, the funds received in Indiana from the gasoline tax are paid over to the state treasurer daily for credit to an account of the general fund of the state to be known as the gasoline fund. After payment of expenses and refunds, two-thirds of the remainder is credited to the state highway fund quarterly and the remaining one-third of such funds is credited to an account of the general fund of the state to be known as the County, Cities, and Towns Gasoline Fund. Of the amount so



credited to such fund, three-fourths is to be distributed to the respective counties of the state on the following basis: one-half is divided equally among the counties; one-half is divided among the counties in the proportion which the number of miles of free gravel, macadam, and county unit roads in the county bears to the whole number of miles of such roads in the state. All monies so distributed to the several counties of the state constitute a special road fund for each of the respective counties and may be used by the Board of Commissioners in the construction, maintenance, or repair of any public highway or public highway bridge within such county. The remaining one-fourth so credited to the County, Cities, and Towns Gasoline Fund is distributed to the cities and incorporated towns of the state according to the proportion of the population of said cities and towns, as determined by the last United States census, to the combined population of all such cities and towns in the state. The money so distributed shall constitute a special street fund of such cities or incorporated towns and may be used for repair and maintenance of any bridges or streets in said towns, preference being given to streets connecting state highways.

The new Kansas law provides that receipts from gasoline taxes shall be paid to the State Oil Inspector, who each day turns them over to the State Treasurer for the credit of the gasoline tax fund. The gasoline tax fund by House Bill 536 is placed in the State Highway Fund. For the purpose of meeting the requirements of the Kansas Constitution, the sum of \$300,000 of said State Highway Fund is to be placed quarterly in the state treasury to the credit of the State-aid road fund. The remainder of the State Highway Fund less any appropriation by the Legislature, not to exceed the sum of \$75,000 for each year, made for the maintenance of the State Highway Commission, is to be distributed semi-annually, March first and September first, as follows: Forty per cent is to be distributed equally among the counties; sixty per cent is to be divided among the counties in proportion to their assessed valuations, based upon the preceding year's assessment. The fund thus created in the various counties is to be known

as the County and State Road Fund and is to be used for construction, reconstruction, and maintenance of state roads in the counties; Provided, that not more than twenty per cent of said fund may be expended, at the option of the county commissioners, on county or township roads or bridges.

The gasoline tax and motor license fees in Michigan, constitute the State Highway Fund. Out of this fund, six million dollars is divided annually among the counties in proportion to the amounts received from the owners of registered motor vehicles within the several counties. The balance of the State Highway Fund is appropriated to meet highway expenditure deficits of previous years, and for the next fiscal year and thereafter for the specific purposes and in the amounts set forth as follows:

“(a) To pay the interest on and to create a sinking fund to retire State highway bonds as they become due, not less than one million, two hundred thousand dollars;

(b) For Maintenance of State trunk line, Federal aid and non-trunk line highways, two million dollars;

(c) For building trunk line bridges, including grade separations, one million dollars;

(d) For non-trunk line highway maintenance and for non-trunk line bridges, five hundred thousand dollars;

(e) For opening, widening and improving State trunk line and Federal aid highways, all sums in said State highway fund not otherwise appropriated.

There is hereby appropriated from said State highway fund for the fiscal year ending June thirty, nineteen hundred twenty-six, and for each fiscal year thereafter, for the operating expenses of the State Highway Department, the sum of three hundred thousand dollars. All the appropriations made hereunder shall be expended under the supervision of the State Administrative Board, which may increase the sums appropriated in sub-division (a) in any fiscal year if and when such State highway fund has a surplus after the other specific appropriations herein have been met. All sums re-

maining in said State highway fund at the end of any fiscal year shall be carried forward and added to such fund for the succeeding fiscal year."

Until May, 1924, Mississippi divided the gasoline tax yield as follows: Forty per cent of the funds received was credited to the State Highway Fund for construction and maintenance. Sixty per cent of the total amount received from each county was returned to the county treasurer for the county road fund. This distribution was made by the Auditor of Public Accounts on or before the fifteenth of the month succeeding receipt of taxes. In May, 1924, the three cent tax law went into effect and it provided that the State Highway Fund should receive fifty per cent of net receipts and the counties fifty per cent, on the basis of number of vehicles registered from each county.

The Nevada law gives fifty per cent of the revenues to the State Highway Fund and divides the other fifty per cent among the counties by prorating it according to the number of motor vehicles holding state licenses. The 1924 law in Oklahoma provided that the proceeds of one cent of the two and one-half cent tax shall be distributed quarterly to each county according to the percentage which population, valuation, and area of each county bear to that of the entire state. The money thus distributed was to be used for permanent roads and bridges and was to be spent in a way approved by the State Highway Commission. The proceeds of the other one and one-half cent of the tax were to be credited to the State Highway Fund for construction and maintenance. Seventy-five per cent of this latter amount must be used for new roads. Their 1925 law gives one-third to counties, on basis of population and area, and two-thirds to the state highway work. The Virginia law appropriates two-thirds of the revenue for the construction of roads and bridges in the State Highway System and one-third to the counties for roads and bridges in the County Highway System. The share to the counties is distributed upon the same conditions as state aid money, except that the counties need not match said sums or any part thereof.

Governor Pinchot of Pennsylvania approved a law on May 14, 1925, which provides that fifty per cent of the one cent tax in that state shall be credited to the county in which the tax was collected. The remaining fifty per cent of the one cent tax and all of the one cent emergency tax is to be credited to the Motor License Fund to be used by Department of Highways. Prior to this act, Pennsylvania had used fifty per cent of the one cent tax and all the revenue from the emergency tax for general state purposes. The 1925 South Carolina law which levies a five cent tax gives three-fifths of the revenue to the state and two-fifths to the counties on the basis of amount of license fees paid from each county. Formerly one-third of the revenue went for general state purposes, one-third of the revenue to the counties, and one-third to state highway fund.

The Wisconsin law definitely appropriates from the general fund to the State Highway Commission, annually, "an amount equal to the surplus of motor vehicle registration fees and the surplus of the motor vehicle fuel taxes paid, after deducting the actual cost of administering said chapters. This amount is to be apportioned and distributed by the State Highway Commission as follows:

"(20.49) (1) Annually, beginning July 1, 1926, one hundred thousand dollars, for the execution of its functions;

(2) After the amount provided for in (1) has been set aside on July 1, 1926, and annually thereafter, ten per cent of the remainder as a free fund for the improvement of the state trunk highway system, - - - -.

(3) On October 1, 1925, and annually thereafter, for marking and signing the state trunk highway system, one hundred thousand dollars.

(4) On July 1, 1926, and annually thereafter, to the counties, cities and villages of the state, for the maintenance of the state trunk highway system within their limits and for connecting streets in cities between portions of the state trunk highway system and for swing or lift bridges on such system, within such cities and villages the following sums: Each county shall receive for each mile which is a primary federal aid highway, the sum of five hundred dollars, for each mile which is a secondary federal aid highway, the sum of four hundred dollars, and for each mile of the system not a fed-

eral aid highway, the sum of three hundred dollars. Each city shall receive for each mile of streets within its limits, selected by the highway commission, not a part of the state trunk highway system, but forming connections through said city between portions thereof, or between such system and the highway systems of adjoining states, the same amount per mile as the county receives for portions of the state trunk highway system of like classification.....Each county, city or village which maintains a free swing or lift bridge, more than fifty feet in length, on the state trunk highway system, within a city or village, shall receive the following sums: If such bridge is less than one hundred feet in length, one thousand dollars, if more than one hundred feet but not more than one hundred and fifty feet in length, two thousand dollars; if more than one hundred and fifty feet but not more than two hundred feet in length, three thousand dollars; if more than two hundred feet but not more than two hundred and fifty feet in length, four thousand dollars; if more than two hundred and fifty feet in length, five thousand dollars.

(5) On October 1, 1925, two hundred thousand dollars, on October 1, 1926, and annually thereafter, two hundred and fifty thousand dollars to pay the state's portion of the cost of bridges under sections 87.02 to 87.05 of the statutes.

(6) On October 1, 1925, and annually thereafter, fifty thousand dollars for the construction and maintenance of roads in the state park areas and for roads leading from the most convenient state trunk highways to state park areas.

(7) On October 1, 1925, and annually thereafter, fifteen thousand dollars for the purpose of making surveys of local road materials available for the construction and maintenance of the state and county trunk highway systems and the county systems of prospective state highways.

(8) On January 1, 1926, and annually thereafter, to the towns, villages, and cities of the state, for the improvement of public roads and streets within their respective limits which are open and used for travel, and which are not portions of the state or county trunk highway systems, and which are not direct connections through cities between state trunk highways, the following sums: Each town and village shall receive for each mile of such road or street, the sum of twenty-five dollars; each city with a population not more than ten thousand by the last federal census shall receive for each mile of such road or street, the sum of fifty dollars; each city with a population more than ten thousand and not more than forty thousand shall receive for each mile of such road or street, the sum of one hundred dollars; each city with a population

more than forty thousand and not more than one hundred and fifty thousand shall receive for each mile of such road or street, the sum of one hundred and fifty dollars; and each city with a population more than one hundred and fifty thousand shall receive for each mile of such road or street, the sum of two hundred dollars.

(9) On July 1, 1926, and annually thereafter, for the improvement of the state trunk highway system, and the county trunk highway systems, the amount remaining after the amounts appropriated under subsections (1) to (8) have been set aside. This amount shall be allotted in the manner provided by subsection (9) of section 84.03, which is as follows:

The highway commission shall first set aside, and use for that purpose, from the amount appropriated for the improvement of the state trunk highway system and the county trunk highway systems by subsection (9) of section 20.49, a sufficient amount each year so that all of the federal aid allotted to this state under the federal aid acts approved November 9, 1921, and June 19, 1922, and available to this state in the four fiscal years ending in 1922 to 1925, shall be received from the United States, and the total allotments under said acts, and the state money necessary to match the same, expended on projects determined in the manner specified in subsection (3) of this section. The remainder shall be allotted by the state highway commission to the several counties of the state in the following manner: Forty per cent shall be allotted in the ratio that the number of motor vehicles registered in each county bears to the total number of motor vehicles registered in the state, and sixty per cent in the ratio that the mileage of highways in each county, as determined from time to time by the highway commission, bears to the total mileage of highways in all the counties, and for the purposes of this subsection, one-half the mileage of all county line highways shall be considered as lying in each county, and the streets and highways in villages and cities shall be excluded. Twenty per cent of the allotment to each county shall be set aside for the improvement of the county trunk highway systems and shall be used for constructing, repairing, and maintaining the county trunk highways, and the bridges thereon under the supervision of the county highway committees; provided that the highway commission may so set aside not more than fifty per cent of the allotment to any county with a population of two hundred and fifty thousand or more. The remainder shall be expended in the improvement of the state trunk highway system."

## 2. Comment on Methods of Distribution.

There are about five distinct ways of measuring the amount to go to the counties. One method is by returning to the counties an amount in proportion to the amount of the tax collected in the county. This procedure commends itself under the argument that the people who pay the tax will get a share of the benefits on the roads near home. This is also an easy method of distribution. It may be presumed that if there is a large tax collected in a county, there is much gasoline used in cars and trucks and there is a real need for good roads. If the funds distributed to the counties are used for maintenance, chiefly, then this method is a good one for determining the need of each county for funds, because the amount of gasoline used in cars and trucks does bear a direct relation to the wear and tear of the road.

Another method of distribution is that on the basis of the per cent of the population of the county to that of the state. No doubt, advocates of this method expect the results to be nearly the same as under the first method. A dense population has greater traffic needs than a small one. A county with a dense population would furnish a good share of the tax because in such a county automobiles are numerous and the need for gasoline is large. This statement needs qualification, though, in the main, it is true. It is conceivable that a population might be very dense and still quite poor. In such cases the ownership of automobiles might be limited. The argument on population distribution would then lose some of its strength. But if the funds of the county were used for maintenance on the state roads, then, even with a poor population, this procedure would work desirable results for it would provide funds for maintenance which probably would not be provided by the people themselves.

Other states distribute the share of the counties in the proportion that the number of registered motor vehicles of the county bears to the total number registered in the state. By this plan, the revenues are returned to the counties from which they come, except in the case of communities that have many cars but do not use them much. Justification for this

way of distributing funds to the county may be upheld by the same arguments that were used for the methods already described.

Several states distribute funds to the counties in the proportion that the mileage of roads or state roads in the county bears to the total mileage of state roads. With this plan results take place very different from those under the previous methods. If the more densely populated counties and those with the most vehicles have also the largest mileage of state roads, then, results will be approximately the same as under the other methods. If the state highway department is attempting to develop a state system of roads, in order to connect "key points" in the system, state roads may pass through some counties where the population is not dense, where the number of motor vehicles is low, and where the valuation of property is low. Then, distribution on a road mileage basis secures desirable results under some circumstances. It helps the counties with low valuations and little ability to provide funds to build good roads to get funds to do their share in developing good roads in the state. There are parts of counties in the Middle and the Southwest states where the total assessed valuation is not high enough, with the highest legal tax rate allowed, to provide enough funds to build a mile of really good road. In such cases as these, a distribution of the kind described in this paragraph, would produce the desired results. However, this method will encounter opposition from the class of people who object to paying a special tax such as the gasoline tax is, and who object to seeing it expended in a way from which they receive no apparent benefit.

Another method of distribution is the division of revenues on the basis of equality among the counties. This method will not produce amounts for some counties in proportion to the amount their residents paid in. But it will help the counties with low incomes from other taxes. It helps create equality of opportunity among counties for road work. Everyone is familiar with the phenomenon of good roads in one county and poor roads in the next county. The first county may be wealthy in its tax resources and the other poor. If both counties share alike in the county distribution of gasoline tax pro-



ceeds, the second county has a better chance to provide good roads than it would otherwise have.

The distribution of part of the proceeds on the basis of mileage of certain types of roads serves as a spur to the counties to develop those types of roads. It is an indirect means of subsidizing and if that is the purpose of the legislature, it is legitimate.

Oklahoma is trying to combine several factors, population, valuation, and area, as a distribution scheme. A county might have a relatively small population and still have a large area and even a high valuation and thus be able to get a good share of the tax. This would be possible in Oklahoma, though one would ordinarily expect a large population and a high valuation to go together. The area element may be significant. A large county needs more roads than a small county. A large county is usually one of small population and sometimes of low valuation. There is an attempt through the use of area in determining distribution to help counties that might be at a disadvantage because of their size. Probably the combination of three factors in Oklahoma is a result of political pressure. The counties with a large area need extra help. The representatives of counties with large populations and high valuations want as large a share of the tax proceeds as possible because they feel that their constituencies have paid the bulk of the tax.

Which of the various methods of distribution to the counties is the best? As for most economic questions, the answer to this question will depend on the circumstances. If the money distributed to the counties is to be used for maintenance, one answer may be given; if it is to be used for new construction, a different answer may be given. If the money is used for maintenance, primarily, several methods will serve. A state could use distribution on the basis of the amount of tax collected in each county, on the basis of per cent of population of county to that of the state, on the basis of the number of vehicles registered from the county compared with the total number registered in the state, or on the basis of the proportion of mileage of roads in the county to be maintained to the total mileage in the state to be maintained. The last method

is best if the purpose is maintenance. But if a good share of the money is to be used by the counties in new construction or in building improved types of roads, then, some other method is desirable. If there is a great deal of difference in the ability of counties to raise funds because of differences in taxable resources, then, distribution on the basis of equality or area will be all right. Or, if the legislators desire to encourage certain types of roads, they should enact in their law the method of Indiana.

The bulk of the funds distributed to the counties should be for maintenance purposes. A small part might be used for new construction or for payment of interest and sinking fund charges for bonds, the proceeds of which are used for new construction. A combination of methods will produce the most desirable results. A detailed plan is suggested in the following paragraph.

Whatever share of the tax the state distributes to the counties should be in the proportion that the area, the registration of the motor vehicles, and the mileage of roads of the county bear to the total area, registration of motor vehicles, and mileage of roads of the state. Suppose a state had a two cent tax. Let one-half of the revenue be credited to the State Highway Fund, and the other half be distributed to the counties by the method described. The administrative officer of the state should divide the total sum to be given the counties into three parts. One part should be distributed in the proportion of the area of the county to that of the state, one part in the proportion of the number of motor vehicles registered from the county to the total number registered in the state, and one part in the proportion of number of miles of road in the county to the total number of miles in the state. The share of any one county, then, would be the sum of these three parts. Once a year, the proportions should be revised. Area will be the same, but the other two factors will change from year to year.

This method has much to commend it. In two ways, it measures the need for maintenance; by the number of vehicles registered from the county and by the mileage of roads in the county. The advantages of these two methods have

been considered before, so will not be repeated here. The area item takes account of the larger counties which have more roads to maintain and usually have less ability to maintain them. It also helps such counties to secure a larger share with which to develop new construction. One might expect the mileage of roads item to help the large county secure a larger share of the funds, though this is not generally the case, for a small, densely populated county will have more roads per square mile to maintain. Area, as a basis of distribution, is better than equality among counties in division of proceeds, because it emphasizes size, which is important. The item on number of motor vehicles will insure in most cases that the counties which pay a large part of the tax will have some of it returned to them. Taken all in all, this method should result in a distribution that will encourage proper maintenance and development of both state and county highways. Not all the states are alike and it is very probable that methods should vary from state to state. Any particular method should be judged by the way it meets the need of the particular state.

Before proceeding to the next phase of the problem, attention should be called to the tendency on the part of states when increasing the rate of the gasoline tax to divide the revenue between the county and the state. Many states under a one cent gasoline tax law gave all the proceeds to the state highway fund. But with an increase of their rates to two or three cents, they made a division of proceeds between the state and the county. This is a reflection of both county politics and the will of the people. County commissioners and county courts have always been more or less jealous of their power over the roads of the county. In many cases, they have resented usurpation, as they think it to be, on the part of the state and the state highway commission. They prefer to spend the county road funds in a political way. On the part of the people, the argument is different. They are altruistic enough to pay a one cent tax on gasoline and are willing to let the state highway department use all the proceeds in the way the engineers think best even though the money may not be expended in their own county. But before they will

ingly pay two, three, or four cent taxes, they want to see provisions made for spending some of the revenues near home. So a number of states have given the counties a part of the revenue coming from increased rates.

Whether cities should receive a share of gasoline tax revenues or not has been a problem recently in a number of states. Maryland, Indiana, and Wisconsin, as noted above, now give some or all cities a share of the receipts. There is no doubt that cities generally need such revenue; and, furthermore, much revenue comes from city motorists. This problem will become increasingly important as the years go by. Before any intelligent division of revenues can be made, more data on use of rural roads by city motorists and others must be obtained. The traffic census needs to be more widely used.

#### *D. Proceeds for Other Purposes than Roads.*

Four states use the gasoline tax revenues for other purposes than roads. Georgia credits one-third of the yield of the tax to the General Fund of the state, one-third to a special division of the State Aid Road Fund, and one-third to the counties. The third to the counties is apportioned on the basis of the pro-rata part for each county of the State Aid System road mileage. Montana has had three systems of distribution since she first passed a gasoline tax law. The 1925 law gives fifteen per cent of the proceeds to the State Highway Commission, thirty per cent to the state general fund and fifty-five per cent to the counties on a basis of equality. The law recently declared unconstitutional credited forty per cent of the revenue to the General Fund of the state, twenty per cent to the State Highway Fund, and forty per cent to the counties, equally. The county share was used for road maintenance. The oldest law in Montana gave two-thirds of the tax to the General Fund and one-third to the counties in proportion to the total number of teaching positions in which teachers were employed in public schools at least six months during the preceding year. Up to 1925 in North Dakota, all net proceeds of the tax were credited to the General Fund of the state. By a bill approved March 7, 1925, only \$200,000 a year goes for state purposes. The balance of revenues collected

goes to the highway department. In Texas, funds derived from the gasoline tax are appropriated as follows: Three-fourths to be available for the Public Free School Fund and the remaining one-fourth to be available for the construction and maintenance of the public highways of the state as designated by the State Highway Commission.

#### *E. Proceeds to Counties.*

Wyoming credits the receipts of the tax to the State Highway Fund, after which they are apportioned among the several counties of the state in proportion to the number of miles of designated state highways therein. These funds are to be used for maintenance and repair of state highways. Alabama now gives all the gasoline tax proceeds to the counties. Formerly, half went to the general fund of the state.

#### *F. Conclusions on Distribution.*

What conclusions can be drawn from the discussion on distribution? The following seem to be sound: First, all funds should be used by the state and spent on state roads and under the direction of the state highway commission, if the tax rate is only one cent per gallon. This is reasonable because a one cent tax in most states will not yield enough revenue to justify its distribution in small sums to the counties. The sums obtained by the counties would be so small that they would be spent in a small way and might even be wasted. If the state keeps the whole amount it can spend it in a way that will accomplish something. Second, if the tax be more than one cent per gallon, the counties should receive a share of the yield. Their quota should be determined on some such basis as that described above. States have done this because they need to in order to get the law passed, but such action is justified on other grounds. The higher rates yield enough so that the state has a good sum for state highways and the counties may have a good share for county projects. This method gets some of the money expended in the regions from which the tax comes. The people who pay get some benefit and that is what they want. Exception might be taken to this point

the case of states where the yield under an increased tax would be low. There all the proceeds should be kept by the state so that the money may be wisely spent and not wasted as it would be if it were divided into small sums. Third, funds secured through gasoline taxation should not be used for general state purposes, but only for road purposes. Most of the states that have passed gasoline tax laws did so to secure funds for road building and road maintenance. Gasoline was selected as the best commodity to tax to raise funds for such purposes because it measures better than anything else the actual use of the road. When states adopt excise taxation as a principal source of revenue, then this objection will not be sound. States are not adopting excise taxes on a wide scale to replace the broken down General Property Tax. They are changing the property tax so as to make it work and are introducing the income and corporation franchise taxes. Some one may say that the gasoline tax is like the corporation franchise tax in that it is a payment for a special privilege. The franchise tax is a payment for the privilege of doing business as a corporation; the gasoline tax is virtually a payment for the privilege of having and using good roads. In the case of the gasoline tax, the benefit from it comes in the way the proceeds are spent; this is not true of the corporation franchise tax. States should use the gasoline tax for road purposes, at least until they change their type of revenue system. The tax is popular when the proceeds are used for better roads, but it encounters objection when used for other purposes. Fourth and last, the funds distributed to the county should be spent by the county under the supervision of the state highway department. This will insure non-political and wise expenditure because the highway department will ordinarily have more capable and efficient engineers than the counties. The success of the tax depends very largely on the distribution of the proceeds.

## CHAPTER VI

### INCIDENCE OF THE GASOLINE TAX

The incidence of the gasoline tax is rather a complicated question. Bound up with the question of incidence is the whole question of automobile service, which includes gasoline, repairs, roads, and the original car. Because this automobile service is a joint cost, the problem is all the more complex. The general concensus of opinion, whether in article, editorial comment, or law, is that the tax is a burden upon the consumer. The thesis of this chapter is that the gasoline taxes with the rates in existence today, are burdenless taxes. A brief analysis will be made of the possible effects of high rates, such as ten or twenty cents.

#### I. IS THE BURDEN ON THE CONSUMER?

The market price of gasoline generally rises by the amount of the tax when a gasoline tax is imposed, or when the rate is increased. In fact, most of the state laws at the present time state that a sign shall be posted, which shows the price of gasoline and the state tax. The consumer is expected to pay the sum of the two items. However, the payment of an increased price for gasoline does not prove that the consumer has an added burden.

If it be assumed that gasoline tax receipts are spent on the maintenance and construction of roads, then the consumer secures economies in other costs that go to make up automobile service. With the exception of four or five states, nearly all the money from gasoline taxes is spent for roads either under state or county supervision. This has been shown adequately in the previous chapter. What the state is really doing for the consumer of gasoline is to force him to pay money to the state to build better roads, which roads help reduce other expenditures that the motorist would have to make in order to secure the joint product, automobile service. With better roads, one secures more miles per gallon of gasoline. Improved highways reduce the cost of breakage in automobiles. Then, even though gasoline may cost more, the user gets a greater product (mileage) per unit of gasoline (gal-

lon) and is, therefore, the gainer. It is probably true that the saving in breakage alone would more than pay for any burden that increased price of gasoline might cause.

The life of an automobile would be lengthened if the wear and tear from operation could be reduced. Good roads tend to extend the period of use for a car because of the reduction in wear and tear. Repair bills would be less. A high estimate for the increased cost of gasoline, caused by the highest tax now in use, five cents in South Carolina, would place the total for the average car at \$20. In most states, the increase would amount to a figure between \$10 and \$15. The cost of gasoline, as a share in the total cost of ownership and operation of motor vehicles, when placed at a high figure would not be more than 15 per cent of the total cost. If it be assumed that \$20 is the maximum increase in cost of gasoline and that gasoline costs be 15 per cent or less of the total cost, it is easy to see that other savings, as indicated above, which car owners receive as a result of good roads, more than counterbalance the increased price of gasoline.

Gasoline taxes have not reduced gasoline consumption. Oregon reported 31,949,653 gallons taxed in 1919; 45,100,330 in 1920; 50,967,323 in 1921; 57,172,772 in 1922; and 72,789,723 in 1923. During the same period, the gasoline tax was increased from a one cent rate to a three cent rate. Figures on oil production, published each week, indicate that the consumption of gasoline is not declining, but even increasing. If gasoline taxes were a heavy burden, one might expect consumption to fall off. Consumption might have increased more if there had been no tax. However, it would not have increased much more.

Looking at the effect of gasoline taxes over a longer period of time, one might argue that even a twenty cent tax would be no burden to consumers and probably a benefit. The latest estimate of our oil reserves gave the United States a reserve of slightly over 9,000,000,000 barrels of oil in 1922, enough to last twelve or thirteen years at the present rate of consumption. If this generation consumes all the oil products now, the next generation will not have them and will be forced to develop expensive substitutes and they may even be obliged



to go without some products. When that time arrives, prices of gasoline will rise very high. Many people who then have cars may find it difficult to operate them, for the costs would be too high. Those people would be ahead if this generation were deterred, now, from purchasing a commodity, which it cannot afford long. A five cent tax does not act as a warning; it does not reduce consumption. Perhaps a ten cent or a fifteen cent tax would reduce consumption.

The high tax rates mentioned would raise the price of gasoline. Professor Ise has ably summarized this viewpoint in a recent article in the *American Economic Review*<sup>28</sup> in which he says: "High prices, of oil, for instance, would prevent the building of a vast industrial structure which can only be of temporary service. The American automobile industry, as it is now developing, is only a transitory industry, which can hardly prosper when our small reserves of cheap oil are gone. Higher prices would have the effect of stopping the growth of this industry, of keeping it down to a size at which it might hope for greater permanence. Furthermore, expensive oil would hasten the development of this industry in the direction which it must some day take—the direction of greater economy in the use of fuel and lubricants. Expensive oil will some day bring much greater efficiency in automobile engines. Perhaps it will double the gasoline and lubrication mileage. Obviously the sooner this comes, the better."

No one would advocate the immediate imposition of such high gasoline tax rates; however, if the increases were gradually imposed, our present industrial structure need not be disturbed. If people were to use gasoline in cars and pay such high prices, there would be a distinct stimulus to economize in the use of gasoline. Improved automobile equipment would be developed. Motorists would be more interested in carburetor adjustments, etc. If, as Professor Ise hints, a 100 per cent economy might be secured with better equipment, a 100 per cent increase in the price caused by a high tax would still prove burdenless on the consumer. Consumers as a whole would gain, for the high price of gasoline would result in its

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28. *American Economic Review*, XV: 289-290. (June, 1925.)

use for its highest services only—which result in the greatest utility.

There probably are a few individuals who over-estimate the cost of gasoline as a share of the total operating cost of an automobile. Such people would not use their cars if the price of gasoline went up to forty cents per gallon. They are marginal consumers. A high price would result in their withdrawal from the market. In so far as this result would take place, society gains, for gasoline would be conserved for the higher uses.

Then, whether taxes are at the rates at which they now are, or are placed at the higher rates for conservation purposes, provided this change is made gradually, the consumer does not bear the burden of the tax. The initial burden is “transformed” into other economies in automobile operation which balance or more than balance the increased cost of gasoline.

In the case of those states in which only a part of the revenues are used for road purposes, the incidence would be different. To the extent that revenues are used for roads, the conclusions are the same as those reached above. For the share of the tax for other purposes, the consumer may bear a burden which he cannot transform or escape, although the gain that he makes from more economical automobile service may balance any loss he may encounter from the use of funds for general state purposes. However, most consumers are only paying through the gasoline tax what they would have to pay through some other tax. Therefore, it may very well be that the total burden of taxes may be no greater with gasoline taxes for state purposes than it otherwise would be. In so far as it results in a redistribution of the burden of taxes, some individuals may have to pay more than before to the state.

## II. IS THE BURDEN ON THE PRODUCER?

The answer to this question depends in part on the tax rates in force. If the rates go no higher than those in effect now, it is safe to say that the producer bears no burden. There has been no decline in gasoline sales; so no loss to the producer. Perhaps, if there had been no gasoline taxes, even more gas-

oline would have been demanded and sold than at present. It may be argued that the consumer pays the additional tax, though it has been shown that there is no burden in the payment when the proceeds are spent for road purposes. If the consumer were not willing to pay the tax, the producer could reduce the supply and competition among demanders would raise the price high enough to cover the tax and the costs of production on that which was sold.

As has been demonstrated, the ultimate effect of gasoline taxes has been to lower automobile operating costs. In view of this, automobile producers need have no fear that they will have to bear any burden of the tax. If a tax increased the cost of running cars, some potential buyers would not buy. These would be the marginal buyers before the tax went into effect. But the tax does not discourage these marginal buyers; it may result in an actual encouragement.

A tax rate high enough to result in a marked decline in consumption, would probably be borne in part by the producer. If a tax rate of twenty cents were gradually imposed, effects on producers might be as follows: As the price of gasoline went higher and higher, in part because of the tax, the demand would become more elastic than in the lower parts of the demand curve. It would be more difficult for producers to increase the price, say from forty cents to forty-four cents, than it is to increase the price from twenty cents to twenty-four cents. Those producers, now working on a small margin, would find it impossible to produce profitably in the new situation. There would be a tendency toward concentration in the producing business—toward monopoly. The relations between demand and supply could be such that a producer might better afford to bear a part of the high tax than to raise the price so high that demand and profits would be reduced. To that extent, the producer might bear a share of the tax burden.

However, the producer might try to improve his methods and save some of the cost. The oil producers would probably gain in the long run, for the resources would last longer and costs of development could be spread over a longer period of time. It is true that such a tax might result in the producer

being forced to discount the future at lower rate than he ordinarily would, and for the present this might prove to be a very onerous burden though in the long run society and groups of producers would gain. The automobile producer would at present be hard hit by high prices for gasoline, but if he can build more than a transitory industry, he would probably suffer no loss in the long run. It is doubtful if the producer could shift or absorb through economies, all the burden that would result from a twenty cent tax.

As gasoline taxes are today, the taxes are virtually burdenless. If the speculation in regard to the future from the extreme conservation point-of-view be correct, even the burden from very high taxes would in a large part also be "transformed." It is quite inconceivable to expect the conservation point of view to be of importance in motivating gasoline tax legislation in the near future.

## CHAPTER VII

### CONCLUSIONS

The material in this chapter naturally divides itself into three parts: First, a discussion of the gasoline tax as a source of highway revenue; second, a discussion of the possibilities of a gasoline tax as a means of promoting conservation of oil; and third, a proposed model gasoline tax law. It is not the purpose of this section to make a recapitulation of the conclusions of each foregoing chapter, but to elaborate the broader and more general conclusions that follow from the study taken as a whole.

#### I. THE GASOLINE TAX AS A SOURCE OF HIGHWAY REVENUE

##### A. *In Relation to Highway Finance.*

The two main problems in connection with the movement for good roads have been, how to secure funds to pay for the original cost, and, how to secure funds for proper maintenance. New roads may be built on cash or on credit. If paid for in cash at construction, the state has to levy taxes at once to secure the funds; if paid for by means of credit obligations, the state may postpone payment for a while but must eventually provide funds to liquidate the credit obligations. In either case, government officials are confronted with the problem of deciding from what source the funds will be raised.

Part of the funds for construction should come from the benefit district. It is only fair that those people who benefit from the convenience of the highways and from increased property values should pay a share of the cost. But others who use the road should pay for the benefit they receive. There are more people using the road who do not live adjacent to it than those who live on the road. The best way to get these people to pay their share of the cost is to levy a gasoline tax. The fact that the consumption of gasoline in automobiles does bear a relation to the wear and tear on the road is well established. The gasoline tax is justified as a means of securing funds for maintenance from those who make the

repairs and renewals necessary. But since the automobile has caused a demand for a better type of road than formerly existed, the gasoline tax as a means of raising funds to provide such roads is justified. The principle of the use of the gasoline tax for maintenance purposes is quite generally approved, though many who approve its use in this way oppose it as a means of raising money for construction purposes. The argument that tourists who help wear out roads also help pay for their upkeep by paying the tax on gasoline is a very popular and a very sound argument. Some tourists go out of their way many miles to be able to travel hard surfaced highways. Since this is true, states need have no moral qualms about using a part of the proceeds of the tax for construction. The tourists are glad to have these highways and do not object to paying an infinitesimal part of the cost.

Two problems still remain in connection with the construction phase of the matter. They are: (1) What division of government should have charge of construction? (2) Shall the money received from the tax be used directly for construction purposes or shall it be used to pay interest and retirement charges on bonds? Most of the money for construction should be spent by the state under the supervision of the highway department or commission. Any share that the counties receive should be spent primarily for maintenance, and whatever they have left after that should be spent for construction, but under the supervision of the highway department. This policy will eliminate much graft and "jobbing" of contracts and will provide for wiser expenditure of funds because of the more expert advice of the highway engineers of the state. No definite answer can be given to the second question. If a state pays cash for its roads, it eliminates the interest burden of bonds, but does not get as great a mileage of roads. If bonds are used to provide the funds for construction of state roads, then the state's share of the proceeds, or as much of it as is needed, should be used to pay interest and retirement charges on these bonds. Any amounts that the counties have in excess of the maintenance requirements might be used in the same way. A lengthy digression is not in point here, but it should be added that if bonds are

issued either by the state or by the counties, those bonds should have a short term, and should be in serial issues.

It is not the purpose of this discussion to cover the field of highway finance, but only to show the relation of the gasoline tax to that larger problem. The gasoline tax should be used, first, as a means for securing maintenance funds, and, second, as a means of getting construction funds. How much should be spent for construction will depend on the people of the particular state and the rate that they are willing to pay.

The most significant argument against gasoline taxes comes from the National Automobile Chamber of Commerce and associated organizations that make up the Motor Vehicle Conference. This group contends that the proceeds of the tax should be used for maintenance only and that this tax should be used only when some other tax on motor vehicle owners has been repealed. The first part of this argument has been adequately considered. The Maryland Statute of 1922 provided that if the yield of the gasoline tax exceeded a certain sum, the governor was authorized to reduce the registration fees for motor vehicles. But very few states have made this provision. In England there was some talk of a ten cent per gallon gasoline tax.<sup>29</sup> This high tax was to replace all existing taxes on motor vehicles. It would take nearly a ten cent gasoline tax rate in the states of the United States if the gasoline tax were to replace all other taxes on motor vehicles or motor vehicle owners. Would those who uphold the view stated above, favor complete abolition of all taxes if it meant a ten cent gasoline tax? Very likely not! What they want is reduced taxes on motor vehicles.

The gasoline tax has proved to be a good tax. It is fair to the people who use the roads, and it is a good revenue producer. At present, the two cent rate and the three cent rate are the most popular. The three cent rate is increasing and in a few years will be used more than any other rate. That rate may go as high as five cents in some states. That is a very high tax, if expressed as an ad valorem tax. If the people really want it, they should have it.

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29. *Engineering News-Record*, 90:505. (March 15, 1923.)

### *B. In Relation to Problems of Administration.*

The administrative problems will not be considered again at great length. What seems best on the basis of the material in Chapter IV will be placed in the Model Gasoline Tax Law. The tax should be collected from the importer or manufacturer; because they are at the point of greatest concentration, because these producers have better credit than retailers, and because fewer accounts need be handled by the state office.

The State Tax Commission should be the main administrative office. This office is selected because it is felt that the tax commission will know more about tax problems and procedure than any other state officer. The tax commissioners should establish rules of procedure, provide forms for reports, make inspections, and assess the tax. Payments of the tax should be made to the state treasurer.

## II. THE GASOLINE TAX AS A MEANS TO PROMOTE CONSERVATION

In the first chapter, the suggestion was made that the gasoline tax might be used as a means to promote conservation. Now, at the close of the study, a partial answer must be made to that suggestion.

If the gasoline tax is to be effective in promoting conservation, it must cause a decline in consumption. The burden of the tax on the marginal consumers must be so heavy that they will buy less gallons or quit buying entirely. The present gasoline taxes have not caused a decline in consumption; neither have they checked the upward tendency of consumption. As was pointed out, in the chapter on incidence, the tax rate would have to be high before any appreciable effect on demand would be noticed. The chief difficulty would be to secure the passage of legislation that would authorize a tax high enough to do some good. No legislature, at present, would dare pass it and if it did, the law would be repealed at the next session. The gasoline tax will be of little value for purposes of conservation, now. From a conservation point of view the policy of the government has been wrong. The government should have kept the ownership of oil lands or



retained the oil rights of land it did alienate. Or it should now establish strict regulation of the industry, an action that would be difficult at this late date.

### III. A MODEL GASOLINE TAX LAW

The substance of the law below is a composite of the best procedure of the various states. Most of the content is not original. The only claim for originality is in the matter of distribution of revenues and in the combination of methods and procedures. This is a general law and is not drawn with any particular state in mind.

#### HOUSE BILL NO. X.

An act imposing a license fee on the use of gasoline in the State of .....; providing for the payment, collection, and distribution thereof, prescribing certain exemptions therefrom and prescribing penalties for the violation thereof.

*Be it enacted by the Legislature of the State of.....*

SECTION I. That the words, terms, and phrases in this act are for all the purposes thereof, defined as follows:

(A) The word "gasoline," shall include the liquid, derived from petroleum or natural gas, commonly known or sold as gasoline, and all other liquids, by whatsoever name known or sold, containing any derivative of petroleum or natural gas, and produced, prepared, or compounded for the purpose of generating power by means of internal combustion, or which may be used for such purpose.

(B) The term "importer" is hereby defined as any person, association of persons, firm, or corporation, whether resident or located, who imports or causes to be imported into the State of.....gasoline as herein defined for use, distribution or sale and delivery in and after the same reaches the State of....., except as hereinafter expressly provided.

(C) The term "manufacturer" is hereby defined as any person, association of persons, firm, or corporation who produces, refines, manufactures or compounds gasoline, as herein

fined, within the State of....., for use, distribution, or sale and delivery in this state.

SECTION II. That on and after ..... (date)....., each and every importer and manufacturer as defined in this Act, who is now engaged or who may hereafter engage in his own name, or in the name of others, or in the name of his representatives or agents in this state, in the sale or use of gasoline as herein defined, shall, not later than the fifth of each calendar month, render to the State Tax Commission a statement on forms prepared and furnished by said Commission which shall be sworn to by one of the principal officers, in case of a domestic corporation, or by the resident general agent or attorney in fact, or by a chief accountant or officer, in case of a foreign corporation, by the managing agent or owner in case of a firm or association of persons, or by the importer or manufacturer in all other cases; which statement shall show the quantities of gasoline used, sold, and delivered within the State of..... during the preceding calendar month; and such importer or manufacturer shall pay at the time of filing the report to the State Tax Commission a license fee of two (2) cents per gallon on all gasoline sold as shown by such statement, except on such gasoline as is in such form and under such circumstances that it is under the protection of the interstate commerce clause of the Constitution of the United States. Provided, further, that the tax shall be paid but once. Bills shall be rendered to all purchasers of gasoline by such importers or manufacturers. The said bills shall contain a statement printed thereon in a conspicuous place that the liability to the State for the tax or taxes herein imposed has been assumed and that the importer or manufacturer will pay the tax or taxes thereon before the fifth day of the following month.

SECTION III. That all importers or manufacturers of gasoline in the State of..... shall file a duly acknowledged certificate with the State Tax Commission on forms prescribed, prepared and furnished by said Commission, which shall contain: The name under which such importer or manufacturer is transacting business within the State of....., the names and addresses of the several persons constituting

the firm or partnership, and if a corporation, the corporate name under which it is authorized to transact business, and the names and addresses of its principal officers, resident general agent and attorney in fact. If such importer or manufacturer is an association of persons, firm, or corporation organized under the laws of another state, territory, or country, if it has not already done so, it must first comply with the laws of.....relating to the transaction of its appropriate business therein. No importer or manufacturer, as herein defined, shall, on and after ..... (date)....., sell, use, or distribute any gasoline until such certificate is furnished as required by this Act.

SECTION IV. That each and every importer or manufacturer shall keep records of all purchases, receipts, sales, distributions and uses of gasoline. These records shall be kept for a period of a year and shall be subject to inspection by the members of the State Tax Commission, or by an agent or employee thereof duly authorized by said Commission.

SECTION V. That it shall be unlawful for any person, firm, or corporation and any retail dealer or distributor of gasoline to receive and accept any shipment in interstate commerce from any dealer, or pay for the same, or to sell and offer same for sale, unless the statement provided for in Section Two (2) appears upon the invoice of said shipment.

SECTION VI. That said tax shall not be imposed on gasoline when exported or sold for exportation from the State of ....., to any other state or nation. Provided that any gasoline so exempt which is later used in such a manner and under such circumstances as may subject it to the taxing power of the state shall be taxable, and any person who uses it in such way or sells it shall make the same reports as the importer and the manufacturer, pay the same taxes, and be subject to all other provisions of this Act relating to importers and manufacturers.

SECTION VII. That said tax or taxes shall be paid on the fifth day of each month, as heretofore provided, to the State Tax Commission, which shall receipt the importer or manufacturer therefor, and which shall pay the same within a day af-

ter receipt, less expenses of collection which shall not exceed .....per year, into the State Treasury. The revenue from half the tax is hereby appropriated for the construction of roads and projects comprising the State Highway System or for the payment of interest or retirement charges on State bonds, issued for said purpose, and for no other purpose. Said funds of the State Highway System are to be expended under the direction and supervision of the State Highway Commission. The revenue from the other half of the tax is hereby appropriated for maintenance purposes, first, and then construction, in the various county highway systems of the state, and shall be distributed among the several counties of the state in the following manner: One-third of said fund shall be distributed to the counties in the proportion that the area of the county bears to the total area of the state; one-third of said fund shall be distributed to the counties in the proportion that the number of motor vehicles registered from the county bears to the total number registered in the state; one-third of said fund shall be distributed among the counties in the proportion that the number of miles of road in the county bears to the total number of miles of road in the state. Said proportions shall be revised annually on March 1st by the State Tax Commission on the basis of the latest figures on area, mileage of roads, and motor vehicle registration. Quarterly, beginning March 1st, the State Tax Commission shall figure the share of the revenue of one-half the tax that goes to each county and certify to the State Treasurer the total share of each county for that quarter, whereupon the State Treasurer shall pay said sum to the county treasurer of each county. The share of each county may be spent in the way herein provided but subject to the approval of the State Highway Commission.

SECTION VIII. That any person, association of persons, firm, or corporation violating any provision of this Act shall be deemed guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000). Any importer or manufacturer or any other dealer coming under the terms of this act who wilfully violates any provision of this Act

may be enjoined and the court may appoint a receiver for the business of such importer or manufacturer.

SECTION IX. That it shall be unlawful for any member of the State Tax Commission, or any agent or employees of said Commission, to disclose, except when required so to do in a court of law, the amount of the tax paid in pursuance of the terms of this Act by any importer or manufacturer, or any other information contained in the reports filed by any importer or manufacturer under the terms hereof. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500).

SECTION X. That any person who shall buy or use any gasoline for any other purpose than propelling motor vehicles on the highways, shall be reimbursed and repaid the amount of such license fee paid by him upon his presenting to the State Tax Commission a statement accompanied by the original invoices showing such purchases, which statement shall set forth the total amount of such gasoline so purchased and used by the consumer, other than for propelling motor vehicles upon the highways, and the State Tax Commission by order of the State Treasurer shall cause to be repaid from the fund created by collection of license fees in the use of gasoline such license fees as have been paid by the consumer on such gasoline as has been used for purposes other than propelling motor vehicles upon the highways. Provided, further, that no agency of any branch of the government shall be liable for the tax.

SECTION XI. That the tax or taxes herein levied on gasoline, shall apply on all such gasoline as shall be, at the time this law becomes effective, in the hands of a retail dealer (to wit: any person, association of persons, firm, or corporation who sells to the consumer) and such tax shall be paid by such retail dealer, who as to the gasoline in his hands on the day this law becomes effective shall make all such reports, do all such things, pay all such sums, in such manner, and at such times, as in other cases is required of importers and manufacturers, as herein defined.

SECTION XII. That if any section, sub-division, sentence or clause in this act shall for any reason be held unconstitutional or void, such decision shall not affect the validity or meaning of any other portion of this Act.

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