

Gas Tax

Overview – The state collects an excise tax on motor vehicle fuel (i.e., gas) and special fuel (e.g., diesel). The current tax rate is 36 cents per gallon and will increase to 37.5 cents per gallon on July 1, 2008. The tax is paid by suppliers of motor vehicle and special fuel and generates about \$1.3 billion in revenue each year. All gas tax revenues must be used for “highway purposes” as defined in Article II, Section 40 of the state constitution (18th Amendment) which states in part:

“Such highway purposes shall be construed to include the following: (a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets; (b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights-of-way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street; (c) The payment or refunding of any obligation of the State of Washington, or any political subdivision thereof, for which any of the revenues described in Section 1 may have been legally pledged prior to the effective date of this act; (d) Refunds authorized by law for taxes paid on motor vehicle fuels; (e) The cost of collection of any revenues described in this section...”

In addition to the state tax of 36 cents per gallon, counties have the authority to impose, subject to majority voter approval, a local county-wide gas tax of up to 10 percent of the state tax (currently 3.6 cents per gallon). To date, no county has imposed the local option gas tax.

Gas Tax Distribution – The state gas tax is shared between state programs and local governments. About 68 percent of the gas tax is retained by the state and the remaining 32 percent distributed to local governments directly or through grant programs. The attached pie charts show the programs that receive gas tax revenues.

How Washington Compares to Other States – The national average state and local gas tax is about 26 cents per gallon. Unlike many states, Washington does not have a local gas tax and does not charge sales tax on gas. Currently there are at least 14 states that collect sales or business taxes on gas based on price per gallon. See the attached table comparing Washington’s gas tax rate with those of other states. When all state and local taxes are included, Washington currently has the 7th highest gas tax and the 8th highest diesel tax.

Legislative History – The last gas tax increase was in 2005 when the Legislature increased it by 9.5 cents per gallon in four increments: 3 cents in 2005, 3 cents in 2006, 2 cents in 2007, and 1.5 cents in 2008. When fully implemented, the state’s gas tax will be 37.5 cents per gallon. The revenues from this gas tax increase are the primary source of funding for the 16-year transportation plan enacted in 2005 that will pay for 274 road, transit, rail, freight and ferry projects throughout the state.

The 9.5 cent package is in addition to the 2003 “nickel” program that is constructing projects from a 5-cent gas tax increase passed that year. Prior to 2003, the gas tax had not been raised since 1990.

Tribal Fuel Tax Compacts – Since the early 1990s, the state maintained 16 fuel tax agreements with federally recognized Indian tribes. These agreements refunded a portion of fuel tax paid by tribal members on the reservation using a population-based per capita formula.

In 2003, two Indian Tribes, the Squaxin and Swinomish, sued the state Department of Licensing claiming that the state cannot collect fuel taxes on tribal land because the legal incidence (or liability) falls on the retailer, which is not authorized by Congress. Federal case law prohibits states from enforcing their taxes on a tribe and its members for sales made on the reservation unless there is explicit authorization from Congress.

In November 2005, federal judge Thomas Zilly agreed with the tribes. A permanent injunction was entered in January 2006. The state appealed the decision. The ramifications of this decision meant that Indian tribal gas stations were no longer required to collect the state gas tax from their consumers, giving tribes a significant competitive advantage on gas prices.

On June 29, 2006, the governor signed new fuel tax agreements with the Squaxin and Swinomish Tribes. The fuel tax is included in the price of fuel delivered to tribal fuel stations. The tribe then requests a 75 percent refund of fuel tax paid from the state. These agreements also required the tribes to impose their own fuel tax equivalent to the state fuel tax rate. These agreements represented a major concession to the tribes because they would not necessarily be required to collect the state gas tax at tribal fuel stations.

As a response to the federal court ruling and to give legal authority for the governor's 2006 compacts, the Legislature passed SB 5272 in 2007. The bill moved the legal incidence of the gas tax up to the supplier level, and therefore off-reservation. According to a U.S. Supreme Court ruling in Kansas, moving the legal incidence off-reservation should have taken care of the tribal issue. However, the governor's office and majority Democrats insisted on allowing the governor to negotiate fuel tax compacts with the tribes.

To address concerns with the tribal compact language, House Republicans offered amendments during the debate on the companion to SB 5272 (HB 1426) that would have:

- Removed new compacting language in the bill and kept current tribal fuel compacts in place - (failed 38 Yeas and 58 Nays).
- Required legislative approval of tribal fuel tax compacts (failed on a voice vote).
- Prohibited tribes from receiving state funding for local roads if fuel tax agreement provides equivalent or additional amounts of fuel tax revenue (failed on a voice vote).
- Prohibited the governor from accepting contributions from a party to a fuel tax agreement or consent decree negotiated within the last four years or currently under negotiation. This amendment was designed to remove any appearance of a conflict of interest (failed 37 Yeas and 59 Nays). [*Do we upper-case "yeas" and "nays" in use like this? Seems to me not. Also, have we generally shown the votes on bills in these 101s? Others have not. RDB call.*]

The final version of the bill retained the compact language. Based on DOL's November 2007 report on tribal fuel tax agreements, nine tribes have signed agreements allowing them to keep 75 percent of fuel tax proceeds. Two more tribes, the Nisqually and the Jamestown S'Klallam, are in negotiations with DOL. The nine tribes with agreements:

Squaxin
Swinomish
Suquamish
Spokane
Skokomish

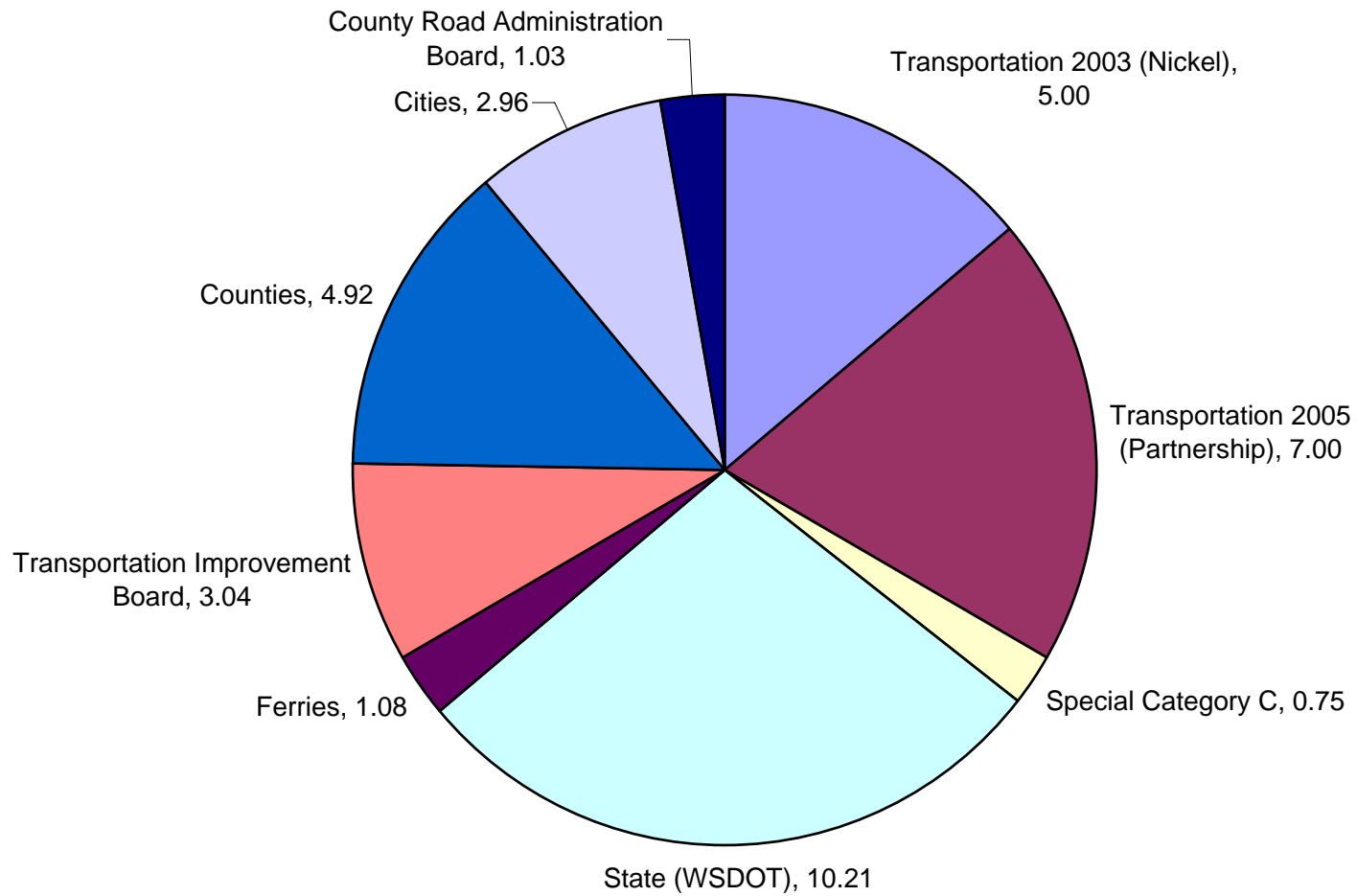
Puyallup
Nooksack
Port Gamble S'Klallam
Chehalis

It is difficult to determine how much these new tribal compacts have reduced state gas tax revenues. Preliminary figures should be available by early 2009.

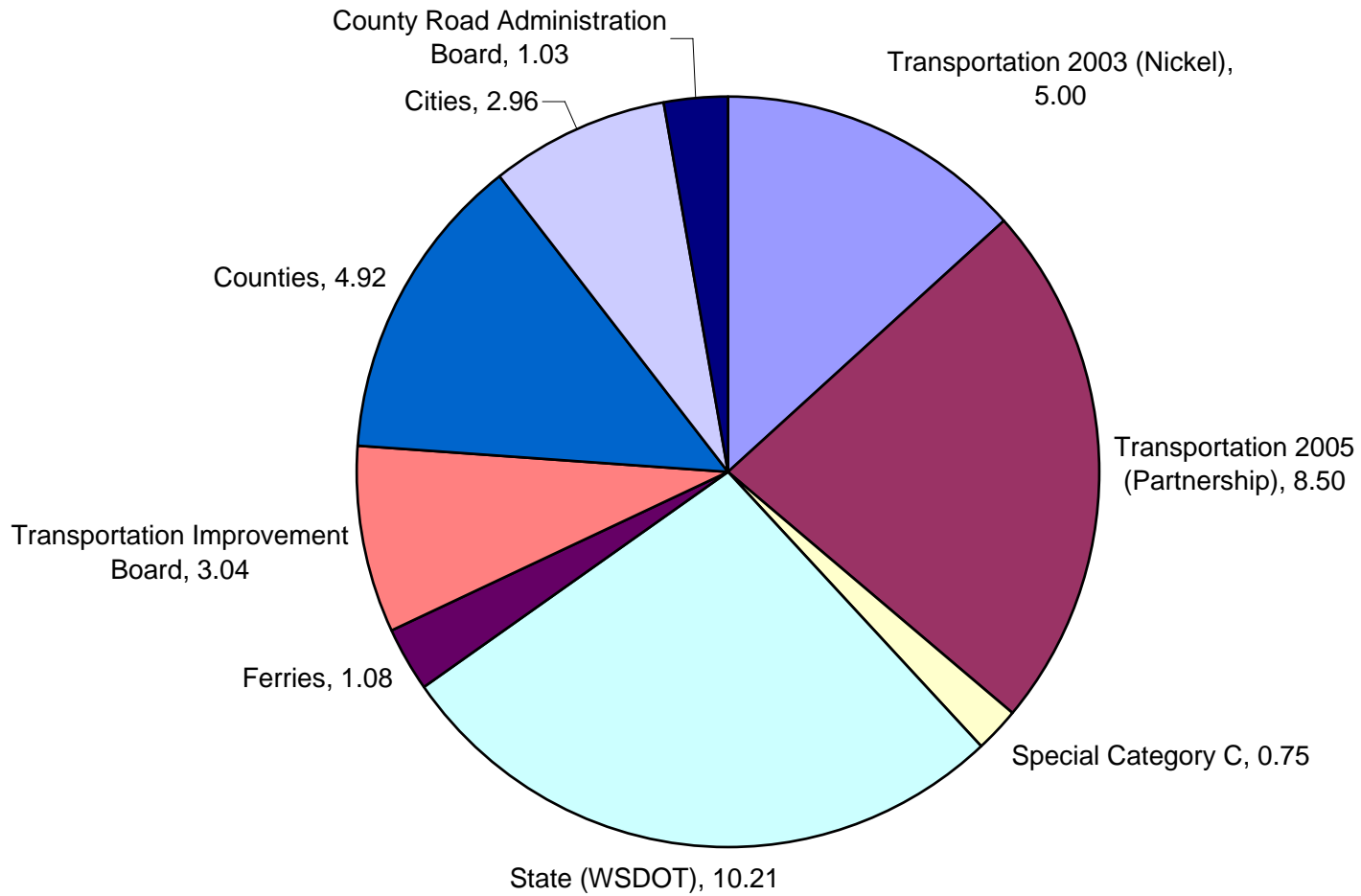
Issues and Outlook – Since passage of the 9.5 cent gas tax increase in 2005, construction costs for highway projects have skyrocketed because of increasing worldwide demand for materials such as oil, concrete and steel. These increases, coupled with higher gas prices, have significantly eroded gas tax revenues. Since 2007, the transportation budget has experienced a \$3.5 billion shortfall to pay for transportation projects. Past budgets have relied on additional bonding, fund transfers, and changing federal funding assumptions to plug the gap.

The decline in gas tax revenue remains a significant issue in transportation financing. Tolls are being considered as a supplement or even as a replacement of gas tax revenues. Oregon and Seattle recently conducted experiments with focus groups to replace the gas tax with a per-mile charge or variable tolls. A study conducted in 2006 by the Joint Transportation Committee noted that Washington state could replace the gas tax with a 2-cent per mile vehicle tax.

Distribution of State Gas Tax - 36 cents (as of July 1, 2007)



Distribution of State Gas Tax - 37.5 cents (as of July 1, 2008)



State & Local Gas Tax Rates (as of January 1, 2008)

Note: State and Local taxes are in addition to the federal gas tax of 18.4 cents/gallon

Rank	State	Total State & Local Tax
1	New York	45.53¢
2	California	43.50¢
3	Connecticut	42.69¢
4	Illinois	41.56¢
5	Hawaii	41.54¢
6	Michigan	36.50¢
7	Washington	36.00¢
8	Indiana	34.58¢
9	Wisconsin	34.26¢
10	Nevada	33.41¢
11	Florida	32.26¢
12	West Virginia	31.50¢
13	Pennsylvania	31.21¢
14	Rhode Island	31.00¢
15	North Carolina	30.15¢
16	Maine	29.73¢
17	Georgia	28.47¢
18	Ohio	28.00¢
19	Nebraska	27.90¢
20	Montana	27.75¢
21	Oregon	27.00¢
22	Idaho	26.00¢
23	Kansas	25.03¢
24	Utah	24.50¢
25	South Dakota	24.00¢

Rank	State	Total State & Local Tax
26	Virginia	23.62¢
27	Maryland	23.50¢
28	Massachusetts	23.50¢
29	North Dakota	23.03¢
30	DC	23.00¢
31	Colorado	22.56¢
32	Arkansas	21.80¢
33	Iowa	21.70¢
34	Mississippi	21.40¢
35	Tennessee	21.40¢
36	Louisiana	21.00¢
37	Kentucky	20.70¢
38	Texas	20.43¢
39	Alabama	20.30¢
40	Minnesota	20.12¢
41	Delaware	20.00¢
42	Vermont	20.00¢
43	New Hampshire	19.51¢
44	Arizona	19.00¢
45	Missouri	17.55¢
46	New Mexico	17.02¢
47	Oklahoma	17.00¢
48	South Carolina	16.75¢
49	New Jersey	14.54¢
50	Wyoming	14.00¢
51	Alaska	8.00¢

Source: WSDOT, American Petroleum Institute

State & Local Diesel Tax Rates (as of January 1, 2008)

Note: State and Local taxes are in addition to the federal diesel tax of 24.4 cents/gallon

Rank	State	Total State & Local Tax
1	Connecticut	54.30¢
2	California	44.51¢
3	Illinois	44.32¢
4	New York	44.26¢
5	Hawaii	42.04¢
6	Pennsylvania	38.11¢
7	Nevada	37.16¢
8	Washington	36.00¢
9	Wisconsin	34.44¢
10	Michigan	33.49¢
11	Indiana	33.08¢
12	Florida	32.26¢
13	West Virginia	31.50¢
14	Rhode Island	31.00¢
15	Maine	30.93¢
16	North Carolina	30.15¢
17	Montana	28.50¢
18	Ohio	28.00¢
19	Georgia	27.64¢
20	Nebraska	27.20¢
21	Kansas	27.03¢
22	Oregon	27.00¢
23	Arizona	27.00¢
24	Idaho	26.00¢
25	Vermont	26.00¢

Rank	State	Total State & Local Tax
26	Massachusetts	24.60¢
27	Utah	24.50¢
28	Maryland	24.25¢
29	South Dakota	24.00¢
30	Iowa	23.50¢
31	Alabama	23.30¢
32	North Dakota	23.00¢
33	Arkansas	22.80¢
34	Virginia	22.37¢
35	DC	22.00¢
36	Mississippi	21.40¢
37	Colorado	21.06¢
38	New Mexico	21.02¢
39	Louisiana	21.00¢
40	Texas	20.43¢
41	Minnesota	20.12¢
42	Delaware	20.00¢
43	New Hampshire	19.51¢
44	Tennessee	18.40¢
45	Kentucky	18.00¢
46	Missouri	17.55¢
47	New Jersey	17.50¢
48	South Carolina	16.75¢
49	Oklahoma	14.00¢
50	Wyoming	14.00¢
51	Alaska	8.00¢

Source: WSDOT, American Petroleum Institute

Updated June 2008