



Model Statutory Language: Creating Variable-Rate State Gas Taxes



American Road
& Transportation
Builders Association

EXECUTIVE SUMMARY

The revenue from motor fuel taxes is an important component of transportation funding in every state highway program across the country. It is used for a variety of purposes, including grants to local governments, state highway capital outlays, matching federal investment, state Department of Transportation (DOT) administration and overhead, maintenance, research, debt service and even to support some law enforcement activities. States face two key challenges in terms of motor fuel tax revenues—the first is that many divert some portion of this revenue to non-transportation purposes. The second challenge is that some of the tax rates are flat, charging a fixed cents-per-gallon amount on fuel purchases. As a result, these flat rates do not change as project costs generally increase over time. When states are not able to generate enough revenue to fund road and bridge construction and maintenance, they have to restart what can often be a lengthy legislative process to increase the motor fuel tax.

Several states have tried to address this issue by replacing the flat excise tax with a variable-rate motor fuel tax. A variable-rate motor fuel tax adjusts the cents-per-gallon charge at the pump based on the wholesale price of fuel, general economic inflation, or other factors like population change and average vehicle fuel efficiency. Several states have a variable-rate formula that combines multiple methods. The legislative design of the variable rate is very important—without the proper language, a state may actually collect lower revenues. This can happen when a variable motor fuel rate is tied to a more volatile economic indicator, like the wholesale price of motor fuel. As detailed in the appendix, a state-imposed ceiling and floor can help mitigate some of those changes.

As of **July 1, 2017, 18 states had a variable-rate motor fuel tax.** Two other states charge a state sales tax on the sale of motor fuel.

This Transportation Investment Advocacy Center™ (TIAC) report includes model language for legislation to adjust the motor fuel tax from a flat excise tax to a variable-rate tax. It was compiled by the Transportation Investment Advocates Council. **It is intended as a starting point for transportation advocates to share with lawmakers considering enactment of similar variable-rate gasoline tax legislation in their states.**

Some sections are underlined and in purple. They are variables that can be filled in with the most appropriate information for the state. This includes the fee amounts, activation dates of legislation, and specific state statute information.

Following the model, a question and answer section provides more details on how a variable-rate tax can be applied and various ways states use a variable-rate gas tax.

An addendum provides additional information on existing variable-rate state gas taxes currently in use.

Established in 2014 by the American Road & Transportation Builders Association (ARTBA), the TIAC is a first-of-its kind, dynamic education program and internet-based information resource designed to help private citizens, legislators, organizations and businesses successfully grow transportation investment at the state and local levels through the legislative and ballot initiative processes.

To learn more about how you can support the Center or join the Advocates Council, contact TIAC Manager Carolyn Kramer at ckramer@artba.org or 202.683.1025.

VARIABLE-RATE GAS TAX MODEL LANGUAGE

(1)(A) MOTOR FUEL TAX RATE

In this section, motor fuel is defined as gasoline or diesel used to power motor vehicles on public roads.

An excise tax is imposed at the rate of XX cent(s) per gallon on distributors who sell or use motor fuel within this state. It is the intention of the General Assembly that the legal incidence of the tax be imposed upon the distributor.

Beginning MM, DD, YYYY and every MM, DD thereafter, the amount of this excise tax per gallon on distributors shall be adjusted automatically by the Department of Finance on an annual basis in accordance with section (B).

(B) CALCULATION OF GAS TAX

OPTION 1: Consumer Price Index

The excise tax imposed in section (A) will be increased by a percentage amount equal to the increase in the Consumer Price Index for all Urban Consumers (CPI-U) as published by the U.S. Bureau of Labor Statistics, with the resulting tax rounded to nearest one-tenth of one cent. The adjustment will be based on the preceding 12-month period. The change shall be added to the associated rate for that year, and shall not be less than provided in section (C).

OPTION 2: Average Wholesale Price of Gasoline

In addition to the excise tax imposed in section (A), an additional tax is imposed at the rate of x percent of the statewide average wholesale price of a gallon of motor fuel. The Comptroller shall determine the average wholesale price of motor fuel (posted by the U.S. Energy Information Administration); exclusive of state and federal excise taxes on each gallon of motor fuel, for each annual period based on sales data gathered for the preceding 12-month period. The change shall be added to the associated rate for that year.

OPTION 3: POPULATION CHANGE

The excise tax imposed in section (A) shall be multiplied by the percent change in population for the preceding 12 months, as estimated by the Department of Finance. The change shall be added to the associated rate for that year, and shall not be less than provided in section (C).

OPTION 4: Corporate Average Fuel Economy (CAFE)

Using XXXX as a base year, the state transportation department shall determine the average miles per gallon of new vehicles registered in this state, based on the most recent U.S. Department of Energy Fuel Economy Guide. The excise tax rate identified in section (A) shall be multiplied by the percentage increase in fuel efficiency from the previous year, and the resulting change will be added to the excise tax rate.

(C) The rate change determined in section (B) cannot exceed (cents-per-gallon/ percent increase). If there is a decline or no growth in the rate calculation of section (B), the motor fuel tax rates shall remain unchanged.

(D) Any increases to the tax identified in section A shall be deemed as a change to the base tax rates.

(E) As determined by the state finance department, the tax rate determined under section (B) is presumed correct and shall not be set aside unless an administrative tribunal or a court of competent jurisdiction finds the department's determination to be clearly erroneous.

(F) The Comptroller shall be required to post the new gasoline tax rate on the state tax department website and notify distributors 30 days prior to when the rate change takes effect.

(G) Funds generated by the taxes identified in sections (A) and (B) shall be deposited into the state Transportation Fund, for use on transportation construction and maintenance projects.

Appendix A: Questions & Answers

Q: Does the variable-rate motor fuel tax need to be adjusted annually?

A: States use a variety of timespans to adjust variable-rate motor fuel taxes. Some states, such as Vermont, evaluate their motor fuel tax and adjust according every three months. Other states, such as Rhode Island, only adjust every other year.

Adjusting the variable-rate tax more frequently quickly captures changes in whatever metric is used to evaluate the tax. Conversely, some states are concerned that adjusting the gas tax so frequently might be met with criticism from taxpayers. Adjusting the rate annually can align with the state budget process.

For example, Kentucky used to adjust its variable-rate state gas tax quarterly and saw revenues increase when gas prices rose in the early 2000s. When prices plummeted in 2014, gas tax revenues did as well, resulting in an inadequate amount of revenue to meet the state's needs. In 2015, the state modified its formula to replace quarterly adjustments with an annual adjustment.

Q: Do states need a flat excise tax in addition to a variable-rate tax?

A: Some states have a motor fuel tax that is solely a variable-rate formula, without a flat excise tax. This arrangement is common in states that adjust their tax based on the average wholesale price of motor fuel.

One advantage of having a variable-rate formula alone is that it allows for a larger variable-rate formula (as is most often the case, the percentage of the average wholesale price of gasoline can be greater when used alone versus when combined with a flat excise tax). This will collect more revenue if motor fuel prices increase. Conversely, if prices fall, the tax will collect much less revenue. A state-imposed ceiling and floor can help mitigate the market volatility. As seen recently in several states (Kentucky, Vermont and West Virginia), a floor may need to be revisited and adjusted as prices fluctuate over time.

The legislation passed as the price of gasoline was dropping. For several years, the tax has remained at its floor price of 16.2 cents-per-gallon.

The additional flat excise tax provides some stability and ensures that the state always collects a minimum amount of revenue. Furthermore, states generally add the variable-rate tax on top of the existing flat excise tax, ensuring that new revenue is generated from the start.

Q: Do you need to choose just one variable-rate formula?

A: Many states have a combination of variable-rate formulas. For example, Maryland has a flat excise tax, a sales tax on the average wholesale price of gasoline, and a variable-rate tax indexed to the **Consumer Price Index (CPI)**. See the appendix for examples of other states that use multiple variable-rate methods to calculate their motor fuel tax.

Appendix B: Current Variable-Rate State Gas Taxes

State	Variable-Rate Description	Ceiling	Floor
California	Flat excise tax, indexed to inflation starting in 2020.		
Connecticut	Connecticut's state gas tax is composed of two separate taxes: a 25 cents-per-gallon flat excise tax and a "petroleum gross receipts earning (PGRE) tax" of 8.1 percent (determined July 2013) on the wholesale level to gasoline and a variety of petroleum products (excluding heating oil).	x	
District of Columbia	8 percent tax on the wholesale price of gasoline.	x	x
Florida	A fuel sales tax is adjusted to the percentage change of the CPI (as issued by the Department of Labor).		x
Georgia	26 cents-per-gallon state gas tax, indexed to both the Corporate Average Fuel Economy (CAFE) and the Consumer Price Index (the latter of which will sunset after July 1, 2018).		
Indiana	Flat 28 cents-per-gallon excise tax, indexed to inflation for the next seven years (capped at a 1 cent increase per year).	x	
Kentucky	Variable excise tax of 9 percent of the average wholesale price of gas.	x	x
Maryland	The state gas tax has two parts: an excise gas tax indexed to CPI to adjust for inflation; and a 3 percent state sales tax which is applied to the wholesale price of gasoline.	x	x
Michigan	Flat excise tax of 26.3 cents-per-gallon, indexed to changes in inflation as reported by the Consumer Price Index beginning Jan. 1, 2022. Increases are capped at 5 percent per year. An additional 6 percent general sales tax on motor fuel purchases is included.		
Nebraska	Three components to the state gas tax—variable, fixed, and wholesale. Gas tax includes a 16.3 cents-per-gallon flat excise tax (increased May 2015, fully implemented January 2019); a 5 percent tax on the average wholesale price of fuel (charged to producers, suppliers, distributors, wholesalers, importers and retailers of motor fuels); and a variable rate tax which is increased as needed by the state legislature to ensure adequate funding for transportation projects.		
New York	8 cents-per-gallon flat excise tax provides majority of transportation funds, with an additional state sales tax of 4 percent (capped at 8 cents-per-gallon), and a petroleum business tax (PBT), imposed on petroleum businesses operating within the state and passed on to consumers. PBT is equal to a base rate of 7.2 percent of gross receipts from petroleum sales and is annually adjusted based off of inflation.		

State	Variable-Rate Description	Ceiling	Floor
North Carolina	Calculated based on changes in both the national Consumer Price Index (making up 25 percent of the new tax) and the state population (making up 75 percent of the tax). The base rate will be 34 cents-per-gallon.		x
Pennsylvania	2013 law eliminated the state retail gas tax paid at the pump and removed the capping process on the Oil Company Franchise Tax (OCFT, calculated by the state Department of Revenue), which was charged at the wholesale level. Uncapping process occurred gradually—the rate was set at \$1.87 beginning January 2014, increased to \$2.49 January 2015, and eliminated entirely January 2017.		x
Rhode Island	33 cents-per-gallon flat excise tax on gasoline, indexed to the Consumer Price Index for all Urban Consumers (CPI-U).		x
Utah	16 percent tax on the average wholesale price of gasoline, effective once the statewide average wholesale price of motor fuel reaches \$1.78 per gallon (expected to kick in on Jan. 1, 2019).	x	x
Vermont	State gas tax is comprised of a 12.1 cents-per-gallon flat excise tax, a Motor Fuel Transportation Infrastructure Assessment (MFTIA) of 2 percent of the average quarterly retail gas price, and a Motor Fuel Tax Assessment (MFTA) of 13.4 cents-per-gallon or 4 percent of the tax-adjusted retail gas price, (whichever is greater) upon each gallon of motor fuel sold by the distributor, not to exceed 18 cents-per-gallon.		x
Virginia	Rate of 5.1 percent of the average wholesale price of gasoline.		x
West Virginia	Flat tax gas tax of 20.5 cents-per-gallon plus 5 percent of the average wholesale gasoline price	x	x