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Variable-Rate State Gas Taxes

A Resource Guide of Current Laws

August 2017

EXECUTIVE SUMMARY

This document provides general information on some of the variable rate strategies states are using to fund transportation investments.

A variable-rate gasoline tax is a tax which adjusts the cents-per-gallon charge at the pump based off of the wholesale price of gasoline, general economic inflation, or a combination of the two. A variable-rate is an alternative to a flat excise tax on gasoline, which charges a fixed cents-per-gallon amount on fuel purchases. As a fixed-rate tax, a flat excise tax on gasoline does not respond to external economic factors, such as the rising cost of construction due to inflation.

A variable-rate state gas tax can be implemented in several ways. Some states determine the state gas tax by charging a percentage of the gasoline price at the wholesale level. Several states charge a combination of this percentage-based tax in addition to a flat excise tax on gasoline. Other states consult direct measures of inflation to determine the gas tax, such as the Consumer Price Index (CPI). All of these states recalculate the amount charged by the tax on a regular basis to accommodate any economic changes.

To ensure that transportation infrastructure supported by the state gas tax is adequately funded, 20 states and the District of Columbia have instituted a variable component to their gas tax.

Five of those states—Connecticut, New York, Utah, Vermont and West Virginia—have a flat excise tax on motor fuel and an additional percentage-based tax on the wholesale price of gasoline. Three states—Kentucky, Pennsylvania, and Virginia—determine their gasoline prices solely by a percentage of the wholesale price of gas. Five states—California (beginning Jan. 2019), Florida, Indiana (ending 2024), Michigan (beginning Jan. 2022), and Rhode Island—determine gas prices by consulting the CPI for economic changes. Four states— Georgia, Maryland, Nebraska, and North Carolina— use multiple factors to calculate their gas tax.

Several other states consider additional components when determining the state gas tax, such as:

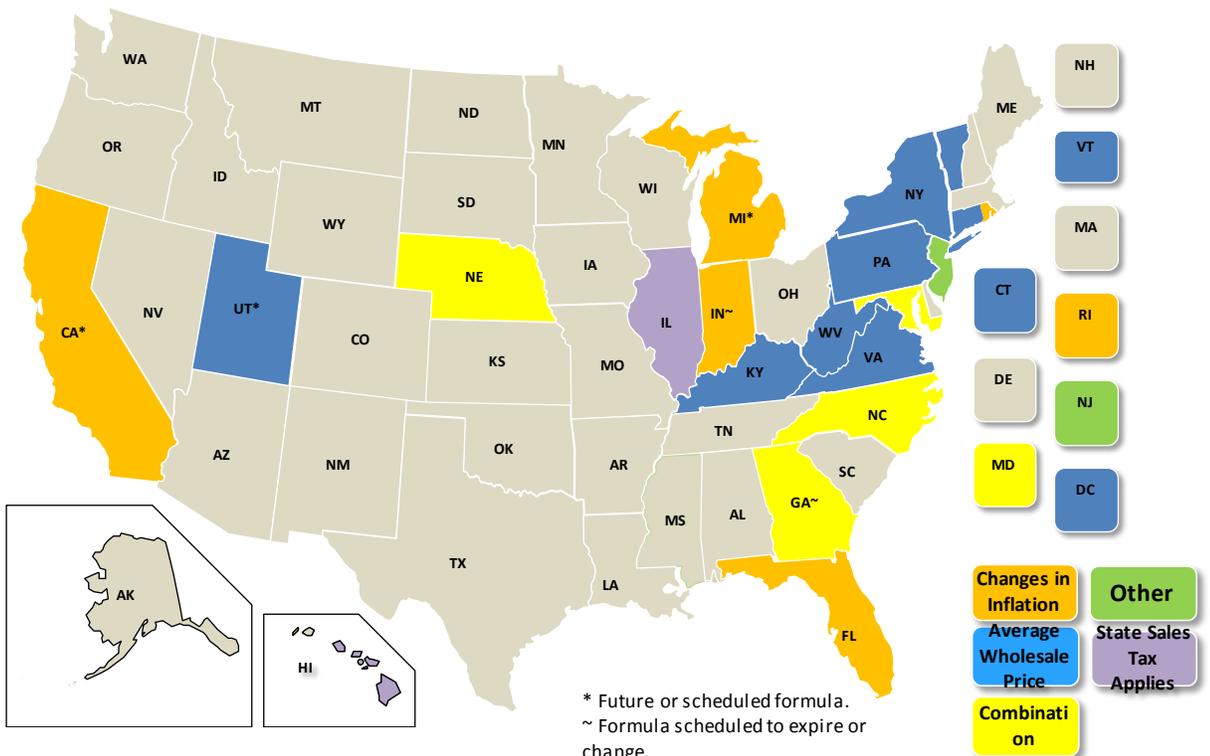
- In addition to a tax on the price of gasoline, Nebraska’s legislature also has the power to recalculate the state motor fuel tax in order to sufficiently make payments on the state’s highway improvement bonds.
- Hawaii and Illinois charge a general state sales and use tax, in addition to a flat excise tax on gasoline. Indiana and Michigan also levy the state sales tax on fuel purchases, in addition to another variable-rate component. State sales taxes may not be utilized for transportation purposes, but can impact the price of gasoline at the pump.
- Some states also have a petroleum gross receipts tax, imposed on either the sale of petroleum products or the gross receipts of the petroleum company. New Jersey charges a 12.85 percent tax, on the first sale of gasoline, liquified petroleum and diesel within the state. The tax is charged as 22.6 cents-per-gallon, but can be adjusted by the state legislature if the price of fuel drops below the state’s transportation funding needs.

Breakdown of variable-rate state gas taxes

	General sales tax applies to motor fuel	Motor fuel tax calculated by percentage of gas price in addition to flat excise tax	Motor fuel tax calculated by percentage of gas price	Indexed to Consumer Price Index and/or CAFE	Other	Frequency Rate is Updated					Ceiling	Floor
						Annual	Six months	Two Years	Monthly	Quarterly		
California*				x		X						
Connecticut		X				X					X	
DC			X				X				X	X
Florida				X		X						X
Georgia				X		X						
Hawaii	X											
Illinois	X					X						
Indiana	x			X		x			X		x	
Kentucky			X			X					X	X
Maryland		X		X		X					x	X
Michigan*	x			X		X						
Nebraska		X			X		X					
New Jersey					X							
New York		X				X						
North Carolina				x	X	x						
Pennsylvania			X			X						X
Rhode Island				X				X				X
Vermont		X								X		x
Virginia			X			X						X
West Virginia		X				X					X	X
Utah*			X			X					X	X

* Legislation approved for a future variable-rate tax.

20 states and the District of Columbia have a variable-rate state gas tax.



CALIFORNIA

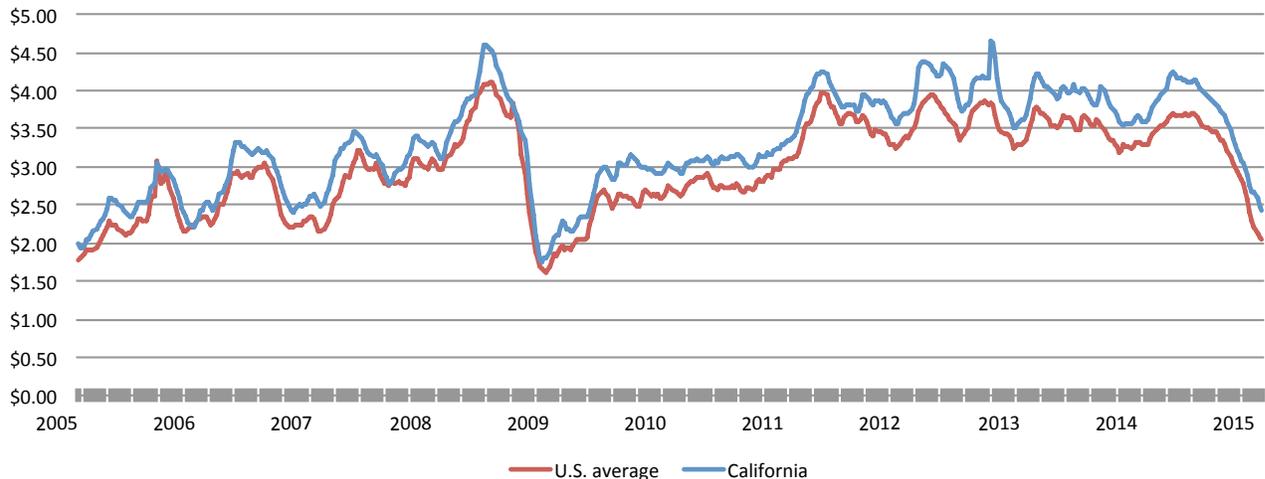
* An alteration to the variable-rate tax was approved April 28, 2017. Beginning Jan. 1, 2019, the state gas tax will adjust based on the rate of inflation.

Currently, the state has an “adjustable tax”. The “Fuel Tax Swap” of 2010 resulted in an “adjustable” gas tax, comprised of a cents-per-gallon base state excise tax plus a 2.25 percent sales tax on motor fuel purchases (reduced from the state’s 6 percent general sales tax). To ensure the sales tax percentage on motor fuel does not affect overall cost of taxes paid at the pump when compared to the previous tax structure, the state’s excise tax on fuel is adjusted annually so that any change in the variable-rate percentage is revenue neutral.

- **Category:** Wholesale Tax in Addition to Flat Excise Tax (currently Indexed to CPI (beginning January 2019))
- **Statute:** Cal. Revenue & Taxation Code §7360
 - **Legislation:** Assembly Bill x8-6 (Chapter 11, Statutes of 2010), Senate Bill 70 (Chapter 9, Statutes of 2010), and Assembly Bill 105 (Chapter 6, Statutes of 2011)
- **Date:** July 1, 2010
- **Frequency:** Annual
- **Limits:** None found.
- **Uses:** Transportation Fund
- **Additional Taxes:**
 - Underground storage fee (currently 1.4 cents-per-gallon);
 - Local sales tax measures.

As shown in the graph below, changes in California’s gas prices reflects the trends in the U.S. average price of gasoline. This trend is apparent before and after gas tax legislation was enacted in 2010.

**California and U.S. Average Weekly Retail Regular Gasoline Prices
1/3/2005-1/26/2015**



Source: U.S. Energy Information Administration

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).

- **Category:** Wholesale Tax in Addition to Flat Excise Tax
- **Statute:** Conn. Title 12, Chapter 227 Sale of Petroleum Products Gross Earnings Tax, §12-587
- **Date:** July 1, 1980 (last raised 2005)
- **Frequency:** Annual
- **Limits:** PGRE tax is capped at \$3 per gallon.
- **Uses:** Gross receipts tax deposited into the General Fund and transferred to the Special Transportation Fund.

DISTRICT OF COLUMBIA

Eight percent tax on the wholesale price of gasoline.

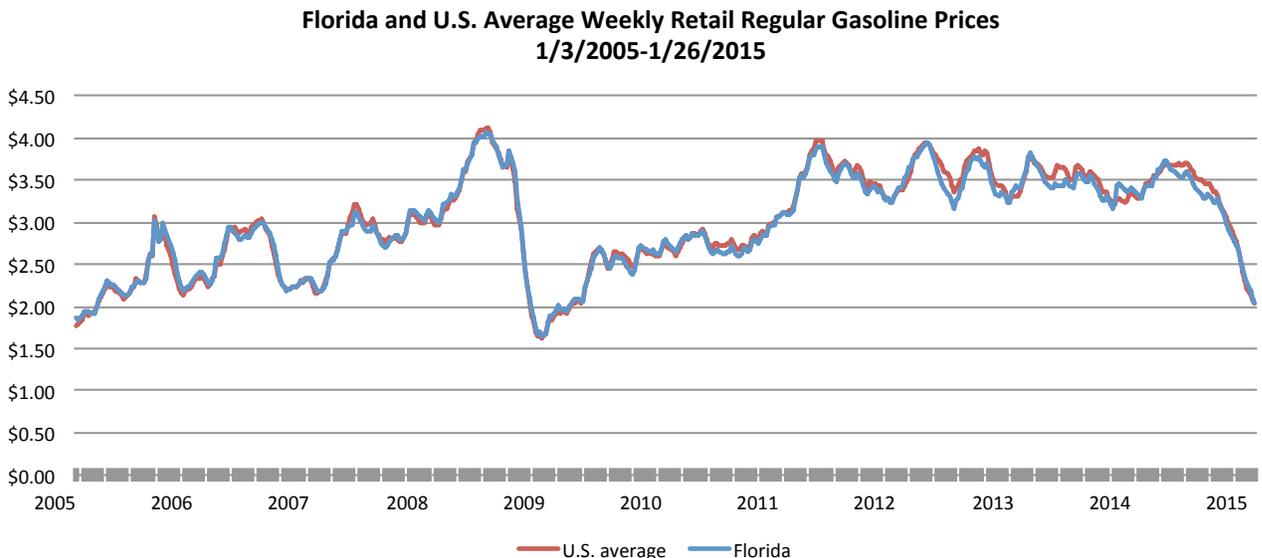
- **Category:** States where gas tax is calculated by average wholesale price
- **Statute:** DC § 47-2301
Legislation: Fiscal Year 2014 Budget Support Act of 2013 (search: B20-0199)
- **Date:** October 1, 2013
- **Frequency:** Every six months.
- **Limits:** The average wholesale price of motor fuel cannot be less than \$2.94. It also cannot fluctuate by more than 10 percent from the average wholesale price of motor fuel from the previous six months.
- **Uses:** All revenue deposited into the Highway Trust Fund.

FLORIDA

A fuel sales tax is adjusted to the percentage change of the CPI (as issued by the Department of Labor).

- **Category:** Indexed to CPI
- **Statute:** Fla. Stat. Ann. §206.41
- **Date:** January 1992
- **Frequency:** Annual
- **Limits:** Floor of 6.9 cents-per-gallon
- **Uses:** Transportation [with diversion to Agriculture Emergency Eradication Trust Fund (0.65 percent); General Revenue Fund (7.3 percent); Department of Environmental Protection-\$6.3 million for aquatic plant management/ \$2.5 million for Fish and Wildlife, Marine Resources, Conservation Trust Fund.]
- **Additional Taxes:**
 - Local government flat excise tax: 3 cents-per-gallon to counties, 1 cent-per-gallon to municipalities;
 - Inspection fee;
 - Local option fuel tax;
- State Comprehensive Enhanced Transportation System tax (indexed to inflation).

As shown in the graph below, changes in Florida's gas prices reflects the trends in the U.S. average price of gasoline.



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).

- **Category:** Indexed to CPI and CAFE
- **Statute:** O.C.G.A § 48-9-3 (Excise Tax) & O.C.G.A. § 48-9-14 (State and Local sales tax)
- **Frequency:** Every six months, based off of average wholesale prices.
- **Limits:** None found.
- **Uses:** Transportation
- **Additional taxes:** Special purpose local option sales tax (capped at \$3 per gallon and used solely for transportation purposes) and a local government sales tax of up to 1 percent.
- **Notes:** 2015 legislation adjusted the new flat excise tax of 26 cents-per-gallon to the fuel efficiency changes published in the United States Department of Energy Fuel Economy Guide, and index it to the Consumer Price Index (CPI from July 1, 2016 until July 1, 2018).

HAWAII

Motor fuel has a 4 percent tax on distributors (called the General Excise Tax), which applies to all goods and services, including motor fuels.

- **Category:** General Sales Tax Applies to Motor Fuel
- **Statute:** Hawaii Rev. Stat. §243, Hawaii Rev. Stat. §248-8 & Hawaii Rev. Stat. §249
- **Limits:** None found.
- **Uses:**
 - General Excise Tax is deposited to the state's general fund.
 - County tax in Honolulu, Maui and Kauai goes towards mass transit.
 - Other county taxes are deposited in the state highway fund.
- **Additional taxes:**
 - County taxes (revenues from the 0.5 percent Honolulu county surcharge are dedicated to rail mass transit).
 - 0.1 cent-per-gallon environmental response tax.

ILLINOIS

6.25 percent statewide general sales tax.

- **Category:** General Sales Tax Applies to Motor Fuel
- **Statute:** Ill. Stat. ch. 30, §740, Ill. Stat. ch. 35, §105, Ill. Stat. ch. 70, §3615
- **Frequency:** Annual
- **Limits:** None found.
- **Uses:**
 - 80 percent (5 percent of the tax) is diverted to the state, and is then directed to various transportation funds, including the Downstate Public Transportation Fund and the Regional Transportation Authority.
 - 20 percent (1.25 percent of the tax) goes to the State and Local Sales Tax Reform Fund.
- **Additional taxes:**
 - Local sales tax may be applied by any city over 100,000; can vary between 6.25-10.5 percent.
 - 1.1 cents-per-gallon for underground storage tank fund.

INDIANA

~ Beginning July 1, 2017, the gas tax will be indexed to changes in inflation (capped at 1 cent per gallon increase annually). The indexing is set to expire in seven years.

Seven percent gasoline use tax rate (charged in addition to the state's flat excise gas tax of 18 cents-per-gallon), calculated by multiplying the statewide average retail price per gallon of the previous month (provided by Oil Price Information Service) by 7 percent, and then rounding to the nearest one-tenth of 1 cent. Tax is collected when a qualified gasoline distributor sells to a nonqualified distributor, and the tax is then included in gas price at the pump.

- **Category:** Wholesale Tax in Addition to Flat Excise Tax; Indexes to CPI
- **Statute:** Ind. Code Ann. §6-2.5-7, §6-6-1.1, Ind. Code 6-2.5-3.5 & Ind. Code 6-2.5-10-1
 - **Legislation:** Senate Bill 479 (2013) and House Bill 1002 (2017)
- **Date:** July 1, 2014/ July 1, 2017
- **Frequency:** Monthly/ Annual
- **Limits:** None found.
- **Uses:** As with the general state sales tax, the gasoline use sales tax is deposited into the state's general fund. Of all revenue in the state general fund:
 - One percent is deposited into the state's motor vehicle highway account;
 - 0.029 percent is deposited into the industrial rail service fund; and
 - 0.123 percent is deposited into the commuter rail service fund.
- **Additional taxes:** One cent-per-gallon oil inspection fee.

KENTUCKY

Variable excise tax of 9 percent of the average wholesale price of gas.

- **Category:** Adjusts based on wholesale price of gasoline
- **Statute:** Ky. Revised Statutes, 1980: KRS 138.220
- **Date:** July 1, 1980
- **Frequency:** Annual
- **Limits:** This rate cannot increase or decrease more than 10 percent per year from the last quarter of the previous fiscal year, and cannot collect less than 26 cents-per-gallon.
- **Uses:** State road fund.
- **Additional taxes:** In addition, Kentucky collects:
 - A fixed “supplemental highway user motor fuel tax” of 5 cents-per-gallon;
 - Two cents-per-gallon for “special fuels” such as diesel; and
 - Underground Storage Tank cleanup fee of 1.4 cents-per-gallon.
- **Notes:** March 2015 legislation altered the variable-rate state gas tax. From July 2015 through June 2016, the average wholesale price of gasoline will be set at the new floor determined by the legislature, \$2.177 per gallon. Beginning July 2016, the average wholesale price of gasoline will be calculated annually.

MARYLAND

The state gas tax is comprised of two parts: an excise gas tax indexed to CPI in order to adjust for inflation; and a 3 percent state sales tax which is applied to the wholesale price of gasoline.

- **Category:** States where gas tax is indexed to CPI/Wholesale Tax in Addition to Flat Excise Tax
- **Statute:** Md. Tax – General §9-305
 - **Legislation:** Transportation Infrastructure Investment Act of 2013
- **Date:** July 1, 2013
- **Frequency:** Annual
- **Limits:** If there is a decline or no growth in the CPI, the motor fuel tax does not change. The excise tax rate has a ceiling of 8 percent of the previous year’s rate.
- **Uses:** Transportation
- **Notes:**
 - If Congress fails to pass a federal Marketplace Fairness Act, or similar legislation to allow states to require internet sellers to collect sales tax, sales tax on gasoline will increase another 2 percent effective January 1, 2016.
 - Maryland Case Study available through the Transportation Investment Advocacy Center.

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.

- **Category:** Indexed to the Consumer Price Index
- **Statute:** Mich. Comp. Laws § 205.75
- **Limits:** None found.
- **Uses:**
 - Motor fuel tax and indexing distributing to the Michigan Transportation Fund.
- **Additional taxes:** 0.875 cent-per-gallon for environmental regulation fee for refined petroleum fund.

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.

- **Category:** Wholesale Tax in Addition to Flat Excise Tax
- **Statute:** Neb. Rev. Stat. §66-489.02 & Neb. Rev. Stat. §66-4,144
- **Date:** July 1, 2009
- **Frequency:** Every six months.
- **Limits:** None found.
- **Uses:** Transportation
 - All revenue generated from these taxes is deposited into the state's Highway Trust Fund (66 percent of the Highway Cash Fund for the Department of Roads; 17 percent to counties via the Highway Allocation Fund for road purposes; and 17 percent to municipalities via the Highway Allocation Fund for street purposes).
- **Additional taxes:**
 - 0.9 cent-per-gallon release prevention fee for gasoline; and
 - 0.3 cent-per-gallon release prevention fee for diesel and other fuels.

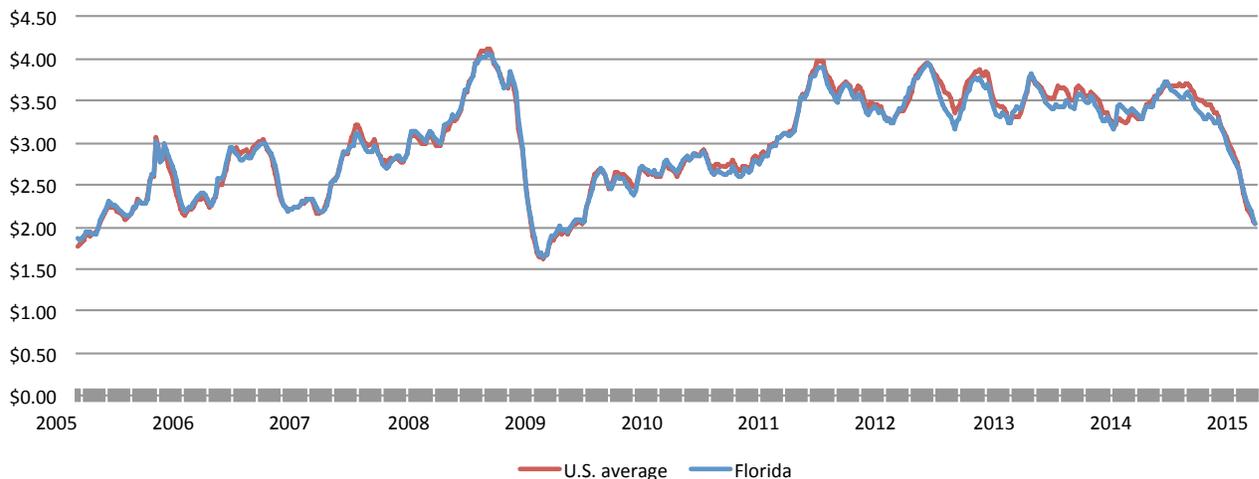
NEW YORK

Eight 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.

- **Category:** Wholesale Tax in Addition to Flat Excise Tax
- **Statute:** N.Y. TAX. LAW § 523 : NY Code - Section 523: Fuel use tax and N.Y. TAX. LAW § 301-j: NY Code - Section 301-J: Supplemental petroleum business tax and supplemental tax on aviation gasoline component of aviation fuel business tax
- **Frequency:** Annual
- **Limits:** Each January the rate change cannot be greater than 5 percent of the previous year's rate.
- **Uses:**
 - "Fuel Use Tax" (comprised of the flat excise tax and state sales tax) is deposited into the Dedicated Highway and Bridge Trust Funds.
 - Since April 2001, PBT revenues are divided among the Dedicated Highway and Bridge Trust Funds, (which receives 50.6 percent), the Dedicated Mass Transportation Fund (29.7 percent) and the mass Transportation Operating Assistance Fund (19.7 percent).
- **Additional Taxes:**
 - 0.05 cent-per-gallon petroleum testing fee (gasoline only);
 - Population-based state sales tax for Metropolitan Commuter Transportation District; and
 - Local county sales tax.

As shown in the graph below, changes in New York's gas prices reflects the trends in the U.S. average price of gasoline.

Florida and U.S. Average Weekly Retail Regular Gasoline Prices
1/3/2005-1/26/2015



NEW JERSEY

Petroleum products gross receipts tax on gasoline, diesel and liquefied petroleum gas of 12.85 percent of the first sale of fuel within the state. Currently charged as 22.6 cents-per-gallon, plus an initial tax of 4 cents-per-gallon (26.6 cents-per-gallon total). The tax can be adjusted legislatively if the price of a barrel of fuel falls to ensure the state's Transportation Trust Fund revenue needs are met.

- **Category:** Other
- **Statute:** P.L. 2016, Chapter 57
Legislation: Assembly Bills 10 and 12 (2017)
- **Date:** Effective November 1, 2016
- **Frequency:** Quarterly, as needed
- **Limits:** None
- **Uses:** Transportation
- **Additional taxes:** Flat excise tax of 10.5 cents-per-gallon.
- **Notes:** See TIAC case study for an in-depth analysis of 2017 changes.

NORTH CAROLINA

Beginning January 2017, North Carolina's state gas tax will be calculated based on changes in both the national Consumer Price Index (making up 25 percent of the new tax) and in the state population (making up 75 percent of the tax). The base rate will be 34 cents-per-gallon.

- **Category:** Adjusts based on CPI and changes in population
- **Statute:** N.C. §105-449.80. Tax rate & §105-449.81
Legislation: Senate Bill 866 (1985)
- **Date:** Effective January 2017
- **Frequency:** Annual
- **Limits:** None
- **Uses:** Transportation
 - 75 percent deposited in the Highway Fund (general repair and maintenance of state roads); and
 - 25 percent deposited in the Highway Trust Fund.
- **Additional taxes:** 0.25 cent-per-gallon inspection tax
- **Notes:**

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 will occur gradually—the rate was set at \$1.87 beginning January 2014, then increased to \$2.49 January 2015, and the OCFT cap will be eliminated entirely January 2017.

- **Category:** Adjusts based on wholesale price of gasoline
- **Statute:** Pa. Consolidated Statute Title 75 (Vehicle Code), Chapter 95
 - **Legislation:** House Bill 1060
- **Date:** Effective January 2017
- **Frequency:** Annual
- **Limits:** Beginning in January 2017, a floor of \$2.99 will be put in place, preventing the tax from collecting below that level.
- **Uses:** Highways
- **Notes:** Pennsylvania Case Study available through the Transportation Investment Advocacy Center.

RHODE ISLAND

33 cents-per-gallon flat excise tax on gasoline, indexed to the Consumer Price Index for all Urban Consumers (CPI-U).

- **Category:** Indexed to Consumer Price Index
- **Statute:** R.I. § 31-36-7
 - **Legislation:** 2014—H 7133 (Budget Bill)
- **Date:** Effective July 1, 2015.
- **Frequency:** Bi-annual (every other year)
- **Limits:** Floor in place preventing generated proceeds from falling below 2015 rates of 33 cents-per-gallon.
- **Uses:** Transportation

UTAH

16 percent tax on the average wholesale price of gasoline, to take effect once the average wholesale price of motor fuel reaches \$1.78 per gallon.

- **Category:** Adjusts based on wholesale price of gasoline (**Beginning when the AWP reaches \$1.78 per gallon**)
- **Statute:** Utah § 59-13-201
 - **Legislation:** 2014 House Bill 562/ 2017 Senate Bill 276
- **Frequency:** Annually
- **Limit:** Once the average wholesale price of motor fuel reaches \$1.78 per gallon, the tax cannot fall less than that amount (collecting no less than 29 cents-per-gallon), and cannot increase more than 40 cents-per-gallon.
- **Uses:** Transportation Fund
- **Additional Taxes:**
 - County option sales and use tax.

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.

- **Category:** Wholesale Tax in Addition to Flat Excise Tax
- **Statute:** Vt. Statute Title 23, Chapter 028, Subchapter 001: § 3106 Imposition, rate, and payment of tax
 - **Legislation:** 2013 House 510 (Act 12)
- **Frequency:** Quarterly
- **Limit:** Base assessment on MFTA, floor of \$3.96 for MFTIA
- **Uses:** Transportation
- **Additional Taxes:**
 - \$0.01 petroleum clean up fee.
- **Notes:** Vermont Case Study available through the Transportation Investment Advocacy Center.
 - Legislation to put a floor on the MFTIA proposed in 2015. Pending consideration by the legislature at time of publication.

VIRGINIA

Rate of 5.1 percent of the average wholesale price of gasoline.

- **Category:** Adjusts based on wholesale price of gasoline
- **Statute:** Va. § 58.1-2217
 - **Legislation:** House Bill 2313 (2013)
- **Date:** July 1, 2013
- **Frequency:** Annual
- **Limits:** A floor is set to prevent the tax from collecting less than the average wholesale gas and diesel price on Feb. 22, 2013.
- **Uses:** Transportation
- **Additional taxes:**
 - 0.6 cent-per-gallon petroleum storage tank fee; and
 - 2.1 percent sales tax in certain locations.
- **Notes:** Virginia Case Study available through the Transportation Investment Advocacy Center.

WEST VIRGINIA

Flat tax gas tax of 20.5 cents-per-gallon plus 5 percent of the average wholesale gasoline price.

- **Category:** Wholesale Tax in Addition to Flat Excise Tax
- **Statute:** W.V. §11-14C-5. Taxes levied; rate.
- **Date:** January 1, 2004/ Updated July 1, 2017 (Senate Bill 1006)
- **Frequency:** Annual
- **Limits:** Wholesale tax rate cannot fluctuate more than 10 percent from the previous year, or fall below \$3.04 per gallon.
- **Uses:** State road fund.

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The TIAC website, www.transportationinvestment.org, was created so transportation investment advocates do not have to “re-invent the wheel” to mount successful campaigns. It exists to put in one place—and promote the sharing of—strategies... sample political and communications tools... legislative and ballot initiative language... and information on where to obtain professional campaign advice, research and help. To subscribe to at no cost—and receive via email—the regularly updated TIAC blog, visit the website.

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