

Questions & Answers

about Montana's State
Fuel Tax Allocations to
Cities and Counties

June 2009



State Fuel Tax Allocations

Dear State Fuel Tax Revenue User:

MCA 15-70-101 allocates state fuel taxes to Montana's 127 incorporated cities, to all 54 counties, and two consolidated city-county governments. We frequently field questions about this program. To help answer them, we've prepared this information booklet. It contains the most frequently asked questions about fuel tax allocations. For those issues or questions which are not addressed in the booklet, MDT staff is available at the telephone numbers shown on page 10.

We hope this booklet gives you the information you need to understand this important program. If you have suggestions for improvement, please let us know.



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Montana Code Annotated 2009

15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 17-2-124, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of \$16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of \$100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of \$6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of \$10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2) (b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other in-

corporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of \$25,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified

statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs.

Questions & Answers

- Q. Generally speaking, what is this program for?
- A. It provides state gasoline tax dollars directly to all 127 cities, 54 counties, and two consolidated city-county governments. These funds can be used for the construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys.
- Q. How much money is allocated to the cities and counties?
- A. Each year, a total of \$16,766,000 is made available for this program. \$100,000 is allocated to the LTAP Center at MSU in Bozeman, \$10,360,000 is allocated to the incorporated cities and towns, and \$6,306,000 is allocated to the counties (including the two consolidated city-county governments).
- Q. How much money does my city and county receive?
- A. It varies slightly from year to year. About June of each year, the Department of Transportation notifies each city and county regarding the amount of fuel tax each will receive during the fiscal year beginning July 1. Notifications are sent to all city clerks and to all county clerks and recorders.
- Q. How and when are the payments made to the cities and counties?
- A. Each month, the MDT sends a warrant to each city, county, and consolidated city-county government in Montana. The payments are made in twelve monthly installments. The first monthly payment may be slightly different than the other eleven payments due to rounding out the total allocation.
- Q. Can my county use these funds to pay a local contractor to accomplish work for us?

- A. If a city or county desires to hire a contractor for construction or maintenance and the project will exceed \$25,000, MCA 15-70-101 requires that the job be awarded to the lowest responsible bidder according to applicable bidding procedures.
- Q. For what types of projects can these funds be used?
- A. Eligible uses of these funds are prescribed in MCA 15-70-101. MDT does not regulate this statute, nor do we attempt to interpret the law on behalf of the cities and counties. The eligible uses of these funds are fairly well defined in the law. If you have questions, we suggest you consult with your city or county attorney for further clarification or interpretation.
- Q. If MDT does not play a regulatory role, how are the uses of these funds monitored?
- A. The Montana Department of Commerce periodically conducts local government audits. These audits may include looking at how the cities and counties use their fuel tax allocations.
- Q. What factors are considered when calculating the city and county fuel tax allocations?
- A. For cities, population and city street and alley mileage are considered. Each is given 50% of the weight in the allocation formula. For counties, population, rural road mileage, and land area are considered. Weights of 40%, 40%, and 20% are given to each factor respectively.
- Q. Sometimes the information used in the formula relating to my city or county does not change from one year to the next, yet the allocation amount changes. Why?

A. The amounts of the allocations are based on a relative comparison of an individual city or county to all other cities or counties. Even though the values in your city or county may remain the same, the same formula variables (particularly population and road mileage) are changing in other cities or counties. Therefore, your relative weight compared to all other cities or counties will change and your allocation will also change.

Q. How does MDT ensure they are using the most current information when calculating fuel tax allocations?

A. Land area figures obviously remain constant from year to year. We use the most recent census figures available from the U.S. Bureau of the Census and/or Montana Department of Commerce. To keep track of road mileage, MDT communicates annually with the cities and counties to certify the road, street, and alley mileage.

Q. Who are the “consolidated city-county governments” referenced in the law?

A. They are Butte-Silver Bow and Anaconda-Deer Lodge.

Q. The statute says a third-class city or town can spend 25% of their allocation in capital equipment and supplies. How are “third-class cities and towns” defined?

A. MCA 7-1-4111 defines cities and towns by population in the following manner:

- First-class city..... 10,000 or more
- Second-class city..... greater than 5,000 & less than 10,000
- Third-class city..... greater than 1,000 & less than 5,000
- Town greater than 300 & less than 1,000

- Q. What constitutes “rural road mileage”?
- A. Rural road mileage is all mileage (excluding the NHS and Primary mileage) outside of incorporated cities and towns that is open to public travel. Private ranch, farm, and residential driveways, primitive trails, and field approaches are not considered part of the rural road mileage within a county.
- Q. When is a road considered “open to public travel”?
- A. For the purpose of this statute, a road is considered open to public travel when that section of the road is available for public use (except during periods of extreme weather or emergency conditions), passable by a two-wheel-drive passenger car, and open to the general public for use without restrictive gates, prohibitive signs, or regulations other than restrictions based on the size and weight of the vehicle.
- Q. Must cities or counties have maintenance jurisdiction of a road to receive fuel tax funding for it?
- A. No. The law simply states, for counties, “the rural road mileage in each county, exclusive of the national highway system and the primary system, as it bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system.” Nowhere does it refer to county roads or maintenance responsibility. For example, many forest service roads and BIA roads meet the criteria as public roads and are included in the rural road mileage for each

For cities, the law reads “the city or town streets and alley mileage, exclusive of the national highway system and the primary system, within the corporate limits of the city or town as it bears to the total street and alley mileage, exclusive of the national highway system and the primary system, within

the corporate city limits of all cities and towns in Montana.” Again, nowhere does it refer to ownership or maintenance responsibility. For example, there are streets in some of the cities and towns in Montana that are under the jurisdiction of the county, yet by law, if they meet the guidelines as public streets, they are included in the mileage for that city.

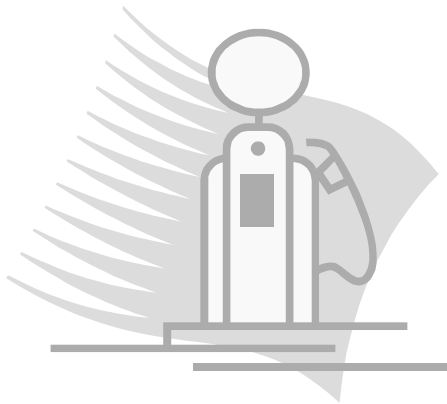
Q. How is the public road mileage determined for cities and counties?

A. The Department of Transportation determines road and street mileage in two ways. The first is through the annual certification process. Each year around September 1, the Department distributes a packet of information to all the cities and counties to certify the road and street mileage. The packet contains two sets of maps and a certification form. Each city and county reviews the maps and makes the appropriate additions or deletions. The total mileage added or deleted is then entered on the certification return form along with the total mileage for that city or county. The Road Inventory and Mapping Section then reviews and approves all mileage changes. In the case that a major increase or decrease in mileage occurs, MDT determines whether a field inventory is warranted.

Field Inventories, which are performed to ensure a fair and equitable distribution of the fuel tax allocation for all cities and counties, are the second way in which the Department of Transportation determines road and street mileage. The staff of the Road Inventory and Mapping Section notifies the city or county of an upcoming inventory and encourages the appropriate officials to attend during the process of driving and measuring all the roads in question. When the inventory is complete, the officials are given the results for review and approval.

State Fuel Tax Allocations

- Q. If I have other questions about this program, who do I call at MDT?
- A. If you have questions about how the program is administered, call the Road Inventory and Mapping Supervisor at (406) 444-6111. If you have any questions about your monthly payments, call the Accounting Systems and Operations Supervisor at (406) 444-6037.



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