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Transportation

M-1 The Relationship between KTA and KDOT

The Kansas Turnpike Authority (KTA) is an entity separate from the Kansas Department of Transportation (KDOT), but the two entities work together to serve the transportation needs of Kansas. This article discusses the statutory relationship between the KTA and KDOT.

KTA and KDOT

In 1953, the Kansas Legislature created the KTA as a separate, quasi-public organization. The KTA was tasked with constructing, operating, and maintaining Kansas Turnpike (Turnpike) projects. To pay for the projects, the KTA is authorized to issue bonds payable solely or partly from KTA revenues. The proceeds of those bonds are to be used only to pay for costs of the project or projects for which the bonds are issued, and the bonds are not a debt of the State or of any of its political subdivisions. The KTA has a statutory relationship with KDOT in terms of governance, contracts, and potentially adding Turnpike projects to the state highway system.

The KTA Board

A five-member board oversees KTA operations. Two of these members are appointed by the Governor for four-year terms.

The Governor's appointees must be residents of Kansas and be owners of revenue bonds issued by the KTA. Additionally, one member must be the Secretary of Transportation (Secretary), and another must be the chairperson of the Senate Committee on Transportation.

The fifth member must be a member of the House Committee on Transportation and is appointed by the Speaker of the House of Representatives. The KTA elects one member as chairperson and another as vice-chairperson. The KTA also must elect a secretary-treasurer who need not be a member of the KTA (KSA 68-2003).

Thus, the KTA has always had a relationship with KDOT by virtue of the Secretary serving on the KTA board.

The Secretary's role as a member of the KTA significantly expanded with enactment of 2013 HB 2234. Beginning July 1, 2013, the

Secretary became the director of operations of the KTA. The provision was set to sunset July 1, 2016, but enactment of 2015 HB 2085 removed the sunset and changed the title to “director” (KSA 68-2003). As director of the KTA, the Secretary is responsible for the daily administration of the toll roads, bridges, structures, and facilities constructed, maintained, or operated by the KTA. The director or the director’s designee has such powers as necessary to carry out these responsibilities. The KTA’s chief executive officer (CEO) directs daily operations.

Contracts between the Secretary and the KTA

The KTA and KDOT may solidify their partnership by forming contracts with each other. The Secretary and KTA are authorized and empowered to contract with one another to provide personnel and equipment for preliminary project studies and investigations (KSA 68-2021). Generally, KSA 68-2021 allows the KTA to contract with KDOT for use of KDOT resources for certain types of work related to KTA projects. These provisions have remained essentially unchanged since 1955.

A statute added in 2013 authorizes the Secretary and KTA to contract with each other to provide personnel and equipment and other resources for recordkeeping, reporting, administrative, planning, engineering, legal, and clerical functions and for construction, operation, and maintenance of Turnpike projects and state highways (KSA 68-2021a). Additionally, KSA 68-2021a requires the two parties to minimize duplication of effort, facilities, and equipment in operation and maintenance of turnpikes and highways of the state.

KTA and KDOT contract with one another frequently to minimize duplication of efforts and provide cost savings to the State. According to the Secretary’s testimony on 2015 HB 2085, KDOT and KTA have worked together more since the partnership was formalized in 2013. According to testimony provided to legislative committees in 2017 and 2019, KTA and KDOT have partnered on bridge surveys, bridge inspections, and construction. Also, KDOT and KTA partnered

with the City of Wichita on a major construction project on East Kellogg.

Potential for KTA Projects to Become Part of the State Highway System

Although the KTA and KDOT have a formalized partnership, the KTA retains its separate identity, powers, and duties (KSA 68-2021a). KTA maintains the integrity of bonded indebtedness, but when bonds issued under the provisions of KSA 68-2001 to KSA 68-2020 are paid or a sufficient amount for the payment of all bonds and the interest has been set aside for the benefit of bondholders, the project can become a part of the state highway system and therefore be maintained by KDOT (KSA 68-2017).

When a project becomes a part of the state highway system, the Secretary would have the power granted to the KTA under KSA 68-2009 to fix, revise, charge, and collect tolls for the use of such Turnpike project. The tolls, rents, and rates of the charges must be sufficient to maintain, repair, operate, regulate, and police such Turnpike (KSA 68-2017). However, bonds issued for maintenance and rebuilding have meant no Turnpike project has thus far become a part of the state highway system.

Adding Tolloed Highways

KSA 68-2002 states no KTA toll road project shall be undertaken unless and until a project has been thoroughly studied and the study shows public funds for such a project are not available, construction could be financed solely or partly using private funds in toll road revenue bonds, and the project and indebtedness can be financed solely or partly through tolls and other income from operating the project.

Provisions enacted in 2019 Senate Sub. for HB 2007, specifically amendments to KSA 68-20,120, authorize the Secretary to construct a toll or turnpike project separate from the KTA if certain requirements are met. The requirements include a proposal prepared jointly by KDOT and local units of government, the project must

add capacity or be a new bridge or highway, the project has been determined to be feasible, revenues from such a project are used only for the project for which the tolls are collected, and the project must be approved by the KTA and the State Finance Council. In neutral testimony on SB 192 on this topic, the KTA CEO stated the KTA was prepared to be a partner with KDOT, local communities, and other stakeholders on such projects.

Differentiating Between Toll and Taxes

The issue of whether a toll is considered a tax has arisen in the U.S. Supreme Court, in federal district courts, and in several individual states. In the case of *Sands v. Manistee River Imp. Co.*, 123 U.S. 288, 294, 8 S. Ct. 113, 115, 31 L. Ed. 149 (1887), the Supreme Court found there is no analogy between the imposition of taxes and the levying of tolls for improvement of highways. Taxes are levied for the support of government and their amount is regulated by its necessities. Toll, on the other hand, are the compensation for the use of another's property, or of improvements made. The cost of a toll is determined by the cost of the property, improvements of the property, and considerations of the return such values or expenditures should yield.

State supreme courts and federal courts in at least six states agree tolls are not taxes. It is also clear toll revenue cannot be used to fund projects outside of a state's transportation system.

Florida. In *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992), the Florida Supreme Court distinguished taxes imposed by sovereign right to support functions the government is called upon to perform from user fees the user could avoid. In *McGovern v. Lee Cnty.*, 346 So. 2d 58, 64 (Fla. 1977), the Florida Supreme Court found toll revenues can be used for approaches and approach roads if a significant portion of its traffic moves onto the tolled facility.

Illinois. In 1945, the Illinois Supreme Court (in *People ex rel. Curren v. Schommer*, 392 Ill. 17, 20, 63 N.E.2d 744, 746) determined the act creating the Illinois State Superhighway Commission

was constitutional and found a clear distinction between tolls and taxes. Illinois courts have not stated whether toll revenue from one toll facility can be used to fund another toll facility.

Massachusetts. In *Murphy v. Massachusetts Tpk. Auth.*, 462 Mass. 701, 971 N.E.2d 231 (2012), the plaintiffs alleged tolls charged by the Massachusetts Turnpike Authority (MTA) but used on overhead, maintenance, and capital costs of un-tolled Metropolitan Highway System (MHS) facilities were an unconstitutional tax. The Massachusetts Supreme Judicial Court found the Legislature had specifically authorized such use of toll revenues, the tolls were collected to compensate the MTA for expenses incurred in operating the MHS, and this use was not unconstitutional.

Montana. In *Monarch Min. Co. v. State Highway Commn*, 128 Mont. 65, 70, 270 P.2d 738, 740 (1954), the Montana Supreme Court made a clear distinction between taxes and tolls. A tax is a demand of the sovereignty levied for support of the government and its amount is regulated by government necessities. Toll is the demands of proprietorship, exacted as compensation for use of another's property.

Rhode Island. In December 2019, the U.S. Court of Appeals, First Circuit, found that tolls of the state of Rhode Island aimed at commercial trucks and to be used to maintain I-95 bridges were fairly described as tolls and were not taxes under the Tax Injunction Act (TIA). See *American Trucking Associations Inc. v. Alviti*, 944 F.3d 45 (2019). The case was returned to the U.S. District Court for Rhode Island. The U.S. District Court had previously found such fees to be taxes under Rhode Island state law and dismissed the case, finding the federal court did not have jurisdiction under TIA.

Virginia. The Metropolitan Washington Airports Authority (MWAA) was formed in 1986 as an entity independent from Virginia, the District of Columbia, and the federal government. However, it possessed powers delegated to it by the District of Columbia and Virginia, and Congress explicitly granted the MWAA the power to "levy fees or other charges." Virginia had repeatedly authorized

its Commonwealth Transportation Board to use toll revenue to fund mass transit projects within the Dulles Corridor before it transferred control of those assets to the MWAA. The U.S. Court of Appeals for the Fourth Circuit, in *Corr v. Metro. Washington Airports Auth.*, 740 F.3d 295, 297 (2014), found tolls were not taxes and agreed with the MWAA and Virginia that Metrorail expansion

and the Dulles Toll Road are part of a single interdependent transit project, and therefore tolls could be used for Metrorail expansion. In 2019, this view was upheld in the decision of the U.S. District Court for the Eastern District of Virginia in *Schneider v. Metro. Washington Airports Auth.* (WL 1931752).

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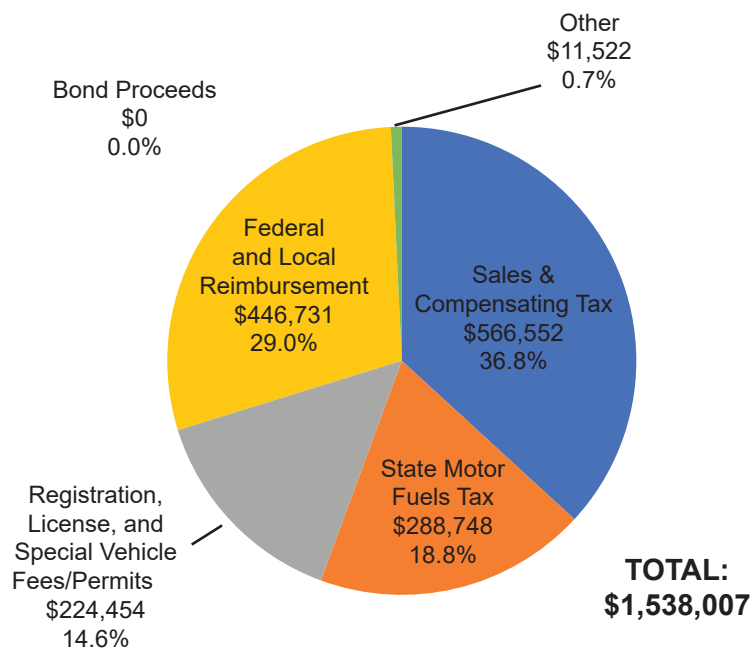
Transportation

M-2 State Highway Fund Receipts and Transfers

Article 11, Section 10 of the *Kansas Constitution* says, “The State shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels.” Projected revenues to the State Highway Fund (SHF) for use by the Kansas Department of Transportation (KDOT) can be described in five categories: state sales tax, state motor fuels tax, federal funding, vehicle registration fees, and “other.” This article discusses the components of those categories and transfers from the SHF.

KDOT estimates detailed in the pie chart below—updated through November 2020—including November consensus estimates) include the amounts for revenues in fiscal year (FY) 2021.

Projected KDOT FY 2021 Revenues as of November 2020
 (Dollars in Thousands)



Note: Other Funds include driver’s license fees, special vehicle permits, interest on funds, and miscellaneous revenues.

Components of State Highway Fund Revenues

The following information summarizes statutes related to major categories of state funding collected in the SHF.

State motor fuels tax. Kansas imposes a tax of 24¢ per gallon on gasoline and 26¢ per gallon on diesel fuel, unchanged since 2003. A separate article on state motor fuel taxes and fuel use is provided as M-3 State Motor Fuels Taxes and Fuel Use, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>. KSA 79-34,142 directs 66.37 percent of fuels tax revenues to the SHF and 33.63 percent to the Special City and County Highway Fund; the percentages have not changed since 2003.

State sales tax. KSA 79-3620 directs 16.154 percent of the revenues from the state sales tax to the SHF. The sales tax rate on which this is imposed is 6.5 percent. KSA 79-3710 similarly directs 16.154 percent of compensating use tax to the SHF.

Registration fees. Statutes also direct moneys from vehicle registration and title fees (KSA 2019 Supp. 8-145 and others), fees from permits for oversize or overweight vehicles (KSA 2019 Supp. 8-1911), and other registration-related fees to the SHF. For most vehicles, property taxes paid at registration and retained by the counties are the majority of the total amount paid. Examples are provided in the general memorandum “Taxes and Fees Paid at Vehicle Registration,” available at <http://www.kslegresearch.org/KLRD-web/Transportation.html>.

Other fees. Driver’s license exam and reinstatement fees (KSA 8-267 and others) are included in this category, as are smaller items, such as junkyard certificate of compliance fees (KSA 68-2205) and sign permit and license fees (KSA 68-2236).

Anticipated Revenues the State Highway Fund Has Not Realized

Since 2011, actual revenues to the SHF have been reduced by approximately \$3.8 billion when compared with the amounts anticipated. The following table summarizes the categories of those reductions. A detailed spreadsheet, “State Highway Fund Revenue Adjustments, FY 2011-FY 2021 APPROVED,” available at <http://www.kslegresearch.org/KLRD-web/Transportation.html>, shows year-by-year revenue adjustments by categories of Extraordinary Transfer or Ordinary Transfer, listed by the project or agency receiving the transfer.

The following summary tables include current transfers and transfer adjustments approved during the 2020 Session for FY 2020 and FY 2021.

These transfers are broken down by type of transfer as follows.

“Ordinary (or historically routine) transfers” refers to those transfers that have some relationship to transportation projects in other agencies or that have generally occurred over a number of years as part of the appropriations process. KDOT considers these transfers to include any transfers that started prior to the Transportation Works for Kansas (T-Works) program.

“Extraordinary transfers,” a KDOT designation, refers to transfers that have been added since the creation of T-Works in 2010.

SHF Revenue Adjustments (Dollars in Millions)		
Transfer:	FY 2020 Approved	FY 2021 Approved
Ordinary	\$(106.58)	\$(158.45)
Extraordinary	\$(258.22)	\$(106.70)
Total Transfers	\$(364.80)	\$(265.15)

Changes to SHF Revenues FY 2011 Actual to FY 2021 Approved (Dollars in Millions)	
Transfer:	
Ordinary	\$(1,156.06)
Extraordinary	\$(2,831.26)
Total Transfers	\$(3,987.32)

Highway-related Transfers to Local Governments

KSA 79-3425i states the Special City and County Highway Fund (SCCHF) will receive

certain moneys related to commercial vehicles in addition to moneys from fuel taxes. Transfers to the SCCHF of commercial motor vehicle *ad valorem* taxes and the commercial vehicle fees that replaced the *ad valorem* taxes as of January 1, 2014 (see KSA 2019 Supp. 8-143m), have been suspended since FY 2010. Appropriations bills, most recently Section 169 of 2020 SB 66, have amended KSA 79-3425i so that no commercial vehicle taxes or fees are transferred from the State General Fund to the SCCHF for FY 2020, FY 2021, and FY 2022. The transfers had been limited to approximately \$5.1 million a year beginning in FY 2001.

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M-3 State Motor Fuels Taxes and Fuel Use

For many years, the state sources that provide the most funding for transportation programs have been motor fuels taxes, sales tax, and registration fees. This article provides information regarding Kansas motor fuels taxes and fuel use.

Per Gallon Motor Fuel Taxes

Kansas’ motor fuel taxes are 24¢ per gallon on gasoline and 26¢ per gallon on diesel fuel, unchanged since 2003. The table below lists the effective dates of tax increases for motor fuels. The increases in 1989 through 1992 were part of the Comprehensive Highway Plan as it was enacted in 1989, and those in 1999 and 2001 were part of the Comprehensive Transportation Program enacted in 1999. No increases in fuel taxes are associated with the Transportation Works for Kansas (T-Works) program enacted in 2010 or the Eisenhower Legacy Transportation Program (also referred to as IKE) enacted in 2020.

Motor Fuels Tax Rates Changes—1925-2020		
Effective Date	Gasoline	Diesel
1925	2¢	--
1929	3¢	--
1941	--	3¢
1945	4¢	4¢
1949	5¢	5¢
1956	--	7¢
1969	7¢	8¢
1976	8¢	10¢
1983	10¢	12¢
1984	11¢	13¢
1989	15¢	17¢
1990	16¢	18¢
1991	17¢	19¢
1992	18¢	20¢
1999	20¢	22¢
2001	21¢	23¢
2002	23¢	25¢
2003	24¢	26¢

A tax of 17¢ per gallon was imposed on E85 fuels beginning in 2006. Certain fuel purchases, including purchases of aviation fuel and fuel used for non-highway purposes, are exempt from fuel tax.

Federal fuel taxes of 18.4¢ per gallon for gasoline, gasohol, and special fuels and 24.4¢ per gallon for diesel fuel also are included in fuel prices. The amount of federal tax per gallon has not increased since 1993, although increases have been proposed in Congress. As of July 1, 2020, combined state, local, and federal gasoline taxes across the country averaged 54.78¢ per gallon and ranged from a low of 32.17¢ per gallon in Alaska to 80.87¢ per gallon in California and 77.10¢ per gallon in Pennsylvania. The equivalent rate for Kansas was 42.43¢ per gallon; for Colorado, 40.40¢; for Missouri, 35.82¢; for Nebraska, 52.50¢; and for Oklahoma, 38.40¢.¹

Recent increases in other states. In 2018, Oklahoma added taxes of 3¢ per gallon on gasoline and 6¢ per gallon on diesel. In November 2018, Missouri voters rejected an increase in gasoline taxes of 2.5¢ each year for four years beginning July 1, 2019. According to the National Conference of State Legislatures, Virginia and the District of Columbia increased gasoline taxes in 2020; Alabama, Arkansas, Illinois, Ohio, and Virginia enacted gasoline tax increases in 2019; California, Indiana, Montana, Oregon, South Carolina, Tennessee, and West Virginia increased gasoline taxes in 2017; and Utah accelerated indexing provisions enacted in 2015. In October 2016, New Jersey enacted a tax bill that, among other tax changes, increased the state's fuel tax by 23¢ per gallon starting November 1, 2016, which was its first fuel tax increase since 1988. In 2015, eight states passed legislation to increase fuel taxes. In 2013, six states and the District of Columbia enacted legislation to increase or allow an increase (generally, by indexing the rate) in gas taxes, followed by three more states in 2014. Laws in 16 of the 31 states that have increased motor fuel taxes since 2013 include indexing provisions to automatically change the amount of the tax.²

Tax Increases and Revenue Projections

In Kansas, during the 2019 Session, HB 2370 and SB 188 (identical as introduced) proposed phased increases of 3¢ a gallon for gasoline and 5¢ a gallon for diesel by fiscal year (FY) 2023.

The fiscal notes prepared by the Division of the Budget projected total increased revenues by FY 2023 of \$40.0 million annually to the State Highway Fund (SHF) and \$20.2 million to the Special City and County Highway Fund (SCCHF).³ Also in 2019, HB 2381 proposed 6¢ increases for all motor fuels, changing the allocations between the SHF and the SCCHF, and reducing the percentage of sales and compensating use taxes statutorily directed to the SHF. In the fiscal note for that bill, the Division of the Budget stated the Department of Revenue estimated the changes would increase motor fuels tax revenues to the SHF by \$104.2 million but reduce sales and compensating use taxes directed to the SHF by the same amount. All three bills died in 2020, at the end of the biennium.

Fuels Usage and Tax Revenues

Kansas fuel tax revenues and gasoline usage fluctuate, as illustrated in the graphics on the following page.⁴

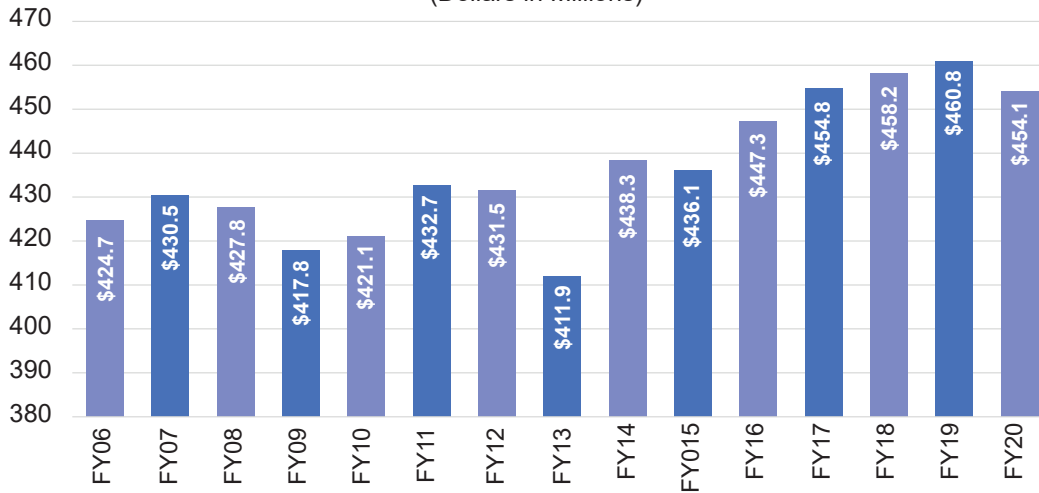
Amounts Households Spend

According to the Bureau of Labor Statistics in the U.S. Department of Labor, U.S. households spent an average of \$10,742 on transportation in 2019, which is an increase from \$8,293 in 2011 and a 10.1 percent increase from 2018, due mostly to insurance costs. In 2019, \$2,094 (19.5 percent) of the transportation total was spent on gasoline.⁵ If fuel prices average \$1.89 per gallon, Kansas state fuel taxes account for 12.7 percent of the amount motorists spend.

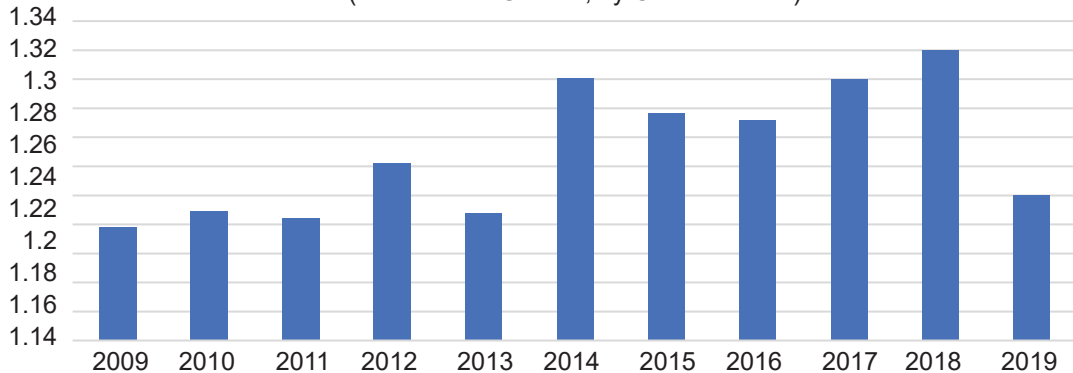
State Gasoline Taxes as Portion of Overall Fuel Cost					
Vehicle, driving	Gallons used	U.S. average		Kansas average	
		Total fuel cost, at \$2.12 per gallon	State tax average, \$0.3638	Total fuel cost, at \$1.89 per gallon	Tax average, \$0.24
12,000 miles, 15 mpg	800	\$1,696	\$291	\$1,512	\$192
12,000 miles, 25 mpg	480	\$1,018	\$175	\$907	\$115
12,000 miles, 35 mpg	343	\$727	\$125	\$648	\$82
30,000 miles, 15 mpg	2,000	\$4,240	\$728	\$3,780	\$481
30,000 miles, 25 mpg	1,200	\$2,544	\$437	\$2,268	\$288
30,000 miles, 35 mpg	857	\$1,817	\$312	\$1,620	\$206
State gasoline tax as percent of overall fuel cost		17.2%		12.7%	

Fuel costs from <https://gasprices.aaa.com/> as of November 6, 2020.
 State tax costs from <https://www.api.org/oil-and-natural-gas/consumer-information/motor-fuel-taxes> and as of July 1, 2020.

Kansas Fuel Tax Receipts
(Dollars in Millions)



Kansas Total Gasoline Sales
(in Billions of Gallons, by Calendar Year)



- 1 American Petroleum Institute, “Combined Local, State and Federal (Cents per Gallon) Rates Effective 7/1/2020,” <http://www.api.org/oil-and-natural-gas/consumer-information/motor-fuel-taxes>, accessed November 6, 2020.
- 2 2018 Oklahoma HB 1010 and 2018 Missouri HB 1460. National Conference of State Legislatures, “Recent Legislative Actions Likely To Change Gas Taxes,” August 12, 2020, <http://www.ncsl.org/research/transportation/2013-and-2014-legislative-actions-likely-to-change-gas-taxes.aspx>, accessed November 6, 2020.
- 3 A very small percentage of the overall revenue increases projected would come from commercial vehicle fuel permit increases included in the bills.
- 4 Reports, Monthly Motor Fuel Reported by States, U.S. Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, Motor Fuel, and the Highway Trust Fund. http://www.fhwa.dot.gov/policyinformation/motorfuelhwy_trustfund.cfm and reports for previous years, accessed November 6, 2020. Motor Fuel Activity Reports, Net After Refunds, <https://ksrevenue.org/mfstats.html>.
- 5 U.S. Department of Labor Bureau of Labor Statistics, news release dated September 9, 2020, “Consumer Expenditures–2019,” <https://www.bls.gov/news.release/pdf/cesan.pdf>, accessed October 13, 2020.

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