

**ADVISORY LETTER  
OF THE  
NEBRASKA HIGHWAY TRUST FUND  
ALLOCATION**

STATE OF NEBRASKA  
Auditor of Public Accounts



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November 7, 2000

Mary Jane Egr  
State Tax Commissioner  
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The Honorable Dave Heineman  
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Beverly Neth, Director  
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Dear Sirs and Madams:

In conjunction with our audit of the Nebraska State Treasurer (Treasurer), we studied the Treasurer's operations regarding the monthly allocation of the Highway Trust Fund (Fund). Neb. Rev. Stat. Section 39-2215 R.R.S., 1998 creates the Highway Trust Fund and establishes the process the Treasurer is to use to allocate the monies in the Fund. While the allocation and distribution of the Fund is the responsibility of the Treasurer, the Departments of Revenue (Revenue), Motor Vehicles (Motor Vehicles), and Roads are significantly involved in this allocation process.

Our study was made under the authority of Neb. Rev. Stat. Section 84-304 R.R.S. 1999, which authorizes the examination of records of state agencies. This advisory letter is intended for the information of the State Tax Commissioner, the State Treasurer, and the Directors of the Departments of Motor Vehicles and Roads. However, this is a matter of public record and its distribution is not limited.

Our objective was to advise the Treasurer regarding the accuracy of the allocation process and to determine whether the procedures were in compliance with the various statutes governing the allocations and distributions. To satisfy these objectives, we reviewed the numerous statutes related to fuel tax, penalties, and fee collections being deposited into the Fund, and the subsequent distributions and allocations of those funds.

As a result of the performance of these procedures, we believe the allocations of the Fund were substantially and materially made as required by statute for the fiscal year ending June 30, 2000. However, there were concerns raised during our examination that we believe should be addressed by your agencies. Our concerns are as follows.

1. In very general terms, Neb. Rev. Stat. Section 39-2215 R.R.S., 1998, separates the distribution process of the Fund into two distinct allocations. First, Section 39-2215(2) requires the allocation of fuel tax collections. Second, Section 39-2215(6) requires the allocation of the remaining balance of the Fund. The balance of the Fund includes fuel permit fees and penalty collections, part of the fuel tax allocation, motor vehicle registration fees, sales tax collections, and plate fees. Therefore, it is important for the collections of fuel taxes to be identified separately from the collection of other fees, especially fuel permit fees and penalties.

During our examination, we noted six different types of fuel permit fee or penalty collections that were being combined with fuel tax collections when recorded on the Nebraska Accounting System (NAS). These fees or penalties are established in Neb. Rev. Stat. Sections 66-4,120 (unlawful use of tax credit fuel penalty) and 66-688 (alternative fuel application fee), R.R.S., 1996 along with Sections 66-694 (alternative fuel user permit penalty), 66-6,115 (compressed fuel use penalty), 66-673 (unlawful issuance of undyed diesel fuel certificate penalty), and 66-719 (fuel tax report penalties) from 2000 Neb. Laws LB 1067 Sections 17, 22, 25, and 27. When these fuel fees and penalties are recorded together with fuel taxes, the Treasurer is unable to allocate the collection of the fees and penalties separate from the allocation of the taxes.

2. Numerous statutes authorize fuel and vehicle fees that are to be deposited into the Highway Trust Fund or the Highway Cash Fund. Our examination noted three different fee collections that were deposited into the Highway Trust Fund, for part of the fiscal year ending June 30, 2000, when the statutes indicate the fees should be deposited into the Highway Cash Fund. These fees are established in Neb. Rev. Stat. Sections 66-483 (fuel supplier application fee), 66-502 (liquid fuel carrier application fee), and 66-666(1) (fuel suppliers license fee) R.S. Supp., 1998. By depositing these fees into the Highway Trust Fund, additional funds were distributed to counties and cities that should have gone to the Department of Roads.
3. Neb. Rev. Stat. Section 60-305.09(10) R.R.S. 1998 authorizes interstate commerce fleet vehicle unladen-weight registration fees and requires these fee collections to be deposited into the Highway Trust Fund. Our examination noted Motor Vehicles was depositing only 70 percent of these fees into the Highway Trust Fund.

In order to eliminate similar problems in the future, we recommend the following:

1. Each of the agencies mentioned above review Section 39-2215 and respond as to whether they agree or disagree the statute requires fuel taxes be allocated separately from fuel permit fees and penalties and motor vehicle fees and taxes.
2. Revenue and the Treasurer work together to determine all fuel taxes are recorded on NAS separately from fuel fees and penalties so they can be allocated as required by Section 39-2215.
3. Revenue review their procedures to ensure the three fuel fees noted above continue to be deposited to the Highway Cash Fund as required by statute.
4. Motor Vehicles review their procedures to ensure all of the unladen-weight fees are deposited to the Highway Trust Fund.

*State Tax Commissioner's Response: This is in response to your November 15, 2000 letter requesting comments on your draft November 7, 2000 Highway Trust Fund Allocation Advisory letter. Our response is directed to your paragraph 1. The State Treasurer and Departments of Motor Vehicles and Roads will respond to their respective sections.*

*While your interpretation of section 39-2215 is technically correct, you should be advised that the Department of Revenue has been following the procedures which result in the allocation of the amounts contained in the Highway Trust Fund for several years now. These procedures have been examined by your office in the past with no objection of which we are aware. Furthermore, as noted more fully below, we believe that the change you seek to those procedures will have an immaterial fiscal impact.*

*In paragraph #1, you contend that the commingling of certain penalties and fees results in an improper allocation of funds. In reviewing those statutory sections involved, we note that with the exception of section 66-719, the remaining sections involve penalties or fees which have no measurable fiscal impact. Section 66-4, 120 involves a penalty for the unauthorized use of tax credit gasoline which has not been imposed for several years. Section 66-688 imposes a \$75 per year alternative fuel user fee on specific vehicles. For several years, we are aware of only three vehicles subject to this fee. Currently, we have only two vehicles paying this fee. Section 66-694 imposes a penalty for failure to obtain the permit in section 66-688. Section 66-6, 115 imposes a penalty for failure to comply with the provision of the Compressed Fuels Tax Act while section 66-673 imposes a penalty for illegal usage of an exemption certificate for certain tax-exempt purchases of diesel. Neither of these penalties has been invoked for several years.*

*Section 66-719 imposes penalties for failure to properly or timely file returns in all fuels tax programs. While these penalties are regularly imposed, they too are insignificant in light of fuel tax collections. During the prior fiscal year, the total amount of penalties collected was less than \$90,000. A unique problem with penalties is that, unlike taxes or fees, they are subject to full or partial abatement at some date subsequent to their imposition. Due to our philosophy of using penalties to effect compliance, penalties are often abated or reduced. This results in a great deal of uncertainty as to what the “true” amount of penalties are at any given moment.*

*Finally, if it is determined that our current processing system must be modified to recognize these adjustments, the cost will most assuredly be far in excess of any benefits derived. If it is ultimately agreed that the separate accounting for penalties is necessary, we suggest that legislation requiring this be introduced due to the high cost of compliance with such mandate.*

**Auditor of Public Accounts’ Response:** We recommend the Department of Revenue take steps to comply with the statutes listed in paragraph 1, by either modifying their procedures or working toward amending the statutes to meet their current procedures.

*State Treasurer’s Response:* The State Treasurer declined to comment to this letter.

*Department of Motor Vehicles’ Response:* The Department has reviewed and corrected procedures for processing the unladen-weight fees to ensure that all of the fees are deposited to the Highway Trust Fund.

*Department of Roads’ Response:* I have reviewed your draft copy of the Highway Trust Fund Allocation Advisory Letter for the fiscal year July 1, 1999 through June 30, 2000.

*Concern #1 and Recommendations #1 and #2 are being addressed by the Department of Revenue.*

*Concern #3 and Recommendation #4 are being addressed by the Department of Motor Vehicles.*

*I offer the following comments on Concern #2 and Recommendation #3 regarding certain fuel and vehicle fees.*

*Our examination of the three statutes referenced (66-483, 66502, and 66-666(1)) indicate that the revenue would be deposited into the Highway Cash Fund, not the Highway Trust Fund, as you have indicated. The current policy of depositing this revenue into the Highway Cash Fund is in accord with the statute as last revised on 1997. A copy of these statutes is enclosed for your reference.*

*Therefore, I believe that concern #2 is in error and is not a valid finding.*

**Auditor of Public Accounts' Response:** The draft of this letter incorrectly stated how fees for statutes 66-483, 66-502, and 66-666(1) were deposited during the fiscal year ending June 30, 2000. As restated in this final letter, the fees for part of the fiscal year were deposited incorrectly to the Highway Trust Fund. The Department's interpretation of statutes regarding Concern Number 2 and Recommendation Number 3 is correct, and we acknowledge those fees are currently being deposited correctly.

Draft copies of this letter were furnished to the Tax Commissioner, the Treasurer, and the Directors of Motor Vehicles and Roads to provide them an opportunity to review the letter and respond to the issues noted. Any formal responses received have been incorporated into this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Dunlap", is positioned to the left of a vertical line.

Don Dunlap  
Assistant Deputy Auditor