



Appendix-18.3

Road Charge Jurisdictional Issues



SUBJECT: Road Charge Jurisdictional Issues

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INTRODUCTION

The purpose of this memorandum is to identify jurisdictional issues related to road charging within the State of California. In particular, this memo covers jurisdictional issues involving local government and quasi-government entities such as toll authorities.

1.0 FRAMING THE ANALYSIS

1.1 Jurisdictions Considered

Caltrans directly manages more than 50,000 lane miles of state and federal highways. Caltrans maintains collaborative partnerships with various stakeholders such as local government entities (cities and counties) and quasi-government entities such as tolling authorities due to the similarity in mission, networks owned and operated, and sharing of resources. One example highlighting this situation is the Alameda Corridor, which is governed by the Alameda Corridor Transportation Authority, a quasi-governmental entity whose mission is to ensure the timely movement of freight into and out of the ports of Los Angeles and Long Beach while minimizing the impacts to local streets and state highways. Caltrans' mission also encompasses efficient transportation to enhance California's economy and livability.¹ Because of the similarity in missions, interdependencies in their transportation assets (rail and grade crossing improvements, city street and highway improvements), and desire to economize by sharing resources, the two entities (plus multiple cities located along the 20-mile corridor²) coordinate their capital investments to maximize the value of the overall projects.³

During phase one of the Road Charge Pilot Program (RCPP), the Technical Advisory Committee (TAC) received public input from various local entities, particularly those represented by the Self-Help Counties Coalition, interested in road charge policy development. Likewise, toll road authorities voiced

¹ Caltrans Mission, Vision, Goals & Values. See: <http://www.dot.ca.gov/mission.html>

² The cities of Vernon, Huntington Park, South Gate, Lynwood, Compton, Carson, and Los Angeles are all located within or adjacent to Alameda Street.

³ For example, see SR-47 Expressway Project.

interest due to the potential for confusion from the general public regarding charges for road use of toll roads versus non-toll roads in the state, potential overlap in fee collection operations, and opportunities for integration and simplification. This memo does not address other special-purpose jurisdictions such as ports and parks, which have relatively little operational overlap with the state highway system and relatively little stake in state fuel tax policy. Furthermore, the report does not address tribal issues, which are the subject of treaties between the State and federally recognized tribes. Instead, this memo focuses on local government entities and toll road authorities.

1.2 Two Implementation Scenarios: Base and Enhanced

To date, the road charge concept in California is being researched as a future replacement for the state gas tax, which this memo labels as the *base scenario*. The analysis of potential jurisdictional issues under the base scenario assesses the policy issues raised by a like-kind replacement of the state gas tax. Given the clearly stated legislative intent that a road charge pilot be designed and analyzed as a replacement for the state gas tax⁴ (rather than an addition to the gas tax, or a tool for managing congestion, influencing travel mode, or funding new projects), most of the attention in this memo is given to the base scenario.

Three important aspects of a road charge merit examination in greater detail to better understand whether new jurisdictional issues might arise: road charge rates, expenditures, and operations.

- ▶ **Rate issues.** A “like-kind replacement” (base scenario) means a road charge would be levied in an amount equivalent to what the average light duty vehicle in California pays in state gas taxes on a per mile basis. The 1.8 cent per mile rate currently being tested in the RCPP reflects this approach. The topic of rate setting for a potential road charge in California has been presented in prior policy work.⁵ In this memo, D’Artagnan will specifically examine whether establishment of a road charge rate raises issues for other transportation taxing jurisdictions – specifically, counties and toll authorities.
- ▶ **Expenditure issues.** A second aspect to consider is how a switch from the fuel tax might affect the expenditure of revenues. To the extent that the state fuel taxes are constitutionally or statutorily restricted in their uses, the question arises whether the expenditure of road charges ought to be similarly restricted. Beyond any permanent legal restrictions on expenditures, the use of road charge revenue remains within the authority of the Legislature. Statutory distributions of the revenue can be adjusted by the Legislature each session through the passage of legislation; and appropriations are made each fiscal year. The topic of use of revenues in a potential road charge system was explored more broadly in an earlier policy memo.⁶ In this memo, D’Artagnan will consider whether replacing the state gas tax with a road charge raises new and unique issues for jurisdictions that call for special consideration.

⁴ *C.f.*, Section 1(h), Senate Bill No.1077, Laws of 2014.

⁵ *California Road Charge Pilot Program Rate Setting*, D’Artagnan Consulting, August 2015.

⁶ *Use of Revenues in a Road Charge System*, D’Artagnan Consulting, August 15, 2016.

- ▶ **Operational issues.** A third aspect to consider is whether the mechanics of collecting a road charge in lieu of the state gas tax raises new issues for jurisdictions related to their (or the State's) operations, either of the roadway facility itself or the administrative requirements to collect a road charge as compared to the state gas tax.

The remaining sections of this memo explore each of the three categories of issues for local governments (cities and counties) and toll road authorities.

2.0 LOCAL GOVERNMENT ISSUES

California has 482 cities and 58 counties. Although the majority of annual vehicle miles traveled (VMT) occur on the state highway system (SHS), local governments are responsible for operating and maintaining the vast majority of local roadway lane-miles (city streets, county roads, and county highways).⁷ Together, with public transportation infrastructure and services, state and local governments manage a transportation system that connects the people and regions of the State and brings goods and services to all parts of California. As such, the State has a compelling interest in ensuring that this transportation network is adequately funded and efficiently operated, regardless of which entity is responsible for the various functional systems.

2.1 Road Charge Rates

Under the *base scenario* (i.e., the road charge as a like-kind replacement for the state gas tax), three potential issues arise for local government related to how a road charge rate will be established.

How can a revenue-neutral road charge rate be set when the underlying state gas tax it replaces varies every year?

In California, the state excise tax on gas comprises two separate components: a base excise tax of 18 cents per gallon, regardless of the price of gas; and a price-based excise tax that is calculated by the California Board of Equalization (BOE) each fiscal year. On July 1, 2010, the State eliminated the sales and use tax on gas and simultaneously raised the state excise tax on gas. However, the BOE is required to adjust the newly established excise tax rate for gas annually so that the total amount of tax revenue generated is equal to what would have been generated had the sales and use tax and excise tax rates remained unchanged. Thus, this component of the gas excise tax is referred to as the price-based excise tax. Since the retail price of gas is highly volatile, the price-based excise tax can fluctuate from year to year.

The 18-cent base excise tax primarily funds state needs (64%), with local cities and counties receiving a smaller share (36%). Because the base excise tax is fixed, calculating the fiscal impact of switching from the state gas tax to a revenue neutral road charge is fairly straightforward, with higher certainty about the potential fiscal impacts of this switch. The more challenging issue is how a road charge can

⁷ As of 2012, there were 303,700 lane miles on local roadways, and 50,500 on the state highway system. Transportation Funding in California, Economic Analysis Branch, Division of Transportation Planning, California Department of Transportation, 2014.

be set at a revenue neutral rate when the remaining component of the gas tax fluctuates depending on the retail price of gas. Approximately 44% of the price-based excise tax funds local roadways, while the remaining 56% funds state highway transportation programs (44% funds the State Transportation Improvement Program and 12% funds the State Highway Operations and Protection Program). This raises a financial planning (and potentially, a public perception) issue for local municipalities: *How will the revenue-neutral road charge rate be set when the underlying state gas tax it replaces varies every year?* What assumption will be made about the price-based excise tax component – will the most current price-based tax rate be assumed, even though retail gas prices have been among their lowest levels in over a decade?⁸ Will a rolling two or even five-year average be assumed, which also represents relatively low retail prices? With 44% of these revenues directed for local roadways, these municipalities will want to understand how this crossover is accomplished in a manner that does not impose a hardship to their transportation budgets.

Given that the purpose of the price-based excise tax is to remain revenue neutral with a sales tax on fuel over time (with annual adjustments accounting for both over or under collections in the previous year, as well as anticipated collections in the coming year), it may be advisable to fix the road charge rate to be similarly revenue neutral, based on a revenue target rather than a rate conversion target.

Whatever the case, local governments will be interested in how this conversion is calculated given their large stake in the revenue produced.

Will the state sales tax on gas be applied to the road charge?

A second issue related to rates is whether the State's current 2.25% sales tax on gas should be applied to a future road charge. Under current law, a portion (2.25%) of the statewide sales tax is levied on the retail price of fuel. In addition, cities and counties may impose a local "district tax" that also is levied on the retail price of fuel. One component of the retail price of fuel (that is, what the consumer pays at the pump), is the state motor fuel excise tax ("gas tax"). So in effect, California levies a portion (2.25%) of its statewide sales tax on the state gas tax. If the state gas tax is repealed, then the retail price at the pump will decrease by a corresponding amount, resulting in lower revenue collections from the 2.25% sales tax on gas. As the majority recipients of the proceeds of the revenue, cities and counties may press for a replacement of the loss of those revenues.

One alternative is to allow the previous 2.25% sales tax on gasoline to be applied to a road charge. There are a few reasons why this may be worth considering. If the road charge is intended to be a full replacement for the gas tax, then applying the 2.25% state sales tax on gas to the road charge would keep intact this same policy and the resulting revenue stream. As a direct beneficiary of that revenue, local government may raise this issue, or insist upon a new source of funding to replace the lost revenue if the sales tax on gas is not applied to future road charges.

⁸ U.S. Energy Information Administration, Historical Retail Gasoline Prices, https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPM0_PTE_NUS_DPG&f=W last accessed February 13, 2017.

A second and broader reason for considering this policy is that it is similar to taxation of other public utilities, such as water, electricity, or phone service. A road charge is the payment drivers make for consuming the commodity (i.e., roadways), as measured in miles. This is analogous to household residents paying for kilowatt-hours of electricity consumed, or paying for minutes consumed on a mobile phone. A sales tax is levied on those usage charges as well.

Will local governments be granted authority to set their own rates in addition to (or in lieu of) the state road charge?

In the base scenario, the road charge would remain a state-level tax and the rate would simply reflect how much the average driver currently pays in state gas taxes. However, most of the questions and potential issues raised by local governments revolve around their ability to collect a different (or higher) amount to fund their transportation system or to achieve other policy objectives important to local governments, primarily related to congestion management. These are features of an enhanced road charge.

It will be up to the Legislature whether to allow local-option components for jurisdictions to enhance the road charges to meet other policy objectives. By allowing such local options, the State could devolve decision authority over enhanced road charge policy choices to lower levels of government, allowing for tailored solutions in each region of the state, some of which could reinforce other regional and state policy objectives related to congestion, environmental protection, and climate change. This is similar to voter-approved transportation sales tax measures already established throughout California (i.e., Self Help Counties). On the other hand, allowing such road charge enhancements could lead to political resistance of the base scenario. Moreover, many of the policies proposed by local agencies in the past would require location-based measurement of road use, which is at odds with the Legislature's expressed policy preference of keeping location measurement optional and forbidding the State from collecting such data. Local-option policies could also lead to operational complications for implementation of the base scenario in the short term, as it may lead to the state agency implementing a road charge being asked to accommodate technical requirements of local agencies.

Alternately, the Legislature could pursue a compromise approach in which it directs the road charge system to be implemented in a way that remains open for future policy evolutions to accommodate other state and local initiatives, but to be operationalized only at the election of a future slate of elected officials.

2.2 Road Charge Expenditures

During the TAC design phase of the RCPP, stakeholders raised the question of whether the distribution of revenues from a road charge will be restricted in the same manner as the state gas tax, or whether a road charge's permissible uses will be expanded to pay for projects, services, and programs beyond traditional transportation infrastructure. While motor vehicle fuel taxes generally have served as a reasonable proxy for a direct user fee for nearly a century, with the recent marked improvements in vehicle fuel economy, a gallon of fuel consumed does not equate to the same mileage driven across the vehicle fleet. Put another way, gas taxes are an indirect road user fee because they tax fuel

consumed instead of actual roadway use; with wide variation in what individual drivers pay for the same miles traveled (due to growing differences in MPG between various makes and models of vehicles), the notion that the state gas tax is a fairly-applied fee for roadway use is drawing increased scrutiny.

Switching from the state gas tax to a road charge will create a true direct user fee for roadway use. While this restores the user-pays principle to the surface transportation system, it may also raise public expectations that the use of the proceeds be strictly reinvested in the maintenance and operation of the roadway system. This may or may not be in accord with the policy objectives of stakeholders, who may perceive greater funding needs in other modes of their local transportation network.

Will road charge revenues be restricted in how local jurisdictions can spend the revenue?

The base scenario assumes the road charge will be bound by the same spending restrictions as the gas tax. More specifically, expenditures of revenue collected from a road charge would be constitutionally restricted to transportation purposes, as is now the case for state gas taxes collected.⁹ In this context, local governments would experience no change in permissible use of the revenue.

While some have questioned whether the current constitutional and statutory restrictions on state gas tax expenditures should be applied to a road charge (particularly in jurisdictions experiencing high levels of congestion and a need for additional public transportation funding), others have argued that a road charge must be restricted in this manner in order to gain public trust that revenues raised from this new system will be reinvested in the maintenance and operation of the roadways (as would be the case with other public utility charges) and not diverted to pay for other government programs or purposes.

2.3 Road Charge Operations

Based on the organizational design work conducted as part of the RCPP, it appears most likely that the administration of a statewide road charge would remain at the state level. This approach has several advantages that are beyond the scope of this memo, but fully analyzed in the Organizational Design task. In short, the State is in the best position to carry out statewide road charge administrative functions because it has the existing taxpayer relationship with over 30 million registered vehicles in the state through the Department of Motor Vehicles (DMV). In the base scenario, instituting the road charge in place of the current gas tax would result in a single, statewide rate for miles driven in California and there is no rationale for any local jurisdiction to become involved in the operations of a road charge system.

Should a road charge administrator provide driving data important for transportation planning activities to local government?

Even if a local jurisdiction has no need or interest in becoming directly involved in administration of a statewide road charge, these jurisdictions may nonetheless wish to have access to, or be provided with, data collected by the State related to mileage driven within specific jurisdictions or even on specific roadways. This information could be useful for measuring usage of roadways within the local

⁹ Article XIX of the California State Constitution.

jurisdiction, which in turn could be used for better allocation of local resources (asset management systems, traffic enforcement, etc.) and for transportation planning (congestion management, smart mobility, complete streets, etc.).

Over the course of the TAC meetings, members, stakeholders, and the general public have expressed an interest in being able to obtain travel data at the most granular level, which could potentially help local jurisdictions make more strategic decisions about their transportation system as well as inform the debate on redirecting funding to those areas where the revenues were generated. However, both of these goals involve tradeoffs that may not yet be acceptable to policymakers or the public. First, drivers' location data is considered among the most sensitive information and thus will be strictly protected under California's proposed privacy protection measures for a future road charge system. At best, this information would only be available if anonymized and aggregated; providing detail necessary to identify preferred routes of drivers may not be possible. Second, an underlying question is whether revenue should be returned to the jurisdiction, area or roadway where the driving occurred. This is not the current method used by the State in making decisions about roadway funding. Use of aggregated and anonymized driving data for this purpose will certainly generate robust public debate about how best to ensure statewide mobility and an interconnected, adequately maintained network of roadways.

Beyond the base scenario, an enhanced road charge could involve a local-option road charge in addition to a statewide road charge that replaces the state gas tax. Depending on its structure, a local-option road charge could require local jurisdictions to become more actively involved in the administration and enforcement of the system to ensure that the locally-adopted rates are properly applied and collected.

3.0 TOLL FACILITIES AND TOLL AUTHORITIES

Toll roads, express lanes, and bridges present a unique situation for road charge policy and operational considerations, because tolls are themselves a form of direct user charging. Instead of charging by the mile driven regardless of location in California, tolls are collected for use of a specific facility. The price to use a tolled facility can vary greatly, depending on the financial and operational objectives of the facility owner or toll facility operator (which may not be the same entity, depending upon the tolled facility). In almost all cases, the revenue derived from tolls must be used for the maintenance, upkeep, and operation of the facility or transportation corridors where the tolls were collected.

3.1 Road Charge Rates

Under the *base scenario*, the per-mile rate would be a fixed amount that does not vary by type of facility, jurisdictional ownership or operational responsibility for the public roadway. Since invoicing and payment of the road charge would be made to the State rather than the toll authority, there should be little confusion about the two payments. Toll authorities would collect their charges through their existing processes, with toll rates that may vary based on a number of factors such as time of day, level of congestion, or segment of roadway traveled; the State would collect the road charge based on aggregate miles driven on public roads in California.

Does collecting a road charge on a tolled facility constitute “double taxation” or at least “double payment” for the same activity?

Some stakeholders and TAC members have questioned whether a State-administered road charge should be collected for miles driven on a tolled facility. The argument is that paying the road charge in addition to the facility toll represents an unfair form of “double-taxation” as motorists are being charged for both use of the specific toll facility and for the mileage driven on that facility. This situation already exists with respect to the current state gas tax, which motorists pay regardless of which roadway they are on, tolled or not.

It’s important to note that the purpose and use of the two types of payments are not identical. For example, a toll authority may set the toll rate in a sufficient amount to ensure that the *facility’s* repair, rehabilitation and replacement is fully funded, often including the costs of financing those reinvestments in the facility. Facilities that are financed with tolls are typically high-cost projects, such as tunnels and bridges; additional funding is required in order to pay for the infrastructure or services, and tolls provide the source for the additional funding from those persons who benefit most from the facility’s upkeep. In contrast, a road charge is established and collected to help pay for the statewide (including local municipalities) transportation *network* costs, regardless of the specific segments of roadway traveled by an individual driver.

Nonetheless, the question may arise in Legislative deliberations over road charge policy whether toll road miles should be exempted from road charge. If so, such miles would be considered similar to off-road and private road miles, which in the RCPP are exempt from road charge assessment and

collection. In the process, drivers can choose a Commercial Account Manager (CAM) that provides automated exemptions, or claim refunds after the fact using a manual process.

3.2 Road Charge Expenditures

As described at the outset of this section, toll authorities are almost always required to expend toll revenues on the facilities or corridors in which the tolls were collected. In cases where construction (or reconstruction) of the facility has been financed with tolls, this requirement carries even greater force through constitutional provisions that prevent government from “impairing” those financing contracts, for example, by passing legislation that attempts to redirect any portion of the pledged toll revenue. Making changes to these toll financing structures is difficult and costly.

While use of toll proceeds is usually very well prescribed, the use of road charge revenue collected for travel on a tolled facility may raise new issues.

Should road charges collected for traveling on tolled facilities be remitted back to the toll authority, or retained by the State? On the one hand, in the base scenario where a road charge fully replaces the state gas tax, the revenues would remain with the State to fund transportation projects, where they would be further distributed to various state, city, and county accounts for roadway expenditures. However, if the tolled facility is required to pay for routine maintenance and operations from toll revenues rather than having these expenses paid from state highway revenues (as is the case with other state roadways), an argument could be made that the toll facility ought to be entitled to a direct distribution of road charges collected by the State for miles traveled on the facility that is maintained and operated by toll payers.

In some instances, concession agreements – contracts with private firms or special purpose entities to operate and maintain the toll facility, in exchange for retaining some or all of the toll revenue – may govern whether additional state taxes or fees can be collected for use of the toll facility.

3.3 Road Charge Operations

The final consideration for toll road authorities is operational. During the design phase of the RCPP, TAC members pointed to toll road operations as a source of potential information and possibly even operational support for implementation of a road charge.

Can motorists pay the road charge using existing toll service providers? California’s toll roads are typically operated by special-purpose entities who outsource varying aspects of the technology and operations to private firms under single-provider arrangements. The methods used for measuring toll facility usage as the basis for transactions include in-vehicle transponders read by in-lane antennae at toll plazas as well as cameras mounted at toll points with automated license plate recognition software. Some facilities continue to collect tolls manually from drivers at tollbooths.¹⁰ None of these methods is

¹⁰ Federal law prohibits tolling interstate highways unless the federal government consents to tolling the facility. Approval to toll interstates is granted through agreements with USDOT, and the terms and conditions of those agreements may address use of the revenue, toll-setting policies, and toll collection methods.

suitable for road charge measurement or fee collection due to the massive coverage required of the State's roadways for implementation. That said, toll service providers could supplement their offerings by becoming CAMs. In this scenario, the same account service provider that manages a customer's tolling account could offer to handle their road charge account, possibly even integrating payment methods for customer convenience.

The policy question for lawmakers is whether to explicitly allow for CAMs to bundle toll and road charge accounts. And, if so, lawmakers must consider whether toll authorities should also follow a road charge "open market" approach using CAMs. A benefit of allowing this approach is that customers could streamline their number of accounts, and the state and toll authorities could theoretically economize on the cost of collections between tolls and road charges. On the other hand, toll authorities have strict operating rules and technical requirements, and in California each authority only allows for automated collection of tolls by a single outsourced provider, thus setting up a potential monopoly situation. Encouraging or even allowing an open market for toll collection services could be disruptive to toll authorities' existing contracts with outsourced vendors.

4.0 CONCLUSIONS

The base scenario, where the road charge is a like-kind replacement for the gas tax, raises very few issues for local governments and toll authorities. If the legislature decides to implement a road charge that contains enhancements to the basic approach now being tested in the RCPP, this would necessitate a reexamination of how the State and local jurisdictions (including toll authorities) will balance their policy objectives.