

Special Highway Fund/Gas Tax

Question: A small town that I am helping with their budget gets around \$400 in Special Highway monies. Can that be incorporated into the general fund or does it need to stay in Special Highway?

Answer: Great question. In short, the gas tax dollars cannot be incorporated into the general fund.

The following subsection is from K.S.A. 79-3425c and spells out a general requirement of segregation of the gas tax dollars flowing to the cities within your county (the exception would be in the event a city has created a “consolidated street and highway fund,” in which case, presumably, the dollars would flow into that fund).

(c) The allocation and payment of moneys to the several cities of the state from the special city and county highway fund shall be in the proportion that the population of each city bears to the total population of all cities in the state All such payments shall be to the city treasurers of the respective cities. Upon receipt of same unless a consolidated street and highway fund is established pursuant to K.S.A. 12-1,119 . . . the city treasurer of each city shall credit the same to a separate fund to be used for the construction, reconstruction, alteration, repair and maintenance of the streets and highways of such city and for the payment of bonds, and interest thereon, issued pursuant to K.S.A. 79-3425g

We hope that this helps.

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Question: We have a new City Treasurer and she has asked for some assistance in locating the Kansas Gas Tax Distributions for 2013 budget purposes. Can you provide any assistance with this? I am not sure where to go, so any help at all is greatly appreciated! Thanks

Answer: The gas tax estimates can be found on the League of Kansas Municipalities website at the following address: <http://www.lkm.org/>

Under the heading Quick Links there is a link entitled 'Alcohol Tax and Special Highway Fund Distribution for 2013 Budgets now available.'

Select that link, and there should be a link entitled 'FY 2013 Special Street/Highway Fund - Cities.' Select that, scroll down to your county, and the information for the city in question should be available.

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Question: The city wants to know if mowing alleys and ditches around the city should come out of the General and Special Highway Funds? Thank You

Answer: Good morning. After a review of the statutes there appears to be no issue with the mowing costs being expended from the General Fund, since General Fund monies can be used for any legitimate city expense.

However, use of monies in the Special Highway fund for this purpose may be limited. K.S.A. 79-3425c(c) states that monies in the fund should “be used for the construction, reconstruction, alternation, repair and maintenance of streets and highways of such city and for the payment of bonds” issued for such purposes. It would appear that using special highway monies for mowing would be a stretch, but your governing body would have to make the ultimate decision concerning that issue.

There is no case law concerning the use of special highway monies, but there is a 1994 Attorney General’s opinion discussing the subject. The opinion, AGO 94-34, discusses the use of Special Highway monies to build sidewalks and a floodgate in a city. The Attorney General opined that such monies could be used to build sidewalks, but not the floodgate. In deciding the issue, the Attorney General relied on Kansas law which defines sidewalks as part of the street.

Hope this information helps. If you have additional questions or comments, please do not hesitate to ask.

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Question: I’m wondering where the population figures come from for the computation of the gas tax distribution...from which set of population numbers?

I assume the calculation is based on the KS Sec. of State’s annual population estimate?

Thanks for your assistance.

Answer: Thanks to Don Osenbaugh of the League and Lucinda Anstaett of the Office of the State Treasurer we have a good picture of the process vis-à-vis the population numbers.

We are actually considering the population numbers used in two different ways. First, we have certain population numbers used by KDOT for making estimates of what cities and counties might receive in the current calendar year and the following calendar year. Second, we have a more recent population number utilized by the Office of the State Treasurer in making the current State fiscal year payments to cities and counties.

The Kansas Division of the Budget is responsible for the certification of Kansas population data to the Secretary of State. These numbers are certified each year on July 1, and represent the population numbers for the preceding calendar year. KDOT makes its gas tax distribution estimates in May of each year, and in doing so utilizes the most recent certified population numbers (i.e. population numbers certified the preceding July 1). For example, in May 2011 KDOT made its estimates of gas tax distributions to be made to cities and counties in calendar years 2011 and 2012. KDOT relied upon the July 1, 2010 certified population numbers (2009 population data).

In contrast, the Office of the State Treasurer is responsible for the actual payments and the population figures utilized in making those payments. Distribution of gas tax dollars by the State Treasurer - to the extent that it is based upon population - is based each State fiscal year upon the July 1 certification at the start of that State fiscal year. For example, the first quarterly payment made by ACH on July 15, 2011 (State FY 2012) utilized the July 1, 2011 certification (2010 population data).

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Question: Good morning. We have a question on what expenses the Motor Vehicle Fuel Tax can be used.

We have a Consolidated Street and Highway Fund (KSA 12-1,119). The citizens passed a special 1/2% sales tax which will start January 1, and will be deposited into the Consolidated Street and Highway Fund.

The Connecting links money is described in KSA 68-416 and KSA 68-416a and lists how the City Connecting links money can be used. It also goes into the Consolidated Street and Highway Fund.

The Motor Vehicle Fuel Tax is described in KSA 79-3425c(c) and it goes into the Consolidated Street and Highway Fund.

Our question is, per KSA 79-3425c(c) "Upon receipt of same unless a consolidated street and highway fund is established pursuant to K.S.A. 12-1,119" what expenses can be paid with the Motor Vehicle Fuel Tax? Do we make this determination from the language in 79-3425c, or the language in 12-1,119?

Answer: We believe that the essence of your question is whether the gas tax statute (KSA 79-3425c(c)) spending limitations are in some way *lessened* due to the placement of those dollars in the consolidated street and highway fund (created pursuant to KSA 12-1,119, a statute in which the spending limitations appear less restrictive). Or, stated another way, do the gas tax spending limitations found in K.S.A. 79-3425c(c) follow the gas tax dollars to the consolidated street and highway fund?

As it relates to spending limitations placed upon gas tax dollars received by cities, K.S.A. 79-3425c(c) provides as follows:

. . . All such payments shall be to the city treasurers of the respective cities. Upon receipt of same unless a consolidated street and highway fund is established pursuant to K.S.A. 12-1,119 . . . the city treasurer of each city shall credit the same to a separate fund to be used for the construction, reconstruction, alteration, repair and maintenance of the streets and highways of such city and for the payment of bonds, and interest thereon, issued pursuant to K.S.A. 79-3425g, and amendments thereto.

Authorization for the consolidated street and highway fund is found in K.S.A. 12-1,119, which, as it relates to spending limitations from such fund, provides as follows:

The governing body of any city may provide, by ordinance, for a consolidated street and highway fund to which may be credited moneys received by the city from state payments under the provisions of K.S.A. 68-416 [City Connecting Links] and 79-3425c [motor fuel tax] Moneys in such fund shall be used solely for street and highway purposes

Without question, the spending limitations found in K.S.A. 12-1,119 are couched in more general terms than those in K.S.A. 79-3425c(c). However, we believe the generally broad spending limitations of K.S.A. 12-1,119 are necessary because the fund may act as repository for more than one form of state payment, each of which comes with more specific limitations (e.g. city connecting links dollars are limited to certain maintenance responsibilities of the city; gas tax dollars are for “construction, reconstruction”), not to mention the possibility that the fund contains other city dollars transferred from the general or other city operating funds, and these broad spending limitations are not intended to replace the more specific limitations found in statutes related to the dollars credited to the consolidated street and highway fund.

In summary, then, gas tax dollars may be utilized only for those categories of expenses described in K.S.A. 79-3425c(c).

We should note that there is a 1994 AGO that addresses this statute and appears to expand slightly the gas tax spending authority of municipalities by pulling in the purpose of the tax as set forth in K.S.A. 79-3402 (link follows below). And, in light of that stated above the 10% limitations found in K.S.A. 79-3425c(e) and K.S.A. 79-3425f will apply to the portion of the consolidated street and highway fund made up of gas tax dollars.

We hope that this helps.

<http://ksag.washburnlaw.edu/opinions/1994/1994-034.htm>

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Question: I'm wondering where the population figures come from for the computation of the motor vehicle fuel tax distribution?

I assume the calculation is based on the KS Sec. of State's annual population estimate? Thanks for your assistance.

Answer: To respond to your question, it is important to understand that the population figures are certified to the Kansas Secretary of State's Office by the Kansas Division of the Budget on July 1st every year, and the July 1st certification is based on the preceding year's population figures (e.g. July 1, 2012 certification is using 2011 population data).

Certified July 1st population figures are used in both developing the estimate by the Kansas Department of Transportation and in making the distribution by the State Treasurer's Office; however, the timing of the estimate and distribution determines which July 1st certified population figures are used.

For example, the KDOT gas tax estimates for 2013 are done in May 2012 using the certified population data as of July 1, 2011 (the most recent certified population figures available, which are based on 2010 population data).

The State Treasurer's Office will also use the most recent July 1st certification for its distribution of gas tax monies. The January 15 and April 15, 2013 distribution of gas tax monies will be made using July 1, 2012 certified population figures, which are comprised of 2011 population data. Whereas, the July 15 and October 15, 2013 gas tax distribution will use the July 1, 2013 population certification, which will consist of 2012 population data.

So, the gas tax estimate by KDOT for calendar year 2013 is based on 2010 population data, while the actual distribution of gas tax monies is based on calendar year 2011 and 2012 population data.

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Question: The City would like to convert the special machinery fund to public works equipment fund for 2013. Historically the City has transferred 10,000 from the special highway (state gas tax) to the special machinery fund to accumulate money to purchase road equipment (trucks, backhoe, etc) under statute 68-141g. The street/public works director would like to use these

funds to purchase equipment not specific to streets (mowers, generators, etc.). His reasoning is so he doesn't have to start the PW equipment fund at -0-. The City has a street department in the general fund and with special highway fund repairs streets inside the city (chip seal, asphalt, etc.).

Can we do this or do we need to start this new fund at -0-?.

Answer: We believe that the City will need to start their new equipment reserve fund without benefit of the gas tax dollars now credited to the existing equipment reserve fund. We say this because we question the City's practice of transferring gas tax dollars to the existing equipment reserve fund with the intent of spending those dollars on equipment. The statute which addresses the gas tax received by the City, and the utilization of those dollars, is K.S.A. 79-3425c(c), which provides in pertinent part as follows:

. . . All such payments shall be to the city treasurers of the respective cities. Upon receipt of same unless a consolidated street and highway fund is established pursuant to K.S.A. 12-1,119 . . . the city treasurer of each city shall credit the same to a separate fund to be used for the construction, reconstruction, alteration, repair and maintenance of the streets and highways of such city and for the payment of bonds, and interest thereon, issued pursuant to K.S.A. 79-3425g, and amendments thereto.

As you can see, K.S.A. 79-3425c(c) limits the expenditure of gas tax dollars to construction, repair, maintenance, etc., and at the same time provides no authority for use of those dollars to purchase of equipment. Additionally, the statute provides for creation of a special fund into which those dollars must be credited (assuming the absence of a consolidated fund into which those dollars may be credited along connecting links and other street-related funds).

We do see where K.S.A. 68-141g authorizes the creation of a non-budgeted fund, the purpose of which is to finance acquisition of equipment or building of bridges, and into which City street fund dollars may be transferred, but the dollars which might be transferred into the fund authorized by K.S.A. 68-141g would not include gas tax dollars. And, even if you accept for the sake of discussion that K.S.A. 68-141g does authorize a transfer of gas tax dollars into the City's equipment reserve fund, the statutory limitation on the expenditure of those gas tax dollars would not be washed away.

Your note indicates that the City does have a special fund to which it credits its gas tax dollars. It would appear to us that the City's practice of transferring on an annual basis some of those gas tax dollars to an equipment reserve fund lacks statutory authority and, even if authorized, the subsequent expenditure of those dollars for purposes beyond what is authorized in K.S.A. 79-3425c(c) would not be appropriate. For these reasons, we are of the opinion that the City will not be able to utilize the dollars already credited to the equipment reserve fund in order to prime a new reserve fund that would likewise be used for purposes beyond those found in K.S.A. 79-3425c(c).

We hope that this helps,

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Question: Have a quick question working on a city budget, on the special highway page and on the input other page where we put the State's distribution for Kansas gas, I found on the municipal services website where I can find the 2011 figure and I just doubled that figure and use that for 2011 but where do I find the estimated 2012 or do we just figure the same and put an amount in the worksheet. Thanks so much.

Answer: The gas tax estimates can be found on the League of Kansas Municipalities website at the following address: <http://www.lkm.org/>

Under the drop-down menu entitled "Online Resources" there is a link entitled "Budget Tips." Click on this link. On the page that appears choose the first link ("FY _____ Special Street/Highway Fund – Cities"). On the .pdf screen that appears scroll down to your county and the information for the city in question should be available.

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