

Gas Tax Exemptions and Community Transit: It Makes Sense to Everyone Except the IRS

There's no such thing as easy money, at least not in the community transportation industry, and particularly not when the source is the Internal Revenue Service (IRS) . But many community transportation providers might be surprised to learn they can get a substantial amount of money by simply filling out a few forms and making some phone calls. A recent CTAA survey found that 40 percent of the systems responding had never applied for a federal or state gas tax exemption.

While it's common sense to community transportation systems that they constitute public transportation, the IRS doesn't agree. Unless you're running big buses along fixed routes, they say, you're not public transit.

by Chris Winters

Big Savings?

In the first week of February, CTAA surveyed its members to collect their experiences with the gas tax. The response was much larger than expected. (See sidebar, *What Did You Say?*) That isn't surprising; the gas tax savings can mean a huge savings for larger systems and a very helpful boost to smaller systems.

Randy Welch, of OATS, Inc., in Columbia, Mo., estimates that yearly savings from the gas tax exemption, if it were not revoked two years ago, would be approximately \$100,000. OATS is a much larger system than most community transit operators, but in these times of stifling budgetary pressures everything helps. Vallerie Stamper, Director of Access Sciota County (Ohio), agrees: "The tax-exempt status for fuel allows us to stretch our transportation dollars just that much further."

However, one survey respondent from Maryland tried to bring the extent of the exemption into focus noting that the gas tax is a small vehicle to keep pace with budget reductions.

Other agencies, while aware of the gas tax, feel that exempting themselves from the gas tax means less money for the government to pay out. "Our agency directly benefits from the collected taxes," a transit manager from California states, "so our Board of Directors does not support filing for any fuel tax requirements."

This disparity of opinions parallels the inequities of the federal distribution of transportation funds like the gas tax. Rural areas, in general, contribute more to the federal government through such taxes than they receive in return. And per capita Federal Transit Administration distributions in FY 1996 range from \$32 in large urban areas to just \$1.89 in rural areas.

Exemption's Source

Since 1978, the IRS has allowed an exemption from the federal fuel tax (currently \$.184 per gallon) for local governments and certain entities performing government-type work. Rules for exemptions from state fuel taxes vary from state to state; call your state's contact for the Motor Fuel Tax (outlined in CTR's January Resource Guide) for specific information about your state.

The intention of the IRS exemption, a result of the 1978 Energy Act, is to encourage people to ride transit by making it cheaper to operate transit vehicles, thereby inspiring lower fares and (hopefully) higher ridership. However, the code is very specific about the types of transit allowed for the exemption.

To exclude taxicabs and vanpooling operations, the IRS code limits the exemption for local bus systems to those that have 20 passengers and stick to fixed routes. They also automatically exempt transportation for schools.

Benefit for Coordination

Another way to get the tax-free gasoline is through a state or local government. The IRS exempts them from paying the federal fuel tax, but has ruled in the past that agencies contracting with a state or local government are not qualified for the exemption unless they provide a service traditionally performed by government or the contracting agency is directly controlled by state or local government. Transportation is not such a traditional government service and, as most nonprofit agencies are controlled by a Board of Directors, they are not under direct control of the government even though a majority of the funding may come from there.

However, some agencies like Access Sciota County (ASC), a brokerage agency in Portsmouth, Ohio, use the exemption as a carrot for coordination. Vallerie Stamper says that because ASC is part of the county government, they can offer the exemption to human services agencies that decide to coordinate through ASC with other area transit providers.

Some systems do not strike such a formal arrangement, instead just purchasing the gasoline from the county they serve. Since the county pays no tax, neither does the transit system.

What is Transit?

A number of community transit agencies have had to fight the IRS's perception that a transit system can have smaller vehicles and demand-response operations and still be a legitimate transit system. According to the IRS code, transit is defined as large buses transporting people along fixed routes. Often, neither of these qualifications is applicable to rural areas.

And the IRS's definition of transit does not discriminate solely against rural operators. An operator in Connecticut inquired about an exemption for their paratransit vehicles. The request was denied, and the operator says that this discriminates against ADA clients, as our paratransit program is more than 92 percent ADA-based.

One way to fight these perceptions is to enlist the help of other agencies in your state. In 1994, the IRS revoked the gas tax exemption for the Kosciusko Area Bus Service (KABS) which operates both small and large buses. The Warsaw, Ind., agency asked both the Indiana Transit Association and the Indiana Department of Transportation to talk to the IRS on the agency's behalf. The intervention added legitimacy to the agency which, despite operating since 1981, was perceived by the IRS as a fly-by-night operation. The exemption was reinstated for KABS and is still in place.

What to Do

Before you think about the exemption, you need to be sure your records are well-organized. The IRS may find that certain parts of your operation can use tax-exempt fuel while others cannot. Are you keeping track of the daily miles each vehicle is traveling? The trips each vehicle is serving?

If you don't precisely match all the qualifications, two points are helpful to emphasize with the IRS:

Transportation to the general public . Every system that receives money from the Nonurbanized Area Formula Program (formerly Section 18) is required to serve the general public. Make sure the IRS knows this. Even if you run a demand-response system, though you may not publish schedules, anyone at any time can schedule a ride.

Intercity transportation . The IRS makes a distinction between intercity buses and local buses. The rules for intercity buses are slightly easier to fulfill -- you only need to show you are available to the general public and operate along regular routes, the definition of which is unspecified. Local buses have the added requirement of having a seating capacity of at least 20 adults. Additionally, you may be able to

exploit the IRS definition of a local and intercity bus: a local bus is defined as one that transports passengers between points within the same metropolitan area. Metropolitan areas in rural America are infrequent, at best.

There are two options for claiming the federal exemption. You can file for a credit along with your yearly tax return (Form 4136). The main benefit of filing for a credit is if you find you're eligible for the current year, you can file for retroactive credits for the two previous years. You can also file for a refund, provided you are claiming at least \$1,000 per quarter (Form 8849). The latter might be the only option for nonprofit operations; consult an accountant.

The federal and state gas tax exemptions, though often confusing, can be an excellent way for any transit operation to cut costs. As federal funds decrease, agencies will need to take advantage of every available opportunity to reduce spending. CTAA has asked the Chief Counsel of FTA to look into the federal fuel tax exemption issue; we will keep you updated in future issues of CTR .

Tell me more!

There are a number of relevant publications and forms from the IRS. You can get them by calling the IRS at 800-829-3676 (although they're likely to be very busy this time of year), on the Internet at the IRS's remarkably well-designed web site or through CTAA's Fax-on-Demand service (800-527-8279).

Here's the publications and forms on the gas tax exemption. They are in Adobe Acrobat (.PDF) format. If you don't have the Acrobat reader, you can download the files now (click on the Save to File... option when your browser asks you what you want to do with the file) and go get Acrobat for free from Adobe .

Publication 378 : Fuel Tax Credits and Refunds (229k)

Publication 510 : Excise Taxes for 1996 (270k)

Form 4196 : Credit for Federal Tax Paid on Fuels (51k)

Form 8849 : Claim for Refund of Excise Taxes (76k)

What Did You Say?

The response from CTAA members to the gas tax survey last month was tremendous, indicating a great deal of interest around the country.

What is most striking about the responses is that in many states, there is no clear idea among transit agencies as to what is allowed and what is not. In many cases,

two similarly sized operators in the same state reported vastly different experiences with the exemption and the IRS. Here's a quick look at some results:

Never heard of exemption

Federal: 21.2 percent

State: 25 percent

Never applied for exemption

Federal: 40 percent

State: 40.3 percent

Applied for exemption but denied

Federal: 14.6 percent

State: 17 percent