
Introduction to Jurisdictional Issues: Assessing Road Charges on Out-of- State Drivers

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Agenda Item #10b

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SB 1077 and TAC Final Report

SB 1077:

“**3092.** (a) The Transportation Agency shall prepare and submit a report of its findings based on the results of the pilot program...The report shall include, but not be limited to, a discussion of all of the following issues:

...(3) *Jurisdictional issues.*”

TAC Recommendations:

Out-of-state vehicles will be included in the pilot and simulate payment for driving on California roads.

Drivers from neighboring states who drive regularly on California roads will be recruited to participate in the pilot.



Today: Only Highlighting Interstate Issues

Focus for today:

Assessing the Road Charge for travel on California roadways by a driver who's vehicle is registered in another state

Jurisdictional issues not considered today:

- ◆ Road Charging between state-local governments
- ◆ Road Charging between federal-state
- ◆ Road Charging involving international travel



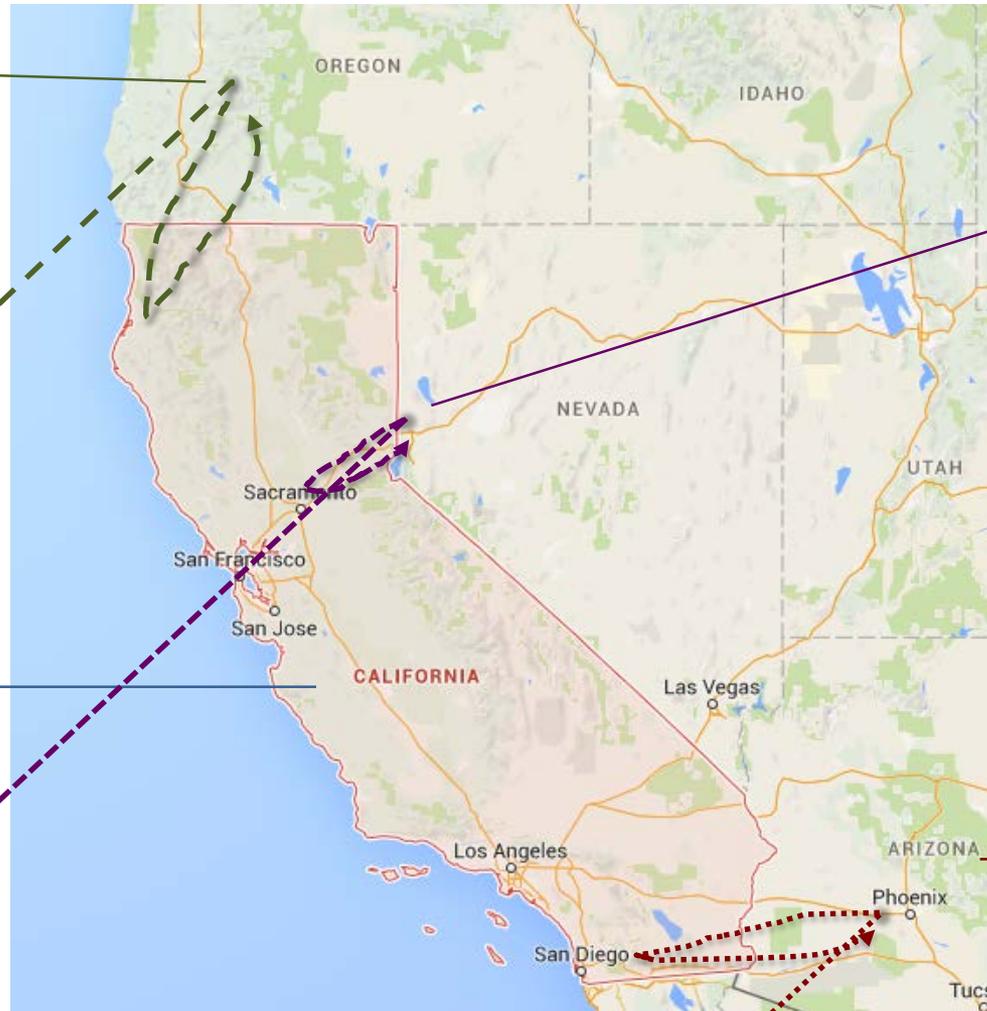
Interstate Travel Scenarios

OR RUC = 1.5 cents/mi
OR Gas tax = 30 cents/gallon

NV Gas tax = 23 cents/gallon

CA Road Charge = 1.8 cents/mi
CA Gas tax = 35.4 cents/gallon

AZ Gas tax = 18 cents/gallon



Legal and Regulatory Issues to Consider

1. **Legality of assessing the Road Charge on out-of-state drivers:**
 - ✧ Authority
 - ✧ Methods

2. **Standards and requirements for distance measurement devices:**
 - ✧ Federal laws
 - ✧ State powers

3. **Revenue collection and distribution among jurisdictions:**
 - ✧ Authority of Road Charge collection entity
 - ✧ Jurisdictional allocations, and state-level accounting rules and procedures



1. Assessing the Road Charge on Out-of-State Drivers

Legal Authority

- ◆ Transportation-related taxable events
 - ✦ Gas tax: wholesale or retail sales of motor fuel within the state
 - ✦ Toll roads: use of specific lane, road or bridge within the state
 - ✦ Vehicle licensing fees: place of primary residence within the state
 - ✦ Road Charge: driving on public roadways within the state

- ◆ Potential issues with assessing a Road Charge on out-of-state drivers
 - ✦ Right to Travel
 - ✦ Commerce Clause



1. Assessing the Road Charge on Out-of-State Drivers (continued)

Test for permissibility of fees charged for facility use:

- (1) based on a fair approximation of use of the facilities
- (2) not excessive in relation to the benefits conferred
- (3) does not discriminate against interstate commerce

The *methods* of assessing a Road Charge will matter:

- ◆ The method of taxation cannot be a de facto impairment of interstate commerce
- ◆ New York State Supreme Court: Flat registration fee with mandatory decal unconstitutional as applied to out-of-state truckers



2. Standards for Distance Measurement Devices

Why this matters:

Revenue grade metering will improve consumer confidence and reduce the possibility of revenue over/under runs

Federal regulations:

- ◆ Federal Odometer Act: only intended to deter fraud. NHTSA enforces the law
- ◆ Society of Automotive Engineers (SAE) guidelines: +/- 4% accuracy
- ◆ National Institute of Standards and Technology (NIST): for-hire passenger vehicles, trucks and buses odometer standards +/- 4%, (taximeters separate)



2. Standards for Distance Measurement Devices (continued)

Why is this an “Interjurisdictional” issue?

State-level action is the best near-term possibility for improving odometer accuracy – either multistate or unilaterally

State powers:

- ◆ Regulatory preemption by Feds?
- ◆ State authority to require distance measurement accuracy
 - ✧ New authorization
 - ✧ Rule-making under existing authority (CARB?)
- ◆ Market tools for ensuring accuracy: testing and certification bodies
 - ✧ Example: UL Labs



3. Revenue Collection and Distribution Among Jurisdictions

Authority of Road Charge collection entity:

- ◆ Collection of revenue from out-of-state drivers
 - ✧ Who do they pay?
 - ✧ Legal authorizations required to collect taxes from out-of-state drivers?
- ◆ Multistate collection entities:
 - ✧ Agents of states (example: International Fuel Tax Association)
- ◆ Tax collection activities by private entities



3. Revenue Collection and Distribution Among Jurisdictions (continued)

Jurisdictional allocations, and state-level accounting rules and procedures:

- ◆ Basis for determining mileage charges owed, by jurisdiction
- ◆ State-level legal requirements governing the receipt, holding and dispensing of public funds
 - ✦ Example: Oregon Treasury's interpretation of requirements
- ◆ State-level accounting rules and procedures
 - ✦ Governmental Accounting Standards Board (GASB) requirements
 - ✦ Annual financial reports – how is Road Charge revenue recognized for out-of-state drivers, etc.
 - ✦ Audits



Main Take-aways for California Road Charge Program

- California Road Charge assessed on out-of-state drivers must not discriminate against interstate commerce:
 - ...**by it's structure**: differential prices, special fines/remedies, etc.
 - ...**as applied**: compliance imposes unreasonable burden on interstate drivers (methods of reporting, compliance or payment)

- Revenue-grade mileage measurement accuracy may be an issue, depending on adopted tax policy:
 - ❖ California may be able to require odometer accuracy through its powers under the Federal Clean Air Act
 - ❖ Standards-setting organizations (e.g., SAE) could develop technical standards that become industry de facto standards
 - ❖ Alternatively, tax policy could allow for mileage “brackets” or small allowances for odometer-reported mileage



Main Take-aways for California Road Charge Program, **TAB 10b** (continued)

- Fee collection and revenue distribution may be conducted:
 - ✦ By individual states, with reciprocity agreements to facilitate enforcement and collection activities
 - ✦ Through bi-state or multi-state compacts (may require state legislative and Congressional approval); provides most robust authority
 - ✦ Third-party entities that facilitate revenue collection and distribution by individual states (example: IFTA)

- Individual states may differ in their ability to handle (or outsource) revenue collection, deposit or distribute funds. Example: Oregon Treasury procedures

- There may be an important role for a multistate entity to serve as a financial clearinghouse for Road Charge revenue reconciliation (but not collection), in lieu of interstate compacts or other federal action

