

# AVIATION FUEL SALES TAX REVENUE ESTIMATION AND ALLOCATION

LOUISIANA DEPARTMENT OF REVENUE  
AND  
LOUISIANA DEPARTMENT OF  
TRANSPORTATION AND DEVELOPMENT

PERFORMANCE AUDIT SERVICES

**Informational Brief**  
**April 24, 2023**

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April 24, 2023

The Honorable Patrick Page Cortez,  
President of the Senate  
The Honorable Clay Schexnayder,  
Speaker of the House of Representatives

Dear Senator Cortez and Representative Schexnayder:

This informational brief provides the results of our review of how aviation fuel sales tax revenues are estimated and allocated for airport capital improvement projects in Louisiana. This brief is intended to provide timely information based on a legislative request. I hope this brief will benefit you in your legislative decision-making process.

We would like to express our appreciation to the Louisiana Department of Revenue and the Louisiana Department of Transportation and Development for their assistance.

Respectfully submitted,



Michael J. "Mike" Waguespack, CPA  
Legislative Auditor

MJW/aa

AVIATIONFUELTX







# Informational Brief

## Aviation Fuel Sales Tax Revenue Estimation and Allocation

Louisiana Department of Revenue and

Louisiana Department of Transportation and Development

Audit Control# 40220034

Performance Audit Services - April 2023

MICHAEL J. "MIKE"  
WAGUESPACK, CPA

We evaluated the estimation and allocation of the aviation fuel sales tax revenues, which are dedicated to fund airport capital improvement projects across the state through House Bill (HB) 2 and to fund the administration of the Louisiana Department of Transportation and Development (DOTD) Airport Construction and Development Priority Program through HB 1 (aviation program).

According to Louisiana Revised Statute (R.S.) 47:818.2, there are two main types of aviation fuel used in general aviation: aviation gasoline and aviation jet fuel. Aviation gasoline is any gasoline that is intended for or primarily used for propelling aircraft. Aviation jet fuel is the motor fuel designed for use in the operation of jet or turbo-prop aircraft. State law<sup>1</sup> exempts aviation gasoline and aviation jet fuel (aviation fuel) from the motor fuel tax, but not from the state sales tax, which is currently levied at a rate of 4.45%. State sales tax revenues on aviation fuel (aviation fuel sales tax revenue) is the only state dedicated funding source for airport capital improvement projects.<sup>2</sup> Exhibit 1 provides the taxes levied on each type of aviation fuel used for propelling aircraft.

Exhibit 1 Taxes Levied on Aviation Fuel		
Aviation Fuel Type	Subject to Motor Fuel Tax?	Subject to State Sales Tax?
Aviation Gasoline	No	Yes
Aviation Jet Fuel	No	Yes

**Source:** Prepared by legislative auditor's staff using state law.

### Why We Compiled This Informational Brief

We received a legislative request to provide information on how aviation fuel sales tax revenues are estimated and used for airport capital improvement projects.

Informational briefs are intended to provide more timely information than standards-based performance audits. While these informational briefs do not follow all *Governmental Auditing Standards*, we conduct quality assurance activities to ensure the information presented is accurate. We discussed this information with the Louisiana Department of Revenue (LDR) and the Louisiana Department of Transportation and Development (DOTD) and incorporated their feedback throughout this informational brief. Appendix A contains DOTD's response and Appendix B contains LDR's response.

<sup>1</sup> R.S. 47:818.14 exempts aviation fuel used for propelling aircraft from the motor fuel tax.

<sup>2</sup> Individual airports can seek state funding for their capital improvements as line item appropriations in HB 2.

The Louisiana Constitution<sup>3</sup> requires that the “excess revenues”<sup>4</sup> from all taxes levied on gasoline, motor fuels, and special fuels<sup>5</sup> be deposited in and credited to the Transportation Trust Fund (TTF).<sup>6</sup> Exhibit 2 shows TTF revenues, by source, for fiscal years (FY) 2010, 2015, 2020, and 2022.

<b>Exhibit 2 Transportation Trust Fund (TTF) Revenues (\$, Million)</b>				
<b>Revenue Source</b>	<b>FY10</b>	<b>FY15</b>	<b>FY20</b>	<b>FY22</b>
<b>Highway Trust Fund (HTF) - Federal</b>				
Federal receipts	\$823.4	\$687.4	\$734.7	\$858.9
<b>Sub-Total HTF - Federal</b>	<b>\$823.4</b>	<b>\$687.4</b>	<b>\$734.7</b>	<b>\$858.9</b>
<b>TTF - Regular</b>				
Motor Fuel Taxes (16-cents motor fuel tax)	\$470.4	\$485.1	\$465.0	\$496.9
Motor Vehicle License Tax	\$44.6	\$50.9	\$52.4	\$59.9
<b>Aviation Fuel Sales Tax*</b>	<b>\$29.8</b>	<b>\$29.8</b>	<b>\$29.8</b>	<b>\$29.8</b>
Miscellaneous Fees and Fines	\$28.0	\$29.7	\$31.4	\$29.5
Interest Earnings	\$1.8	\$0.3	\$5.1	\$0.4
<b>Sub-Total TTF - Regular</b>	<b>\$574.6</b>	<b>\$595.8</b>	<b>\$583.7</b>	<b>\$616.5</b>
<b>TIMED Account</b>				
Motor Fuel Taxes (4-cents motor fuel tax)	\$117.6	\$121.3	\$116.3	\$124.2
Interest Earnings	\$1.1		\$0.1	
<b>Sub-Total TIMED Account</b>	<b>\$118.7</b>	<b>\$121.3</b>	<b>\$116.4</b>	<b>\$124.2</b>
<b>Construction Subfund</b>				
Act 10 of the 2020 First Extraordinary Session			\$3.0	
Act 167 of the 2022 Regular Legislative Session				\$100.0
Miscellaneous Fees and Fines				\$4.2
<b>Sub-Total Construction Subfund</b>			<b>\$3.0</b>	<b>\$104.2</b>
<b>Mega Projects Leverage Fund</b>				
Act 167 of the 2022 Regular Legislative Session				\$500.0
<b>Sub-Total Mega Projects Leverage Fund</b>				<b>\$500.0</b>
<b>Total Revenues</b>	<b>\$1,516.7</b>	<b>\$1,404.5</b>	<b>\$1,437.8</b>	<b>\$2,203.8</b>
* The aviation fuel sales tax amounts are not based on the annual estimated revenue from sales tax collected on aviation fuel. Instead, it is based on an amount that was established by LDR for FY 2010. <b>Source:</b> Prepared by legislative auditor's staff using information from the State's LaGov Enterprise Resource Planning System (LaGov), Louisiana's Annual Comprehensive Financial Report, Westlaw, as well as information provided by LDR.				

<sup>3</sup> La. Const. Art. VII § 27(A)

<sup>4</sup> Excess revenues are the remaining revenues after payment of outstanding bonds secured by the taxes levied on gasoline, motor fuels, and special fuels, payments for La. Const. Art. VII § 27(C) bonds, and credit to the Bond Security and Redemption Fund.

<sup>5</sup> According to R.S. 47:818.2, aviation gasoline falls under the “gasoline” category, and aviation jet fuel falls under the “motor fuels” category.

<sup>6</sup> TTF is the main funding source used to meet the state's transportation needs and was established as a special permanent trust in the state treasury by Act 847 of the 1989 Regular Legislative Session, eff. Jan. 1, 1990 (La. Const. Art. VII § 27).

LDR collects state sales tax revenues, classifies a specific amount of state sales tax as aviation fuel sales tax in the state's LaGov Enterprise Resource Planning System (LaGov), and transfers collected state sales taxes (including the reclassified aviation fuel sales tax) from LDR's bank account into the Louisiana Department of Treasury (Treasury). The Louisiana Constitution<sup>7</sup> requires that airports receive from TTF funds an annual appropriation in the amount equal to, but not greater than, the annual estimated revenue from the sales taxes to be collected and received on aviation fuel.

DOTD administers the aviation program<sup>8</sup> using TTF funds<sup>9</sup> appropriated based on the estimated aviation fuel sales tax revenues. Every year since FY 2010, the Revenue Estimating Conference<sup>10</sup> (REC) has forecasted \$29.8 million in revenues from aviation fuel sales tax collections. The purpose of this informational brief was to answer questions regarding how the aviation fuel sales tax revenue estimation is determined and how these funds are allocated by DOTD for the aviation program.

### **Question 1: Are the aviation fuel sales tax appropriations based on the annual estimated revenue<sup>11</sup> from sales taxes collected on aviation fuel?**

**No, the aviation fuel sales tax appropriations have not been based on the annual estimated revenue<sup>12</sup> from aviation fuel sales taxes collected since FY 2010, as required by the Louisiana Constitution.<sup>13</sup>** Best practices<sup>14</sup> state that financial forecast estimations are based on past, current, and projected financial conditions. Therefore, the estimation of aviation fuel sales tax revenues should consider the actual amount of these taxes collected based on historical revenue data. Instead, the appropriations have equaled \$29.8 million for the past 13 years, an amount that was calculated by LDR based on an average of gallons of

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<sup>7</sup> La. Const. Art. VII § 27(B)(1)

<sup>8</sup> The program maintains annual priority list of airport capital improvement projects, subject to approval by the Joint Legislative Committee for Transportation, Highways, and Public Works, which can be found on the following website:

[http://wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/Multimodal/Aviation/Pages/Construction\\_Development.aspx](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Multimodal/Aviation/Pages/Construction_Development.aspx)

<sup>9</sup> Per R.S. 2:807, TTF is the source of state funds provided for any airport project on the priority list of airport improvement projects.

<sup>10</sup> R.S. 39:24(A) states that the REC shall establish an official forecast for each fiscal year that provides an estimate of money available for appropriation.

<sup>11</sup> The legislature is required to appropriate sales tax revenues collected on aviation fuel before they are actually collected by LDR for the upcoming fiscal year.

<sup>12</sup> The legislature is required to appropriate sales tax revenues collected for aviation fuel before they are actually collected by LDR for the upcoming fiscal year. Based on best practices, this estimate should be based on actual aviation fuel sales tax collected in prior years.

<sup>13</sup> La. Const. Art. VII § 27(B)(1)

<sup>14</sup> The Government Finance Officers Association, *Financial Forecasting in the Budget Preparation Process*, February 2014.



aviation fuel sold, an estimated price per gallon,<sup>15</sup> and a 4% sales tax rate as of FY 2010 that has not since been updated. According to state law,<sup>16</sup> LDR is responsible for the collection of all state sales taxes. The Louisiana Constitution<sup>17</sup> states that the revenue dedicated to airports shall be an annual TTF appropriation based on the *annual* estimated revenue from sales tax collected and received on aviation fuel.

REC has annually adopted the amount of \$29.8 million in aviation fuel revenues since FY 2010; however, it is not based on the annual estimated revenue from sales tax collected on aviation fuel. According to state law,<sup>18</sup> the REC may request and shall receive from all public officers, departments, agencies, and authorities of the state and its political subdivisions assistance and data to enable REC to fulfill its duties. According to LDR, it has not provided the REC with any updated amounts of estimated revenue from sales tax collected on aviation fuel since that time, even though the number of gallons of aviation fuel may have changed, the sales tax rate has changed, and aviation fuel prices have fluctuated since FY 2010.<sup>19</sup> According to a presentation<sup>20</sup> given by LDR in August 2016, "It was agreed to allocate \$29.8 million per fiscal year to the Aviation Fund."

**According to LDR, it cannot accurately estimate the annual revenue from aviation fuel sales taxes because it does not currently collect all information needed for this estimate.** State law<sup>21</sup> requires aviation fuel dealers to file the Aviation Fuel Dealer Quarterly Return. This return contains the number of net gallons sold for or used in aircraft during the reporting period. According to LDR, because this return is for informational purposes only, it cannot enforce that all aviation fuel dealers report this information to LDR. Therefore, if LDR provides information from these forms for the calculation of a new estimate of aviation fuel sales tax revenues, that information may not provide complete and accurate information on gallons of aviation fuel sold for or used in aircraft. According to state law,<sup>22</sup> LDR does have the option to issue a \$100 penalty for failure to file this return by the due date.

According to LDR, state law<sup>23</sup> needs to be changed to include additional information in the Aviation Fuel Dealer Quarterly Return, such as the gross amount of aviation fuel revenues and the total amount of aviation fuel revenues exempt from sales tax, as shown in Exhibit 3. We found that this state law already authorizes LDR to collect the listed information as well as "any other information

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<sup>15</sup> According to LDR, it calculated the price per gallon by using information from the Energy Information Administration and calculated the number of gallons by using fuel tax reports filed by gasoline dealers.

<sup>16</sup> R.S. 47:302

<sup>17</sup> La. Const. Art. VII § 27(B)(1)

<sup>18</sup> R.S. 39:24(B)

<sup>19</sup> Since FY 2010, the sales tax rate changed from 4% to 5% for a short period in F Y 2016; back to 4% in FY 2017 and FY 2018; and to 4.45% in FY 2019, and has since remained at that level.

<sup>20</sup> <https://bit.ly/3o9bd6e>

<sup>21</sup> R.S. 47:818.32

<sup>22</sup> R.S. 47:818.24

<sup>23</sup> R.S. 47:818.32



required," so it does not need legislation to modify the return; however, adding additional required information to state law may give additional enforcement authority to LDR. Exhibit 3 also shows examples of what LDR could add to the Aviation Fuel Dealer Quarterly Return to collect this information and help provide a more accurate estimate of the revenue from the aviation fuel sales taxes collected. In addition, LDR could also add a separate line for reporting aviation fuel sales taxes on the Sales Tax Return form or another required form if they choose not to use the Aviation Fuel Dealer Quarterly Return.

### Exhibit 3 Example of Aviation Fuel Dealer Quarterly Return

R-5347 (9/17) Batch Type 903 or 904

**LOUISIANA**  
DEPARTMENT of REVENUE

**Aviation Fuel Dealer Quarterly Return**

Mail To:  
Louisiana Department of Revenue  
P.O. Box 201  
Baton Rouge, LA 70821-0201  
(855) 307-3893

**FOR OFFICE USE ONLY.** Field flag

Filing Period: MM/YY

FEIN: \_\_\_\_\_

If your name has changed, fill in circle.     If amended return, fill in circle.     If final return, fill in circle.

Account Number: \_\_\_\_\_

Name (1): \_\_\_\_\_

Name (2): \_\_\_\_\_

Address (1): \_\_\_\_\_

Address (2): \_\_\_\_\_

City, State ZIP: \_\_\_\_\_

**AF**

Transactions for the Quarter	A Aviation Gasoline	B Aviation Jet Fuel
1 Actual beginning inventory		
2 Total receipts (Sch. A - R-5291)		
3 Total gallons available for removal (Add Line 1 and Line 2)		
4 Total gallons exported (Sch. B - R-5290)		
5 Total gallons sold for or used in aircraft (Sch. B - R-5290)		
6 Total gallons sold/used for purposes other than aircraft (Sch. B - R-5290)		
7 Total disbursements (Add Lines 4, 5, and 6)		
8 Net accountable gallons (Subtract Line 7 from Line 3)		
9 Actual ending inventory		
10 Inventory variation - gain		
11 Inventory variation - loss		
12 <b>Penalty Amount Due</b> (If not filed within 30 days from due date, penalty of \$100 is due.) Make payment payable to: <b>Louisiana Department of Revenue</b> and mail return and payment to the address above. <b>Do not send cash. Pay this amount.</b>	\$	00

This return is due on or before the 25th day of the month following the period covered. If the due date falls on a weekend or legal holiday, the return is due the next business day.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

**PAID PREPARER USE ONLY**

Print Preparer's Name: \_\_\_\_\_ Preparer's Signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_ Check  if Self-employed PTIN: \_\_\_\_\_

Firm's Name: \_\_\_\_\_ Firm's EIN: \_\_\_\_\_

Firm's Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

**Complete only if change in business status has occurred. Please print or type.**

Date business discontinued (mm/dd/yyyy): \_\_\_\_\_ Date business sold (mm/dd/yyyy): \_\_\_\_\_ Name of purchaser: \_\_\_\_\_

#### Examples of Potential Additional Requirements to Form

1. Total amount of revenues from aviation fuel sales
2. Total amount of aviation fuel revenues exempt from sales tax (e.g., sales to federal government, subject to interstate commerce, etc.) and reason for exemptions.



**Note:** These are examples of potential requirements. LDR should work with the aviation fuel dealers to determine what exact information LDR needs in order to be able to accurately calculate aviation fuel sales tax revenues.

**Source:** Prepared by legislative auditor's staff using information obtained from LDR.

**Matter for Legislative Consideration 1:** The legislature may wish to work with LDR to consider whether amending R.S. 47:818.32 would help LDR collect the information needed to more accurately estimate the revenue from the aviation fuel sales taxes. This could include the total amount of revenues from aviation fuel sales, the total amount of aviation fuel revenues exempt from sales tax, and the reasons for exemptions.

**Matter for Legislative Consideration 2:** The legislature may wish to amend R.S. 47:818.32 to potentially increase the penalty amount in state law if the aviation fuel dealers fail to submit this information to help LDR enforce this law.

**Matter for Legislative Consideration 3:** The legislature may wish to work with LDR to ensure that LDR has sufficient resources to enforce aviation fuel dealers' compliance in submitting required information.

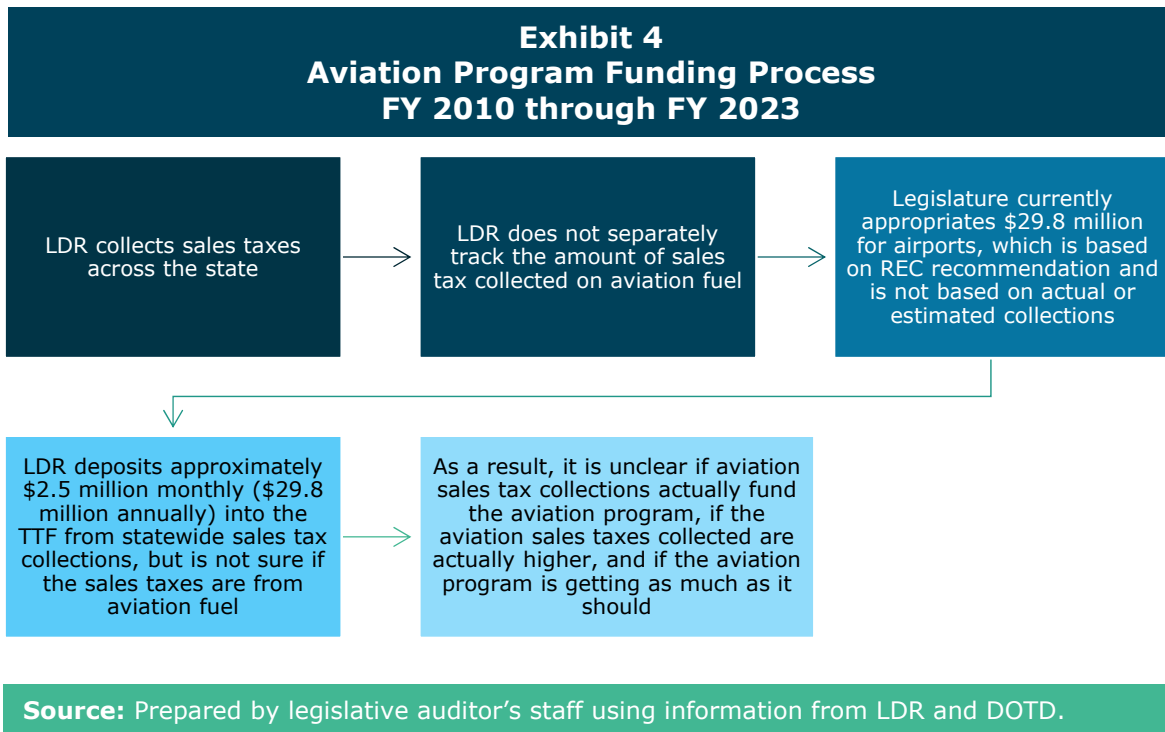
## **Question 2: Do the estimated aviation fuel sales tax revenues fund the aviation program?**

**It is unclear whether the estimated aviation fuel sales tax revenues are sufficient to cover the \$29.8 million appropriated to the aviation program.** The Louisiana Constitution<sup>24</sup> requires that the "excess revenues"<sup>25</sup> from all taxes levied on gasoline, motor fuels, and special fuels must be deposited in and credited to the TTF. According to LDR, when it receives sales tax returns, it cannot separate the amount of sales tax on aviation fuel because these taxes are combined with taxes on other types of taxable sales for reporting purposes. Therefore, LDR transfers \$29.8 million from the total sales taxes collected in the state to the TTF annually (approximately \$2.5 million monthly). Because LDR does not know how much it collects in aviation fuel sales taxes, it is unclear whether aviation fuel sales taxes collected are sufficient to cover the \$29.8 million appropriated to the aviation program. It is possible that the aviation fuel sales taxes collected are less than \$29.8 million, meaning that part of the amount transferred to the TTF comes from general sales taxes. It is also possible that aviation fuel sales taxes exceed \$29.8 million, meaning some money that should have been appropriated to the aviation program was spent for different purposes. Exhibit 4 provides the process of funding the aviation program.

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<sup>24</sup> La. Const. Art. VII § 27(A)

<sup>25</sup> Excess revenues are the remaining revenues after payment of outstanding bonds secured by the taxes levied on gasoline, motor fuels, and special fuels, payments for La. Const. Art. VII § 27(C) bonds, and credit to the Bond Security and Redemption Fund.



**Question 3: How does DOTD allocate the aviation fuel sales tax revenues to airports, and how does it ensure equal consideration is given to commercial service airports and general aviation airports, in accordance with state law?**

**Per state law<sup>26</sup> and regulations,<sup>27</sup> DOTD administers the aviation program and determines which airports are eligible to receive TTF funds for capital improvement projects based on program applications, with 65% of TTF funds from aviation fuel sales tax revenues dedicated to aviation going to commercial service airports and 35% dedicated to aviation going to general aviation airports.** Commercial service airports are airports that enplane 2,500 or more passengers annually. Louisiana has seven commercial service airports: (1) Alexandria International Airport, (2) Baton Rouge Metropolitan Airport, (3) Lafayette Regional Airport, (4) Lake Charles Regional Airport, (5) Louis Armstrong New Orleans International Airport, (6) Monroe Regional Airport, and (7) Shreveport Regional Airport. General aviation airports are public-use airports that do not have scheduled service or have scheduled service with less than 2,500 passenger boardings each year. Louisiana has 61 public general aviation airports. DOTD uses TTF funds from the aviation fuel sales tax revenues to fund eligible

<sup>26</sup> R.S. 2:801 through 814

<sup>27</sup> Louisiana Administrative Code (LAC) 70, Part IX

airport improvement projects on the priority list of projects approved by the Joint Legislative Committee for Transportation, Highways, and Public Works.

DOTD evaluates airport improvement projects using a point-based application process. Applications for commercial service airports and general aviation airports use the same requirements. To ensure equal consideration is given to smaller and larger airports as required by state law,<sup>28</sup> DOTD developed regulations<sup>29</sup> requiring that 65% of TTF funds from aviation fuel sales tax revenues go to commercial service airports and 35% to general aviation airports for improvement projects.

**From FY 2010 through FY 2023, the legislature has appropriated in HB 2 an average of \$28.5 million each fiscal year for airport capital improvement projects for the aviation program based on REC's annually adopted forecast of \$29.8 million. The remaining amount is appropriated in HB 1 for aviation program operations.** For FY 2023, the legislature appropriated \$28.3 million airport capital improvement projects. Exhibit 5 summarizes where DOTD allocated the FY 2023 appropriation.

<b>Exhibit 5 Aviation Program's Allocation FY 2023</b>		
<b>Allocations</b>	<b>Amount (\$, Million)</b>	<b>Percentage (%)</b>
<b>Commercial Service Airports</b>		
Commercial Service Airports	\$18.3	64.9%
<b>General Aviation Airports</b>		
General Aviation Airports	\$9.0	31.9%
General Aviation Maintenance*	\$0.3	1.1%
Navigational Aid*	\$0.6	2.1%
<b>Sub-Total General Aviation Airports</b>	<b>\$9.9</b>	<b>35.1%</b>
<b>Total Allocated to Airports by DOTD</b>	<b>\$28.2**</b>	<b>100.0%</b>
<b>Total Appropriated in HB2</b>	<b>\$28.3</b>	
<p>*According to DOTD, the General Aviation Maintenance and Navigational Aid programs are dedicated to general aviation airports. The allocations to these programs should be added to the total general aviation airport amount, resulting in 35% allocated to general aviation airports.</p> <p>**According to DOTD, the FY 2023 difference between the HB 2 appropriation and the aviation program total allocations could have been caused by insufficient funds to cover a particular airport project cost. The funding is not decreased from the aviation program and remains available to fund other projects when there is more funding added in the next fiscal year or to pay possible change orders associated with approved airport costs.</p> <p><b>Source:</b> Prepared by legislative auditor's staff using information from HB 2 of the 2022 Regular Legislative Session and DOTD's aviation program.</p>		

<sup>28</sup> R.S. 2:802

<sup>29</sup> LAC 70:IX.311(C),(D)

As of FY 2023, DOTD has identified \$206.0 million in unfunded<sup>30</sup> general aviation airport capital improvement projects and \$465.2 million in unfunded commercial service airport capital improvement projects through FY 2030. According to DOTD, this \$671.2 million state investment would result in \$581.5 million in matching federal funds.

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<sup>30</sup> While these projects made the aviation program priority list, they are unfunded.



## **APPENDIX A: DOTD'S RESPONSE**

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Office of the Secretary  
PO Box 94245 | Baton Rouge, LA 70804-9245  
ph: 225-379-1200 | fx: 225-379-1851

John Bel Edwards, Governor  
Eric Kalivoda, Secretary

April 14, 2023

Mr. Michael J. "Mike" Waguespack, CPA  
Louisiana Legislative Auditor  
P. O. Box 94397  
Baton Rouge, LA 70804

**RE: Department of Transportation and Development  
Informational Brief Response - Aviation Fuel Sales Tax Revenue Estimation and  
Allocation**

Dear Mr. Waguespack:

The Department is in receipt of your Informational Brief entitled "Aviation Fuel Sales Tax Revenue Estimation and Allocation." I appreciate the opportunity to respond to the brief and also to have my response letter included as an attachment in the final report.

The Department concurs with your Informational Brief regarding this subject.

It should also be noted that the cost of improving and maintaining the Louisiana airport system relies heavily on the airport sponsors and the State of Louisiana for funding support for General Aviation capital projects. System improvements recommended for each airport to meet its service role in providing local and regional economic benefits to Louisiana communities was determined for the system through the "Louisiana Aviation System Plan." The costs associated with continued maintenance and development of the system is estimated at approximately \$3.48 billion over the next 30 years.

Thank you for the opportunity to respond to this Informational Brief and to have our response included in the final report. Please feel free to contact me or Barry Keeling, Deputy Secretary, at (225) 379-1200 should you have any questions.

Sincerely,

Eric Kalivoda  
Secretary

EK:MS:ch

**Informational Brief Response – Aviation Fuel Sales Tax Revenue Estimation and Allocation**

April 14, 2023

Page 2 of 2

c: Mr. Barry Keeling  
Mr. Don Johnson  
Ms. Renee Lapeyrolerie  
Mr. Brad Brandt  
Mr. Phil Jones  
Mr. Mark St. Cyr

## **APPENDIX B: LDR'S RESPONSE**

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State of Louisiana  
Department of Revenue

JOHN BEL EDWARDS  
Governor



KEVIN J. RICHARD, CPA  
Secretary

April 19, 2023

**Via Email Only, to: [gbrown@lla.la.gov](mailto:gbrown@lla.la.gov)**

Mr. Michael J. "Mike" Waguespack CPA  
Louisiana Legislative Auditor  
Post Office Box 94397  
Baton Rouge, LA 70804-9397

Re: Louisiana Department of Revenue's (LDR) Response to the  
Office of the Louisiana Legislative Auditor's (LLA)  
Aviation Fuel Sales Tax Informational Brief

Dear Mr. Waguespack:

In an information brief prepared in April 2023, the LLA explored questions about the aviation fuel appropriation to the transportation trust fund ("TTF"). This letter addresses the LLA's position regarding question one (1), which directly relates to LDR's preparation of the aviation fuel annual estimate. For now, LDR will not discuss the LLA's summations about questions two (2) and three (3), as that information is not directly related to LDR. So, in question one (1), the LLA outlined the information below.

<b>Aviation Fuel Sales Tax Appropriations Have Not Been Based on Annual Estimates</b>	
<b>Question 1</b>	Is the aviation fuel sales tax appropriations based on the annual estimated revenue from sales tax collected on aviation fuel?
<b>LLA's Short Answer</b>	<ol style="list-style-type: none"><li>1. The aviation fuel sales tax appropriations have not been based on the annual estimated revenue from aviation fuel sales tax since FY 2010, as required by the Louisiana Constitution.</li><li>2. According to LDR, it cannot accurately estimate the annual revenue from aviation fuel sales taxes because it does not currently collect all information needed for this estimate.</li></ol>
<b>LLA's Recommended Matters for Legislative Consideration</b>	<p>The legislature may wish to:</p> <ol style="list-style-type: none"><li>1. Work with LDR to consider whether amending R.S. 47:818.32 would help LDR to collect the information needed to more accurately estimate the revenue from the aviation fuel sales taxes.</li><li>2. Amend R.S. 47:818.32 to potentially increase the penalty amount in state law if the aviation fuel dealers fail to submit this information to help LDR enforce this law.</li><li>3. Work with LDR to ensure that LDR has sufficient resources to enforce aviation fuel dealers' compliance in submitting required information.</li></ol>

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### ***LDR's Estimate Preparation Process Is Hampered by Data Limitations Not the Agency's Failure to Collect Data***

The LLA's statement that, "[a]ccording to LDR, it cannot accurately estimate the annual revenue from aviation fuel sales taxes because it does not currently collect all information needed for this estimate" is a mischaracterization and oversimplification of the process and analysis LDR engages in to prepare the aviation fuel estimate as well as the limitations of LDR's various data sources. So, to clarify LDR's process, analysis and data limitations, LDR shares the following.

LDR reviews its own past and current returns, records and reports to obtain data necessary to prepare the estimate. However, because the constitutional article that outlined the parameters of the TTF does not easily work in concert with the various tax impositions and exemptions applicable to aviation fuel, LDR must review several different types of tax returns, reports and records to obtain data necessary to prepare the estimate. This includes reviewing state sales tax returns, petroleum product inspection fee reports and motor fuel tax reports, which all have a different basis and different required information to determine the applicable tax due for that respective return or report.

Next, LDR gathers information to determine the cost/price of the purchase/sale of the aviation fuel transactions reported on these different return, report and record types. In doing so, LDR faces a data limitation because the laws that govern the respective returns, reports and records do not require taxpayers to report the cost/price of each aviation fuel purchase/transaction. Instead, these returns, reports and records require reporting the total amount of all aviation fuel purchases that occur in a respective tax period. So, to overcome this data limitation without placing a substantial reporting or compliance burden<sup>1</sup> on aviation fuel taxpayers, LDR uses the monthly price information posted for Louisiana by the Energy Information Administration to assist in determining the market cost/purchase price for aviation fuel. Once all the requisite information is gathered, LDR then performs a statistical analysis to complete its estimate preparation.

This information is important because though LDR collects a volume of information, the information it collects is not limitless or boundless. More importantly, it brings clarity to your office's statements as there is no inherent failure on LDR's part, rather the laws that govern the TTF and the taxing system's returns, reports and records do not easily work in concert together. In addition, there is no statutory enactment accompanying the constitutional article that outlined the parameters of the TTF. As a result, there remains unanswered questions and missing

<sup>1</sup> It is widely discussed in the business and tax world that a taxing agency's increased compliance requirements increases the cost of compliance, discourages taxpayers from compliance and sometimes negatively impacts market competition. As a result, LDR is constantly balancing its need to encourage voluntary compliance against the need to refrain from over burdening taxpayers with compliance requirements.

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statutory mandates that would allow LDR the best opportunity to gather the information needed to ensure a more accurate estimate and/or estimate preparation process.

### ***LDR Cannot Interfere with the Legislature's Power To appropriate***

Your office also stated that: (1) "the Louisiana Constitution states that the **revenue dedicated** to airports shall be an annual TTF appropriation based on the annual estimated revenue from sales tax collected and received on aviation fuel", (2) "the **REC has annually adopted** the amount of \$29.8 million in aviation fuel revenues since FY 2010" and, (3) "the **REC may request**...such assistance and data as will enable REC to fulfill its duties". The premise of these statements are derived from the Legislature's power to appropriate, which can be found in La. Const. art. 3 §16(A), which states,

Except as otherwise provided by this constitution, **no money shall be withdrawn from the state treasury except through specific appropriation**, and no appropriation shall be made under the heading of contingencies or for longer than one year.

The power to appropriate is a long standing principle of the separation of powers doctrine that provides only the Legislature with the power to appropriate funds. Your office's Informational Brief is replete with implications that LDR's responsibilities should be the trigger for the Legislature, through the Revenue Estimating Conference ("REC"), to request information, adopt a different aviation fuel estimate and to appropriate TTF funds. However, LDR's true role is to provide information upon request rather than use its duties to influence and/or drive the TTF appropriation process.

Your office's Information Brief also shares that, "[a]ccording to LDR, LDR has not provided the REC with any updated amounts of estimated revenue from sales tax collected on aviation fuel since that time, even though the number of gallons of aviation fuel may have changed, the sales tax rate has changed, and aviation fuel prices may have fluctuated." However, in stating this, your office does not clearly recognize that the REC has not requested an update from LDR, which is why none has been provided. Also, LDR in compliance with the Legislature's power to appropriate and dictate all appropriation related activities, such as the REC recognizing specific estimates and amounts related to the TTF, has been available, as an agency, to provide information when requested. In short, the Legislature, through the REC process or its other processes, can and should determine if the annual TTF appropriations should have been different or the same amounts, not LDR, because only the Legislature has the power to dedicate monies in accordance with the constitutional mandate.

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In closing, LDR thanks the LLA for exploring these questions regarding the aviation fuel appropriation of the TTF and looks forward to partnering with the Legislature, through the REC, to ensure the appropriation process comports with law and its wishes. Should you have any questions or require additional information, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Richard', with a large, stylized flourish at the end.

Kevin Richard  
Secretary  
Louisiana Department of Revenue

cc: Gina Brown, Audit Manager, Legislative Auditor's Office  
Irina Hampton, Audit Team, Legislative Auditor's Office  
Mark St. Cyr, Director of Audit & Quality Control, DOTD  
Don Johnson, Undersecretary, DOTD  
Barry Keeling, Deputy Secretary, DOTD  
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