a few feet below the ditch on the uphill side of the road and
the trouble was cured. At the times when the road had for­
merly broken up this tile discharged a large amount of water
but was entirely dry in the summer.
Another important use of underdrains is in the controlling
and preventing of land slides. Many, if not most, of these
slides are due to unbalanced earth strata which under the ac­
tion of water tend to move. Hence, the movement can be
prevented by suitable drainage. Many examples of this could
be cited, but time does not permit. Mr. Geo. E. Ladd of the
U. S. Bureau of Public Roads has been making a study of
these conditions and presents some valuable discussion of
them in Roads and Streets for November, 1928.

THE COLLECTION AND DISTRIBUTION OF GASOLINE
TAX

By A. N. Bobbitt,
Auditor, State of Indiana

In the study of the collection, distribution, and uses of gaso­
line tax, it might be interesting to give some consideration
to the history and development of the gasoline tax.
The first proposal for a tax on gasoline that was given
any serious consideration was made by President Wilson in
his address to congress on December 7, 1915. At that time
he estimated that a tax of one cent per gallon on gasoline
and naphthta would yield a revenue of $10,000,000 per year.
The World War was then in progress in Europe and it was
a question as to how much revenue the tariff would produce.
The gasoline tax was considered as a ready means for mak­
ing up the deficiency which was expected to occur in the reve­
nue derived from the tariff.
This recommendation of the President was not taken seri­
ously. It did, however, provoke some interesting comment
from a few newspapers. The Horseless Age, the oldest auto­
mobile magazine in America, said in its editorial comment,
"What gasoline is to automobiles, oats are to horses, so let's
tax oats too, and see what revenue we can get from that
source. A levy of three cents per bushel on oats would be
equivalent ad valorem to one cent per gallon on gasoline. As
the production of oats amounts to above 1,153,000,000 bush­
els per year, according to the Department of Agriculture, the
revenue to be derived from the tax we propose would amount
to $34,590,000.00, quite a tidy little sum and more than three
times what the president hopes to get from his tax on gaso-
line." This statement reflects the sentiment and attitude of the people toward a tax on gasoline at that time.

The next proposal for a tax on gasoline was made in 1918. This time it appeared in the House Revenue Bill of 1918, which provided for a two-cent per gallon tax on gasoline. However, this provision did not appear in the final draft of the Bill and consequently failed to become a law. This was the last action taken by the federal government in regard to the adoption of a gasoline tax.

**Oregon First**

The first tax on gasoline was adopted by the State of Oregon and became effective February 25, 1919. The people through the initiative adopted a tax of one cent per gallon. North Dakota and New Mexico enacted a one cent per gallon law in March, 1919, and Colorado followed their lead in April of the same year. Kentucky was the only state which adopted the tax in 1920. In 1921 eleven more states enacted gasoline tax laws. All of them adopted a rate of one cent per gallon. 1923 was the banner year, when sixteen new states adopted the tax and thirteen states increased their rate per gallon. The first three-cent rates were adopted by Oregon, Florida, North and South Carolina, Arkansas, and Georgia.

The year 1925 saw nine more states added to the ranks of those having gasoline tax laws and sixteen states raising their rates. Many of the states had now adopted their second and third increases in rate. During this year, Florida, North Carolina, Arkansas, and Nevada raised their tax to four cents per gallon and South Carolina raised her rate from three to five cents, thus being the first state to enact a five-cent tax. Five states increased their rates in 1926.

Illinois and New Jersey adopted the tax in 1927, and several states again increased their rates. However, the Supreme Court of Illinois has recently declared the Illinois law unconstitutional. The State of Massachusetts passed a gasoline tax law at the last session of their legislature, and through a vote of the people at the last general election this law became effective January 1, 1929. New York and Illinois are now the only states not having a gasoline tax law.

Thus from three states in 1919, each having a one-cent tax we now have, in the brief space of ten years, forty-six states, the District of Columbia, and several provinces of Canada which have adopted the tax at a rate of from two to five cents per gallon.

Arkansas, Florida, Kentucky, New Mexico, South Carolina, and Virginia now have a rate of five cents; twelve states a rate of four cents; one state (Utah) a rate of three and one-half cents; fourteen states a rate of three cents, and thirteen states a rate of two cents per gallon.
Divergent Laws

The rapid growth of the gasoline tax movement has resulted in the enactment of widely divergent laws. The law of each state, being affected by conditions existing in that particular state, was drafted to suit its own local needs and without regard to any uniform gasoline tax law. As a result, we have in some states, as in Tennessee, a privilege tax imposed upon the dealer for the privilege of selling gasoline; in others, as in Pennsylvania, an excise tax, and in still others, as in Indiana, a license, or license fee for use of the public highways.

Administration

In some states the tax is collected from the refiner; in others from the wholesaler or distributor, and in a few from the retailer of gasoline.

The administration of the law has been placed in some states with the state tax board, in some with the state treasurer, in others with the oil inspection departments and other boards and commissions, and in others, as in Indiana, with the state auditor. There is no apparent reason why the duty of administration should not be assigned to the same state official in every state.

Indiana Law

The Indiana Gasoline Tax Law which provided for a tax of 2 cents per gallon on gasoline was passed in 1923 and became effective June 1, 1923. This act provided in Section 2 for the payment of tax by the retail dealer on the amount of gasoline sold by him. A provision was made in Section 7 of the act which provided that the refiner or distributor, commonly known as wholesaler, might pay the tax if he so elected on gasoline sold to other dealers. At the time the Indiana law was put into effect a conference was held by the Auditor of State with representatives of a number of the larger oil companies operating in Indiana and an agreement was reached whereby the tax was to be paid under Section 7. This has proved to be a very satisfactory arrangement and our tax is collected from the wholesaler or distributor. We have at the present time approximately three hundred (300) dealers in Indiana paying the tax.

Collections

Total collections for the fiscal years, beginning with the first full fiscal year, are as follows:

October 1, 1923-September 30, 1924, $4,741,637.11
October 1, 1924-September 30, 1925, $6,792,531.70
October 1, 1925-September 30, 1926, $8,867,984.32
October 1, 1926-September 30, 1927, $10,039,642.39
October 1, 1927-September 30, 1928, $11,404,339.87
Distribution and Uses

The original law as passed in 1923 provided that the net collections after the expense of collection and all refunds had been paid should be paid over to the State Highway Commission for their use in construction and maintenance of state highways and bridges. The act further provided that in the fiscal year ending September 30, 1923, the sum of $500,000 should be distributed to the respective counties of the state and that thereafter the sum of $1,000,000.00 should be distributed each fiscal year among the respective counties of the state on the following basis:

One-half to be divided equally among the counties and the other one-half to be divided among the counties in the proportion which the number of miles of free gravel or macadam and county unit roads in the county bears to the whole number of miles of such roads in the state. The act provided that this money which was distributed to the various counties should be used by the board of county commissioners in the construction, maintenance, or repair of any public highway within the county.

The Legislature of 1925 amended the original act by increasing the tax from two to three cents per gallon and by changing the method and manner of distribution of the tax. The 1925 amendment provided that two-thirds of the net amount of tax collected should be credited to the state highway fund for use of the State Highway Commission and that the other one-third should be credited to an account of the general fund of the state to be known as county, cities, and towns gasoline fund. This one-third is distributed on the following basis:

Three-fourths is distributed among the various counties of the state on the following basis: One-half of the three-fourths is distributed equally among the ninety-two counties; the other one-half is divided among the counties in the proportion which the number of miles of free gravel, macadam, and county unit roads in the county bears to the whole number of miles of such roads in the state. The other one-fourth of the one-third is distributed to the cities and incorporated towns of the state on the basis of population according to the 1920 census.

This distribution to the counties, cities, and towns is made on March 1st of each year. Every year so far we have had inquiries from some towns which have grown up and become incorporated since 1920. The officials of these towns have not been able to understand why they do not receive a portion of the tax distributed to the cities and incorporated towns. As above stated, the law provides that the distribution shall be made on the basis of the last federal census. Consequently, if an incorporated town was not in existence in 1920 and no
population is recorded in the federal census of that date, we have no basis on which to make a distribution to such town. However, where a town was in existence in 1920 and a population was given in the 1920 census report and the town has since that time become incorporated, such town would be entitled to its proportionate part of the distribution of gasoline tax. In this case we would take as the basis of distribution the population of the unincorporated town as given in the 1920 census.

The 1925 amendment to this section of the law provided that all monies distributed to the various counties should constitute a special road fund to be used by the Board of Commissioners in the construction, maintenance, or repair of any public highway or public highway bridge within the county. The amendment further provided that the money distributed to the various cities and incorporated towns should constitute a special street fund to be used by the common council of the city or board of trustees of the town in the maintenance or repair of any street or bridge within such city or town. Preference being given to those streets connecting with the state highways.

It was the intention of the legislature that the gasoline tax distributed to the counties, cities, and towns should be used as a repair fund, although in writing the amendment the word construction was used, which has resulted in the Board of Commissioners in the various counties constructing a new road out of the gasoline tax money and using none of it in the repair of existing roads. This is, of course, of no concern to the State Auditor's Office nor do they have anything to say in this matter. However, some time after the distribution is made each year we receive letters of protest and inquiry from various citizens in certain counties asking what can be done to prevent the use of all this money by the Board of County Commissioners in constructing a new road when the money is so badly needed for the repair of existing roads. From my observation during the past four years of the operation and workings of this law I am of the opinion that this section should be so amended as to limit the use of this money to repair and maintenance of roads and bridges.

The legislatures of some states have attempted to use the proceeds of the gasoline tax for the operation of schools and other departments of the state government. The Florida gasoline tax law provides that a certain portion of the gasoline tax shall be used to pay the cost of maintenance of the public schools. A few other states have provisions in their law providing for various uses in addition to the building and maintenance of highways and bridges.

The theory of the gasoline tax is that it is a license for the use of public highways. On every occasion when a gaso-
line tax law has been passed, one of the arguments used by the people sponsoring the law is that the persons who use the public highways should pay for their construction and maintenance. It is upon this theory that the gasoline tax has grown rapidly and has become—if such a thing could be—a popular tax. The proceeds of the gasoline tax should be used for nothing except the building and maintenance of public highways and bridges. The friends of the gasoline tax law in Indiana should be on their guard and be prepared to resist any effort which might be made to divert any of the proceeds of the Indiana gasoline tax to any purpose other than for the construction and maintenance of public highways and bridges.

**Refunds**

I shall not discuss the merits of the refund section of the Indiana law, but will attempt to give you such information as I think may be of interest to you. Inasmuch as a number of officials present here this morning are dealing with road contractors and are in a number of cases in the same class as a road contractor in the filing of refunds, I believe it would be worth while to give you some instructions and suggestions in regard to claims filed for the refund of the tax on gasoline used in the construction of public highways and bridges.

Section 5 of the Indiana law provides that:

"Any person who shall buy or use any gasoline for the purpose of operating or propelling stationary gas engines, tractors used for agricultural purposes, motor boats, airplanes or aircraft, or who shall purchase or use any gasoline for cleaning or dyeing or for any other commercial use except for propelling motor vehicles operated in whole or in part upon any of the public highways of the state, shall be reimbursed and repaid the amount of such license fee paid by him upon presenting to the Auditor of State a statement, accompanied by the original invoices, showing such purchases, which statement shall set forth the total amount of such gasoline so purchased and used by such consumer, other than for propelling motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state, and the Auditor of State shall, upon the presentation of such statement and such invoices, cause to be repaid to such consumer from the fund created by the license fees collected on the use of gasoline, as herein provided, the amount of the license fees paid by such consumer on gasoline used for purposes other than propelling motor vehicles as hereinbefore provided. All applications for refunds or reimbursement as provided for in this section shall be filed with the auditor of State within ninety days after the date on which such gasoline shall have been purchased, as shown by the in-
voice. Any person, firm, or corporation who shall make any false statement in connection with an application for the refund of any money or license fees, as herein provided, or who shall collect or cause to be repaid to him or to any person any such fees without being entitled to the same under the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not to exceed one thousand dollars ($1,000.00).

The first refund made to road contractors, on gasoline used in trucks, was in April, 1925. This question was presented to the attorney general by the state auditor and the following opinion was rendered: "Section 1 of the act of March 9, 1923 (Acts 1923, p. 532), provides: 'That a license fee of two cents per gallon * * * is hereby imposed on the use of all gasoline used in this state for any purpose whatsoever.' And Section 5 provides that: 'Any person who shall buy or use any gasoline for the purpose of operating or propelling stationary gas engines * * *,' etc.

"Under these provisions, I think a contractor who uses tractors in the construction of a road over a new way which has never been a public highway but which will become one only when construction is completed and who does not operate his tractor on a public highway is entitled to be reimbursed and repaid the amount of such license fees paid by him.

"When tractors are used in grading and pulling stumps in constructing a road running parallel with the old road but not in the old road bed, except where the new road crosses the old, I think its owner is entitled to be reimbursed; and also it is my opinion that a contractor is entitled to be reimbursed on account of fees paid for gasoline used in trucks to haul gravel from a gravel pit across a field to his work, when such trucks are not at any time operated over or upon a public highway in transporting such gravel. Section 5 of the act provides for refunding the license fees paid for using gasoline in stationary engines, etc., 'for any other commercial use except for propelling motor vehicles operated in whole or in part upon any of the public highways of the state,' which shows that the General Assembly intended that license fees should be refunded in all cases where such gasoline is not used to propel a car on a public highway. Of course, if such contractors operate their trucks or tractors on the public highway in going to and returning from their work, they will not be entitled to be reimbursed."

There are a number of provisions which must be complied with in order to secure a refund.

**First:** All applications for refund must be filed in the Auditor of State's office within ninety days from the date of the purchase of gasoline as shown by the date of the invoice. This does not mean that claims may be mailed within the ninety-day period but means that such claims must be actually
received in the office within that period. Do not include invoices in your claims when you are sure that such invoices will be more than ninety days old when they reach the office. The law is plain on this provision and we have no discretion in the matter.

**Second:** Send original invoices or original driver’s delivery tickets, properly signed by the driver, in support of your claim. Do not send duplicate or any other form of invoice or delivery ticket except the original. The law presumes that persons desiring to avail themselves of the refund privilege will preserve the original invoices, and it makes no provision for the payment of refunds upon any other evidence except the original invoice. When you include duplicate or other copies of invoices in your claim the result is that we are compelled to return your application for the original invoices and the payment of your refund will be delayed until the matter is adjusted.

**Third:** Never allow the date to be changed or an invoice to be changed or mutilated in any way, either by the tank wagon driver or any other person. If the driver accidentally puts the incorrect date on a ticket, do not allow him to erase it or change the date by “working it over”; make the driver give you a new ticket. Every invoice is carefully checked and examined, and if any have been mutilated by the dates having been erased and rewritten or changed in any other manner, the claim is held up until we have secured a verification of the dates and invoices from the oil company. This, of course, occasions considerable delay in the payment of the claim.

**Fourth:** All delivery tickets and invoices filed in support of the application for refund must be properly filled out and must be marked “paid.” Refunds will not be made on invoices or delivery tickets representing credit sales until the gasoline tax has been actually paid by the purchaser to the dealer and invoices submitted in support of the refund claim are so marked.

**Fifth:** All claims must be sworn to before a notary public or some officer having authority to administer oaths generally. Many claims are returned each month because the notary failed to give the date of the expiration of his commission or failed to affix his seal. In Indiana an affidavit is not complete unless both of these requirements are met. Before mailing your claim examine it and see whether or not these things have been done. A little precaution here might save you a week’s delay in the payment of your claim.

**Sixth:** All applications must be made in the name that appears on the invoices accompanying the application or a separate statement must be submitted with the claim, setting out the reason for the discrepancy in names and showing the relation of one to the other.
Seventh: Persons signing affidavits for a company or partnership must designate their official capacity which authorizes them to make the affidavit, as for example, “The Union Construction Company, by John Jones, Treasurer,” or “Jones Bros., by John Jones, Partner.” The receipt for warrant on the back of the claim must be signed in the same manner. No warrants will be mailed by the Auditor of State unless they have been receipted for, as the law requires that the Auditor have a signed receipt for every warrant issued. The fact that you receipt for a warrant before you receive it does not stop you from securing a duplicate warrant should the original be lost before it reaches you.

Eighth: State specifically how gasoline is used. It is not sufficient merely to say that gasoline was used in road construction, or in construction machinery. We are unable to tell from this statement whether or not any of the gasoline was used on the public highways, and consequently when your claim is sent to us in that manner we are compelled to write you for more detailed information. Each claim should show the particular kind of machinery in which the gasoline was used, such as concrete mixers, industrial railways, road rollers, and the like. If the gasoline is used in trucks or tractors, you must state in each claim that such trucks or tractors were used in the construction of a road which was closed to public travel or had not yet been accepted by the State Highway Commission or Board of Commissioners, and that such trucks traveled exclusively upon the road under construction and did not on any part of the haul travel upon or over a public highway which was not under construction. If your trucks travel any part of the haul over a public highway not under construction or are driven to town night and morning, you are disqualified and are not entitled to refund on any of the gasoline used in such trucks. Trucks must be left on the job and used there exclusively. This information should be given with every claim. Each application is a separate and distinct order, and the evidence supporting the claim must be filed with it as authority for its payment.

Ninth: Always give the correct address to which the warrant is to be sent. We have a number of warrants and claims in our files now and are unable to locate the owners because of incorrect and incomplete addresses.

Most of these instructions are applicable to any person making application for refund.

The Indiana law makes no provision for refund to any subdivision of the state government or any municipal corporation because of the fact that they are a subdivision of the state government or a municipal corporation. Governmental units are treated in exactly the same manner as individual citizens.

We have had numerous requests from county highway superintendents asking for refund of the tax on gasoline used
in county road repair trucks. The law makes no provision for refund in this case, and the county highway superintendent is not entitled to refund of tax on gasoline used in a truck, which is used in the ordinary course of gravel road repair. Neither is a township trustee entitled to refund of tax on gasoline used in a school hack or bus.

The basis of the Indiana law is a license fee for the use of the public highways. It is plainly to be seen that both in the case of the rock road repair truck and the school bus that each is a motor vehicle which is being operated upon the public highways.

A county highway superintendent and a township trustee are entitled to a refund of tax on gasoline used in any sort of stationary road equipment, such as a concrete mixer or a stationary gasoline engine. They are also entitled to refund of the tax on gasoline used in a road roller, on the ground that a road roller is not a motor vehicle within the meaning of the gasoline tax law.

In any case where a county highway superintendent or county engineer under the direction of the board of county commissioners is constructing a new road, he would be entitled to a refund of tax on gasoline under the same conditions as have been outlined for a road contractor.

The number of persons availing themselves of the refund privilege of the law has increased very rapidly during the last two years, especially since the tax was raised from two to three cents per gallon. When the tax was only two cents per gallon, numbers of people using fifty gallons or more of gasoline a year in a gasoline engine did not apply for refund because they considered the amount involved too small for the trouble involved in securing their refund. However, when the tax was raised to three cents, these same people immediately took advantage of the refund section and began making applications for a refund of the tax regardless of the amount of gasoline used. This may be taken as an indication of how the people in general feel toward an increase in the rate of gasoline tax beyond any reasonable figure. The following amounts have been refunded during the calendar years since 1924:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount of Refund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1924</td>
<td>$104,096.38</td>
</tr>
<tr>
<td>1925</td>
<td>$179,413.02</td>
</tr>
<tr>
<td>1926</td>
<td>$245,511.52</td>
</tr>
<tr>
<td>1927</td>
<td>$365,515.52</td>
</tr>
<tr>
<td>1928</td>
<td>$471,539.77</td>
</tr>
</tbody>
</table>

Refund claims paid during the past five years are as follows:
Year | Number of Claims Paid
--- | ---
1924 | 10,625
1925 | 16,640
1926 | 20,675
1927 | 35,535
1928 | 51,519

From these figures it will be seen that the number of refunds has greatly increased.

The question of making these refunds has become a serious one. We have been compelled during the past year to revolutionize completely our system of handling these claims. We are at the present time making a request of the legislature for a sufficient appropriation to install the necessary filing system and to employ the additional help which is absolutely necessary for the proper enforcement of this provision of the law.

There have been in the past advantages taken of the refund provision, and if these violations continue to increase, sooner or later the legislature will be faced with the question of repeal of this provision of the law.

I shall not attempt at this time to give you the amount of gasoline tax which will be distributed on the first of March of this year to each of the ninety-two counties in the state. Last year we distributed to the counties, cities, and towns $3,448,635.39. We had in this fund, on December 31, $3,208,075.58. Estimating that one-third of the net collections for the months of January and February will be $500,000.00, we should then have for distribution on March 1st of this year $3,708,075.58. This would be an increase of approximately 9% over the amount distributed in 1928. To arrive at the approximate amount which your county should receive this year all you need to do is to add 9% to the amount which you received last year.

Proposed Changes in the Law

We have considered for some time the question of strengthening the administrative part of the law. As the law now stands there is no penalty for delinquent payment and we have no way of enforcing prompt payment except by going into court and filing suit, which, of course, requires considerable time and oftentimes does not secure the result which we desire. We have prepared amendments to the present law, which provide that if the tax is not paid when due, a penalty of 10% shall immediately accrue; if a dealer is delinquent in the payment of his tax for a period of one month, an additional penalty of 2% shall be added; and if such dealer is delinquent more than one month, an additional penalty of 2% shall be added each month or fraction thereof.
We would also provide for the registration of the dealers and have a bond filed guaranteeing the payment of the tax. In order to have available figures for a complete check on the amount of gasoline purchased by the various dealers in the state, we are asking that the railroad agents report to our office each month all gasoline delivered from their stations and the persons to whom such gasoline is delivered. With this information and with the additional safeguards mentioned above, we will be in better position to enforce properly the provisions of the gasoline tax law.

The basic provisions of the Indiana law are, I think, second to none; and if we are successful in securing the proposed amendments, Indiana will have one of the best and most complete gasoline tax laws of any of the states or provinces.

SHOULD THE GASOLINE TAX BE USED FOR MAINTENANCE OR CONSTRUCTION?

By E. W. Murphy,
Highway Superintendent, Hendricks County

The law on the use of the gasoline tax is very broad. The money from this tax may be kept as a separate fund. It can be used in most any form of road work or maintenance. The intention of the law was to provide a fund for the general necessities of construction and maintenance of the public highways which may be used in permanent work, or for maintenance, in case there is no necessity for permanent work. But the law gives preference to the road and street intersections with state highways.

It may be used in the cooperative construction of state highways, in paying for damages caused by these highways, or in the construction of intersections with county roads and streets.

The law specifies that when the state highway commission shall establish a state highway in a county, city, or incorporated town and so benefit them, in that event the board of county commissioners in such county, or the common council of such city, or the board of trustees of such incorporated towns, may, by petition of the property owners, make such contributions to the state highway commission to aid in the construction of such state highway as they may deem proper. Such contribution may be made in the manner provided for in Chapter 122 in the Acts of the General Assembly of 1923.

Under the law the county commissioners and the council of any incorporated town may pave the intersections of any