



# 2020-005

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

STEVEN T. MARSHALL  
ATTORNEY GENERAL

501 WASHINGTON AVENUE  
P.O. BOX 300152  
MONTGOMERY, AL 36130-0152  
(334) 242-7300  
[WWW.AGO.ALABAMA.GOV](http://WWW.AGO.ALABAMA.GOV)

October 30, 2019

Honorable John McMillan  
Office of State Treasurer  
State Capitol  
600 Dexter Avenue, Suite S-106  
Montgomery, Alabama 36104

Treasurer – County Commissions –  
Municipalities – Motor Vehicle License  
and Registration – Accounts and  
Accounting

The state's portion of license taxes and registration fees collected pursuant to the Rebuild Alabama Act shall be deposited into the State General Fund until the total annual registrations of battery electric and plug-in hybrid electric vehicles exceed four percent of the total annual registrations of all motor vehicles.

The act does not authorize the State Treasurer to distribute proceeds from license taxes and registration fees for battery electric and plug-in hybrid electric vehicles collected before the four percent threshold is met to counties or cities.

Such taxes and fees must be prorated in the same manner as automobiles and motorcycles. If a prorated amount is collected, it must be distributed first to the state, counties, and cities, as proportionally allocated, and then to the Rebuild Alabama Fund if monies are remaining.

Dear Mr. McMillan:

This opinion of the Attorney General is issued in response to your request.

### QUESTION ONE

To which fund should the state's portion (66.67%) of the taxes and fees created by the Rebuild Alabama Act be distributed?

### FACTS AND ANALYSIS

Section 40-12-242 of the Code of Alabama assesses an annual license tax and registration fee on automobiles and motorcycles operated on the public highways of the state. ALA. CODE § 40-12-242 (2011). In 2019, the Legislature enacted Act 2019-2, the Rebuild Alabama Act, which, in part, amended section 40-12-242 to also assess an annual license tax and registration fee of \$200 on each battery electric vehicle and \$100 on each plug-in hybrid electric vehicle. ALA. CODE § 40-12-242(b) (Westlaw 2019).

Proceeds collected from the annual license tax and registration fee on automobiles and motorcycles are distributed in accordance with section 40-12-270 of the Code of Alabama. ALA. CODE § 40-12-270 (2011). The act creates a separate distribution scheme for taxes and fees collected from battery and plug-in hybrid electric vehicles as follows:

(f) Notwithstanding any other statute or law to the contrary, all proceeds of the annual license taxes and registration fees imposed and charged in subsection (b) above, after deduction pursuant to Section 40-12-269 (a)(1), Code of Alabama 1975, shall be distributed as follows:

(1) The *first \$150* collected from the annual license tax and registration fee *on each battery electric vehicle* and the *first \$75* collected from the annual license tax and registration fee *on each plug-in hybrid electric vehicle shall be distributed* sixty-six and sixty-seven one

hundreths percent (66.67%) *to the state*, twenty-five percent (25%) *to counties*, and eight and thirty-three one hundreths percent (8.33%) *to cities*.

(2) The *remainder shall be deposited in the Rebuild Alabama Fund* established pursuant to the provisions of this act, and shall be used by the State Department of Transportation to fund electric vehicle transportation charging infrastructure through the Electric Transportation Infrastructure Grant Program established in this act *until such time as the total annual registrations of battery electric vehicles plus plug-in hybrid electric vehicle exceed four percent (4%) of the total annual registrations of all motor vehicles* within the state of Alabama, except trailers and semitrailers, for which an annual license tax and registration fee is paid. *Thereafter the annual license taxes and registration fees* imposed by subsection (b)(1) and (b)(2) shall be reduced to \$150 and \$75, respectively, and after such reduction the receipts *shall be deposited into the Rebuild Alabama Fund* and distributed sixty-six and sixty-seven one hundreths percent (66.67%) to the state, twenty-five percent (25%) to the counties, and eight and thirty-three one hundreths percent (8.33%) to the cities *to be used in the construction, reconstruction, maintenance, and repair of public roads, highways, and bridges* in the state, and for any other purpose for which moneys in the Rebuild Alabama Fund may be lawfully used. All previously collected but unspent funds dedicated to the Electric Transportation Infrastructure Grant Program shall continue to be used to fund the Electric Transportation Infrastructure Grant Program.

The statute directs that \$50 of the \$200 collected for battery electric vehicles and \$25 of the \$100 collected for plug-in hybrid electric vehicles be deposited into the Rebuild Alabama Fund. Other than the proceeds specifically directed to this fund, the act does not specify a fund for depositing the state's portion of the taxes and fees collected on these vehicles prior to the total annual registrations of battery electric vehicles plus plug-in hybrid electric vehicles exceeding four percent of the total annual registrations of all motor vehicles in the state. We must, therefore, look to other provisions to determine where these funds should be deposited.

Section 41-4-92 of the Code of Alabama states as follows:

***All fees, receipts and income collected or received by any department, board, bureau, commission, agency or office or institution of the state shall be paid into the State Treasury or deposited in an approved state depository to the credit of the General Fund of the State of Alabama or to the credit of a special fund if the latter is required by law.***

ALA. CODE § 41-4-92 (2013) (emphasis added).

Because no other fund is specified for the deposit of taxes and fees collected by the act, the state's portion shall be deposited into the State General Fund. Opinion to Honorable Frank W. Gregory, Administrative Director of Courts, Administrative Office of Courts, dated April 26, 1996, A.G. No. 96-00196 (certain acts related to the collection of administrative fees in circuit and district court that do not specify a fund for deposit shall be deposited into the State General Fund).

It is noted that although these funds are to be deposited into the State General Fund, section 111.06 of article IV of the Recompiled Constitution of Alabama restricts their use, stating as follows:

***No moneys derived from any fees, excises, or license taxes, levied by the state, relating to registration, operation, or use of vehicles upon the public highways except a vehicle-use tax imposed in lieu of a sales tax, and no moneys derived from any fee, excises, or license taxes, levied by the state, relating to fuels used for propelling such vehicles except pump taxes, shall be expended for other than cost of administering such laws, statutory refunds and***

adjustments allowed therein, *cost of construction, reconstruction, maintenance and repair of public highways and bridges*, costs of highway rights-of-way, payment of highway obligations, the cost of traffic regulation, and the expense of enforcing state traffic and motor vehicle laws.

ALA. CONST. art. IV, § 111.06 (amend. 354) (emphasis added). *See also*, opinions to Honorable Robert L. Childree, State Comptroller, dated February 13, 1992, A.G. No. 92-00159 and to Honorable Lawrence Oaks, Executive Director, Alabama Historical Commission, dated February 13, 1992, A.G. No. 92-00160. Those opinions state that the State Treasurer and State Comptroller should establish separate funds or accounts within the State Treasury to segregate donations or trust funds from the Alabama Historical Commission from which investments are made.

Likewise, once the four percent threshold on total registrations is reached, section 40-12-242(f)(2) similarly limits use of the funds to “construction, reconstruction, maintenance, and repair of public roads, highways, and bridges.” ALA. CODE § 40-12-242(f)(2) (Westlaw 2019).

### CONCLUSION

The state’s portion of license taxes and registration fees collected pursuant to the act shall be deposited into the State General Fund until the total annual registrations for battery electric and plug-in hybrid electric vehicles exceed four percent of the total annual registrations of all motor vehicles.

### QUESTION TWO

Does the act require the State Treasurer to make distributions to counties or cities? If so, what formula should be followed?

### FACTS AND ANALYSIS

Probate judges collect the license taxes and registration fees for automobiles and motorcycles and transmit a portion of the proceeds collected to the State Treasurer. *See* ALA. CODE § 40-12-269 (2011). The State Treasurer then distributes a portion of that money to the counties pursuant to section 40-

12-270. ALA. CODE § 40-12-270(a)(1)(a)(b) and (a)(2)(c) (2011). The probate judge is responsible for the distribution of the cities' portion of proceeds collected. ALA. CODE § 40-12-270(a)(2)(b) (2011).

Section 40-12-242, however, relating to battery electric and plug-in hybrid electric vehicles, is silent as to the public official or entity to distribute proceeds to counties or cities. It is noted that, in 2019, the Legislature additionally enacted Act 2019-305, which added section 40-12-242.1 providing for the allocation and distribution of proceeds from license taxes and registration fees from battery electric and plug-in hybrid electric vehicles to counties and cities. Section 40-12-242.1 states, in pertinent part, as follows:

***All proceeds of the annual license taxes and registration fees to be distributed to counties and municipalities pursuant to subsection (f) of Section 40-12-242, Code of Alabama 1975, as amended by Act 2019-2 (2019 First Special Session), shall be allocated in the same manner and used for the same purposes as provided in subdivisions (2) and (3) of subsection (c) of Section 7 of Act 2019-2 (2019 First Special Session).***

ALA. CODE § 40-12-242.1 (Westlaw 2019) (emphasis added).

Sections 7(c)(2) and (3) of the act are codified at sections 23-8-6(c)(2) and (3) of the Code of Alabama. ALA. CODE § 23-8-6(c)(2)-(3) (Westlaw 2019). These sections merely further refine the distributions made to the counties and cities. They do not require the State Treasurer to make them. For example, section 23-8-6(c)(2) simply provides that the twenty-five percent distributed to counties should be allocated and disbursed such that forty-five percent is allocated equally and fifty-five percent by population.

“[I]t is a fundamental principle of statutory construction that in enacting the statute the legislature had full knowledge and information as to prior and existing law and legislation on the subject of the statute.” *Goldsmith v. Alabama Bd. of Pardons and Paroles*, 724 So. 2d 80, 81 (Ala. Cr. App. 1998), citing *Miller v. State*, 349 So. 2d 129, 131 (Ala. Crim. App. 1977). The Legislature is aware of the method of distribution of proceeds from the collection of license taxes and registration fees for automobiles and motorcycles, and had it intended for the State Treasurer to distribute proceeds collected for license taxes and registration fees from battery electric and plug-in hybrid electric vehicles to counties and cities, it would have used similar

language. In light of the answer to the first part of your question, the second part of your question is moot.

### CONCLUSION

The act does not authorize the State Treasurer to distribute proceeds from license taxes and registration fees for battery electric and plug-in hybrid electric vehicles collected under section 40-12-242(f)(1) to counties or cities.

### QUESTION THREE

If the taxes and fees created by the act are prorated and lesser amounts collected, are the monies to be distributed to the state, counties, and cities, as proportionally allocated, and then only to the Rebuild Alabama Fund if monies are remaining?

### FACTS AND ANALYSIS

Section 40-12-259 of the Code of Alabama states as follows:

Notwithstanding any other provision of law, *the license tax and registration fee to be paid for any motor vehicle*, either new or used, that may be acquired or first brought into and operated on the public streets or highways of this state *shall be computed by the multiplication of one twelfth of the annual license tax and registration fee by the number of calendar months remaining in the license year.*

ALA. CODE § 40-12-259 (2011) (emphasis added).

The term “motor vehicle” is defined as “[e]very vehicle which is self-propelled, *every vehicle which is propelled by electric power*, and every vehicle that is drawn by a self-propelled vehicle, including every trailer and semitrailer.” ALA. CODE § 40-12-240(8) (Supp.2018) (emphasis added). Thus, a license tax and registration fee paid for battery electric and plug-in hybrid vehicles is subject to proration.

As stated above, the act requires that “[t]he *first \$150 collected* from the annual license tax and registration fee on each battery electric vehicle *and the*

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*first \$75 collected* from the annual license tax and registration fee on each plug-in hybrid electric vehicle shall be distributed” to the state, counties, and cities. ALA. CODE § 40-12-242(b) (Westlaw 2019) (emphasis added). The remainder is deposited into the Rebuild Alabama Fund. *Id.* Therefore, if a prorated amount is collected, it must be distributed to the state, counties, and cities, as proportionally allocated, and then only to the Rebuild Alabama Fund if monies are remaining.

### CONCLUSION

License taxes and registration fees for battery electric and plug-in hybrid vehicles must be prorated in the same manner as automobiles and motorcycles. If a prorated amount is collected, it must be distributed first to the state, counties, and cities, as proportionally allocated, and then to the Rebuild Alabama Fund if monies are remaining.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Wes Shaw of my staff.

Sincerely,

STEVE MARSHALL  
Attorney General

By:



G. WARD BEESON, III  
Chief, Opinions Division

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