



# A SELECTED READING

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## State Collected and Distributed Local Revenue and State Taxes Paid by Municipalities

**M**unicipalities in Alabama currently receive a share of state revenue from a number of sources which by law must be shared back with municipal governments under a variety of formulas. The largest single source of shared revenues is state gasoline taxes. For a complete discussion of state gasoline taxes, please see the article titled “Municipalities and State Shared Fuel Taxes” in this publication.

Conversely, municipal governments are required by law to pay several state taxes and, in addition, municipal courts are required to collect several special court costs from which municipal governments receive little or no direct benefits.

This article examines the state revenues that are shared with municipal governments and also lists the state taxes and other costs which must be paid by Alabama cities and towns.

### Sources of State Collected and Distributed Local Revenues

1. **State 7-Cent Gasoline Tax** – Section 40-17-359, Code of Alabama 1975, provides for the distribution and use of the 7-cent state gasoline tax. For a complete breakdown of the distribution of such funds to municipalities, please see the article titled “Municipalities and State Shared Fuel Taxes” in this publication.

State gasoline tax funds are distributed monthly by the state treasurer. Under the law, cities must use these funds only for street and highway purposes and must keep them in a special fund. Some municipalities contract with the state for street construction projects and pledge their gasoline tax revenues to pay for the work. This procedure involves checking with the Alabama Department of Transportation to determine how long the city’s share will be diverted to the department to pay out such contracts.

2. **State 5-Cent Gasoline Tax** – Section 40-17-359, Code of Alabama 1975, also provides for the distribution and use of a supplemental gasoline excise tax of 5-cents per gallon on the sale, use or consumption, distribution, storage or withdrawal from storage in this state for any use.

For a complete breakdown of the distribution of such funds to municipalities, please see the *Selected Reading* titled “Municipalities and State Shared Fuel Taxes” found on the League legal team’s Selected Readings page, here: <https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx>.

A municipality’s share of the proceeds from this tax shall be used for the same purposes and deposited in the same municipal fund as the 4-cents per gallon gasoline tax. See, Sections 40-17-359(f) and 40-17-362, Code of Alabama, 1975, and AGO to Hon. Ricky Harcrow, September 5, 2012.

3. **State 4-Cent Tax on Gasoline and Lubricating Oils** – Section 40-17-325(a)(1), Code of Alabama 1975, levies a tax of 4-cents per gallon on all gasoline and lubricating oil sold in the state. For a complete breakdown of the distribution of such funds to municipalities, please see the article titled “Municipalities and State Shared Fuel Taxes” in this publication.

Use of these funds is limited to resurfacing, restoring and rehabilitating roads, streets and bridges. The funds can also be used to construct new roads and streets and for bridge replacement. Taxes collected must be kept in a separate fund. See, Section 40-17-362, Code of Alabama, 1975, and AGO to Hon. Ricky Harcrow, September 5, 2012.

4. **State 10-Cent Gasoline Tax** – Section 40-12-242, Code of Alabama 1975, levies a 10 cents gasoline tax increase authorized by Rebuild Alabama Act, the money will be distributed among the state and local governments as follows:
  1. 66.77% - ALDOT
    - a. Transportation infrastructure statewide
    - a. ALDOT Grant program (not less than \$10M annually – for local government projects upon competitive application)
    - a. ATRIP II – (\$30-50M annually – fund projects of “local interest on the state maintained highway system, which may include local roads and bridges”)
  2. 25% - Counties
  3. 8.33% - Municipalities
    - a. 25 percent will be allocated evenly - every municipality will receive approx. \$14,109
    - b. 75% will be distributed by population.

Distributions are monthly beginning no later than January 2020.

5. **State Inspection Fee on Motor Fuels and Motor Oil** and State 6-Cent Tax on Diesel Fuels -Section 8-17-87, Code of Alabama 1975, imposes an inspection fee which shall be collected on petroleum products sold, offered for sale, stored or used in the state. The fee is 2-cents per gallon on gasoline and diesel fuel with varying amounts for other fuels and lubricating oil. It shall be the duty of the person first selling, storing or using any petroleum product in the state to pay such inspection fee. The inspection fee shall be paid to the Commissioner of Agriculture and Industries on or before the 20th day of each month on all petroleum products sold, stored or used in the state during the preceding month.

Section 40-17-325 levies a 6-cents per gallon tax on diesel fuel sold in the state, a portion of which is distributed to municipalities and is used as provided in Section 8-17-91.

Section 8-17-91, Code of Alabama 1975, provides that the proceeds from the permit fees, inspection fees and penalties, if any, collected by the Commissioner of Agriculture and Industries shall be paid into the state treasury and distributed on a monthly basis as follows:

- An amount equal to 5 percent or no less than \$175,000 to the Agricultural Fund with the balance distributed as follows:
- 13.87 percent to each of the 67 counties equally
- \$408,981 to Highway Department for Public Road and Bridge Fund
- 2.76 percent to incorporated municipalities (45.45 percent of this revenue is allocated among counties equally and 54.55 percent of this revenue is allocated among the counties on the basis of population). The amount allocated to each county is distributed monthly, on the basis of population, by the state treasurer to the municipalities within the county.

A municipality must use its share of the inspection fee revenues for transportation planning or for the construction, reconstruction, maintenance, widening, alteration and improvement of public roads, bridges, streets and other public ways, including payment of the principal and interest of any securities at any time issued by the municipality pursuant to law for the payment of which any part of the net tax proceeds were or may be lawfully pledged. Funds distributed to municipalities under the provisions of this law shall not be commingled with other funds of the municipality, except with the municipality’s portion of the highway gasoline tax. The funds shall be kept and disbursed by the municipality from a special fund only for the purposes enumerated above. This fund is commonly referred to as the Public Road and Bridge Fund.

6. **Motor Vehicle License Tag Tax** – Section 40-12-248, Code of Alabama 1975, levies an annual license tax and registration fee for trucks and truck tractors using the public highways of the state. The annual fee consists of a base amount plus an additional amount as provided by the statute. Section 40-12-242, Code of Alabama 1975, levies a \$13 fee for license tags for private passenger automobiles and a \$7 fee for license tags for motorcycles.

Sections 40-12-269 and 40-12-270, Code of Alabama 1975, provide for the distribution of these revenues. The moneys collected each month by the probate judge from motor vehicle license taxes and registration fees shall be distributed in one of two ways depending upon the source of the revenue. Under either formula, 2.5 percent is deducted for the probate judge's fee and five percent goes to the state treasurer for administrative costs. The remaining revenue is known as the "net proceeds."

That portion of the "net proceeds" that consists of additional amounts paid under the schedule of additional amounts for truck and truck tractors under Section 40-12-248 shall be remitted by the probate judge to the state treasurer who shall distribute said amounts as stated in Section 40-12-270, Code of Alabama 1975:

- 64.75 percent to state of Alabama
- 35.25 percent apportioned to the counties (42.16 percent of the apportionment to the counties equally and 57.84 percent on a population basis).
- The entire residue of the "net proceeds" remaining after distribution of the additional amounts for trucks and truck tractors shall be distributed as follows:
  - 72 percent to state of Alabama for the Highway Department
  - 21 percent remitted by probate judge to counties and municipalities on the basis of vehicle situs
  - 7 percent held by state treasurer and distributed monthly to counties pro rata on the basis of vehicle registrations. Ten percent of the amount each county receives is further distributed to the municipalities within the county on a population basis.

Revenues from this tax must be spent for street and road purposes. All municipal officials should note that the main portion of the city or town's share of the tag tax is distributed by the probate judge on the tax situs of the vehicle. No tag may be issued by the probate judge unless the owner of a vehicle produces a tax receipt showing that the ad valorem tax has been paid. If the owner has listed a rural address to evade the municipal ad valorem tax, the municipality will also be cheated out of the tag tax, for the probate judge must distribute 21 percent of the license tax revenue to either the county or municipal government on the basis of vehicle situs as shown on the ad valorem tax receipt.

7. **ABC Profits** – Section 28-3-74, Code of Alabama 1975, provides for the sharing of profits from ABC stores as follows:

**First \$2 million in profits:**

- 50 percent to state general fund
- 19 percent to Alabama Department of Human Resources
- 10 percent to wet counties equally for their general funds
- 1 percent to wet counties equally for public health
- 20 percent to incorporated wet municipalities where ABC stores are located on the basis of store profits.

**Next \$200,000 in profits:**

- 100 percent to incorporated wet municipalities on a population basis according to the last federal census.

**All profits over \$2.2 million:**

- 10 percent to wet counties on population basis
- 16-2/3 percent to wet municipalities on a population basis
- 3-1/3 percent to wet municipalities where ABC stores are located on the basis of population
- 10 percent to Alabama Department of Human Resources
- 60 percent to state general fund.

Section 28-3-53.2, Code of Alabama 1975, provides that the total amount of the additional mark-up on the cost of merchandise levied by the ABC Board subsequent to June 30, 1983, shall be designated to the credit of the general fund of the state. The law defines "mark-up" as "the percentage amount added to cost plus freight on spirituous or vinous liquors sold by the board, exclusive of taxes heretofore levied with respect thereto."

**Note:** Additional separate state taxes are levied on the selling price of liquors sold in ABC stores. These taxes are generally reported as part of the gross sales of the stores, but they are not distributable as profits. Instead, each tax is earmarked for a particular use at the state level. Sections 28-3-200 through 28-3-207, Code of Alabama 1975.

Because of these superimposed taxes, profits have done well to maintain a slight increase each year. The ABC Board has had to increase prices sharply to cover the taxes. This action has increased bootlegging and the consequent expense of enforcement which is one of the costs of ABC Board operations.

The profits are distributed semi-annually in February and in August. ABC Board profits may be used by municipalities for general purposes.

Section 28-3-53.1, Code of Alabama 1975, provides that funds accumulated by the board as working capital from municipalities and counties many years ago will be distributed to the counties and municipalities from which they were withheld on the same basis as withheld on the next distribution of profits by the ABC Board after October 1, 1984. Municipalities and counties entitled to this refund received a one-time payment in February 1985.

8. **State Table Wine Tax** – Sections 28-7-1 through 28-7-24, Code of Alabama 1975, allow the sale of table wine at retail establishments in wet counties and in wet municipalities. A tax equal to 45-cents per liter of table wine is added to the purchase price of the table wine and is collected by the Board or retailer from the purchaser. *See*, Section 28-7-16, Code of Alabama 1975. Thirty-eight cents per liter goes to the state treasury and 7-cents per liter goes to the municipality if the table wine was sold within the corporate limits of the municipality. The money can be used for general purposes. The municipality receives its share of the table wine tax from the ABC Board or from the wholesaler who services the retailer who sold the table wine.
9. **Uniform Beer Tax** – Section 28-3-190, Code of Alabama 1975, levies a uniform statewide beer tax of 1.625-cents per four fluid ounces of beer. This tax is levied on every person licensed by the ABC Board to sell, store, or receive for the purpose of distribution to any person, firm, corporation, club or association within Alabama. The tax is added to the sales price and must be collected from the purchaser. The tax is collected monthly by a return which must be filed by the wholesaler with the wet county or wet municipality where sold.

The law provides a general formula for the distribution of this revenue. If the beer is sold within the corporate limits of the municipality, the municipality receives all of the tax money. If the beer is sold in the police jurisdiction or beyond, the county gets the tax revenue. Most counties have adopted a different distribution formula. A municipality's share of this money can be used for general purposes unless otherwise specified by law.

10. **Tax on State ABC Store Sales** – Section 28-3-280, Code of Alabama 1975, levies an additional state sales tax in the amount equal to the combined county and municipal general sales tax rates levied or assessed in the county and municipality where the transaction occurs, applied to the sales of alcoholic beverages sold at retail by the state ABC Board. The taxes collected shall be paid to the Department of Revenue, which shall redistribute the proceeds collected within each locality to the respective localities. This revenue can be used by a municipality for general fund purposes.
11. **Financial Institutions Excise Tax** – Section 40-16-6, Code of Alabama 1975, provides that each municipality shall receive 33.3% of the State Financial Institutions Excise Tax levied on institutions such as banks, loan agencies, etc., which are located in the municipality. This is actually an income tax levied on the net taxable income of financial institutions. It is administered by the Income Tax Division of the Alabama Department of Revenue.

The municipal share of the State Financial Institutions Excise Tax is paid each calendar quarter. It may be used for general purposes. Marked fluctuations can take place in this source of state-shared revenue, since it is dependent upon the operations of financial institutions in each municipality. Should one major bank decide to take a large write-off of bad investments for a year, this could drastically affect the Financial Institutions Excise Tax paid in that municipality.

12. **Privilege Tax on Oil and Gas Production** – Section 40-20-2, Code of Alabama 1975, levies an annual privilege tax on every person engaging or continuing to engage in the business of producing or severing oil or gas from the soil or waters or beneath the soil or waters of the state for sale, transport, storage, profit or for use. The amount of the tax is measured at the rate of eight percent of the gross value of said oil and gas at the point of production, with certain exceptions. All wells producing 25 barrels or less of oil per day or 200,000 cubic feet or less of gas per day shall be taxed at the rate of four percent of the gross value of said oil or gas at the point of production. All oil and gas produced from onshore discovery wells, onshore development wells on which drilling commenced within four years of the completion date of discovery well and producing from a depth of 6,000 feet or greater, and all oil and gas produced from onshore development wells on which drilling commenced within two years of the completion date

of the discovery well and producing from a depth less than 6,000 feet shall be taxed at a rate of six percent of the gross value of said oil and gas at the point of production for a period of five years from the date production begins from said discovery and development wells, provided said wells were permitted by the State Oil and Gas Board after July 1, 1984. However, for any well for which an initial permit is issued on or after July 1, 1988, the tax on oil or gas produced by offshore production from a depth of 18,000 feet or greater and the general eight percent tax, is reduced by two percent

Section 40-20-8, Code of Alabama 1975, provides for the distribution of the revenues derived from this tax. Revenues derived from offshore production are divided as follows: 90 percent to the state general fund and 10 percent to the county where the oil or gas was produced. The remaining oil and gas tax revenue shall be collected by the Department of Revenue and distributed as follows:

- 25 percent to state general fund
- The remaining 75 percent to be divided as follows:
  - 16.66 percent to state general fund
  - 16.66 percent to county where produced for general purposes
  - 66.66 percent to counties and municipalities for general fund purposes on the following schedule:
    - a. 25 percent to counties where produced for general purposes or for schools
    - b. 10 percent to municipality where oil or gas was severed within corporate limits or police jurisdiction. If a well located within the corporate limits or police jurisdiction of the municipality pays taxes on the four percent rate, then 10 percent of all taxes collected from said well shall go to the municipality.
    - c. 50 percent of the first \$150,000 remaining shall go to the state, 42.5 percent to the county, and 7.5 percent to the municipalities therein on a population basis.
    - d. 84 percent of all remaining sums goes to the state, 14 percent to the county and two percent to the municipalities therein on a population basis.

All funds received by a municipality from the state tax on oil and gas production may be used for general fund purposes.

**13. TVA Payments** – Sections 40-28-1 through 40-28-5, Code of Alabama 1975, provide for the distribution of a portion of the money received by the state from the Tennessee Valley Authority in lieu of taxes to be shared back with the counties and municipalities served by TVA. The law further provides that a portion of this money is to be shared with those dry counties and municipalities not served by TVA. The money can be used for general purposes.

**14. Coal Severance Tax** – Sections 40-13-30 through 40-13-36, Code of Alabama 1975, provide for the levy and collection of an excise and privilege tax on every person severing coal or lignite within the state in an amount equal to 20-cents per ton of coal or lignite severed. If the coal or lignite was severed within the corporate limits or police jurisdiction of the municipality as it existed on January 1, 1977, then 50 percent of the tax levied on such severance shall go to the municipality and 50 percent shall go to the county. If the coal or lignite was not severed within the corporate limits or police jurisdiction of a municipality, then 100 percent of the tax collected on the coal or lignite severed will go to the county. This money may be used for general purposes.

**15. Municipal Government Capital Improvement Fund** – Sections 11-66-1 through 11-66-7, Code of Alabama 1975, gives municipalities in Alabama 10 percent of the interest derived from the investment of the Alabama Trust Fund, Amendment 450 (Section 219.02), Alabama Constitution, 1901, in any fiscal year in which the interest equals or exceeds \$60 million. The money must be used for capital improvement purposes and maintained in a separate account.

Fund capital is distributed by the state comptroller on April 15 of the fiscal year for which each annual distribution is made as follows:

- \$1,000 to each incorporated municipality with a population of less than 1,000;
- \$2,500 to each incorporated municipality with a population of 1,000 or more.

The residue of the portion to be paid to the incorporated municipalities in Alabama is distributed pro rata on the basis of population according to the last federal decennial census or, in the case of a municipality incorporated subsequent to the decennial census, according to the official census taken upon incorporation.

**16. Simplified Sellers Use Tax (SSUT)** - The “Simplified Sellers Use Tax Remittance Act”, codified at Sections 40-23-191 to 199.3, Code of Alabama 1975, allows “eligible sellers” to participate in a program to collect, report and remit a flat 8 percent Simplified Sellers Use Tax (SSUT) on sales made into Alabama. An “eligible seller” is one that sells tangible personal property or a service into Alabama from an inventory or location outside the state and who has no physical presence and is not otherwise required by law to collect tax on sales made into the state. The term also includes “marketplace facilitators” as defined in Section 40-23-199.2(a)(3), Code of Alabama 1975, for all sales made through the marketplace facilitator’s marketplace by or on behalf of a marketplace seller.

The proceeds from the SSUT 8 percent tax are distributed as follows:

- 50% is deposited to the State Treasury and allocated 75 percent to the General Fund and 25% to the Education Trust Fund.
- The remaining 50% shall be distributed 60% to each municipality in the state on the basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and the remaining 40% to each county in the state on the basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to distribution.

The department of revenue will provide a list of SSUT account holders on the website disclosing the start and cease date of participants in the program, as applicable. This list is provided so that the local governments are aware of the taxpayers who fall under the protection of the SSUT Act.

### **Elimination of Small Payments**

Section 40-1-31.2, Code of Alabama 1975, provides that in all cases involving distribution of revenues to counties and municipalities, the state agency charged with the responsibility of apportionment of such funds shall eliminate all payments of less than \$5 to a municipality and shall include the amount so eliminated in any payment to be made to the county in which the municipality is located.

### **State Taxes or Costs Paid by Municipalities**

Section 91, Alabama Constitution, 1901, prohibits the Legislature from levying taxes on the real or personal property owned by municipal governments. In addition, municipalities enjoy a natural exemption from state taxation unless they are specifically included in the language of the statute imposing a particular tax. *State v. Montgomery*, 228 Ala. 93, 151 So. 856 (Ala. 1933). At present, cities and towns are required to pay two direct taxes to the state. In addition, municipal courts are required to collect several special costs on certain court cases and remit all or part of the revenue to the state. The Alabama Legislature passed Amendment 621 (Section 111.05) Alabama Constitution, 1901, which prohibits the Alabama Legislature from passing a general law or state executive order that would increase or add expenditure of funds held or disbursed by the governing body of the municipality, unless approved by an ordinance or resolution adopted by the governing body of the municipality.

1. **State Gasoline Inspection Fee** – Sections 8-17-87 and 8-17-91, Code of Alabama 1975, which levies a gasoline inspection fee of 2-cents per gallon, applies to municipalities. However, municipalities also receive a portion of the revenue from this levy.
2. **Utility Tax** – Section 40-21-80, Code of Alabama 1975, specifically includes “every municipal corporation in the state of Alabama” as being subject to the four percent privilege or license tax imposed on the gross receipts of utility services. Section 40-21-83 does exempt electricity used by a municipality or municipal board in furnishing or providing street lighting or traffic control signals, water used by a municipality or municipal board to fight fires and telephone service used by a municipality or municipal board for fire alarm systems.
3. **Alabama Uniform Severance Tax** – Municipalities are required to pay a tax of ten cents per ton on severed material sold as tangible personal property when purchased by the municipality. The tax shall be collected by the producer and become due and payable by the purchaser thereof at the time of sale or delivery, whichever first occurs, provided that the tax shall be identified as a severance tax on a bill of sale, invoice, or similar sales document to the purchaser thereof, otherwise the tax shall instead be the obligation of the producer. Twenty-five percent of the funds distributed to a county as a result of the severance of materials from within the corporate limits of a municipality in the county shall be expended by the county on county roads or other projects authorized by the law within the corporate limits of that municipality. Sections 40-13-50 to 40-13-61, Code of Alabama 1975.

4. **Solid Waste Management Fee** – Municipalities must pay a fee of \$1 per ton for disposal of solid waste within the state the proceeds of which shall be used to adequately fund the solid waste management program of the Alabama Department of Environmental Management; establish a trust fund to provide for a grant program for local governments to develop, implement, and enhance recycling and waste minimization efforts; and to establish minimum standards for solid waste reduction, minimization, and recycling. Section 22-27-17, Code of Alabama, 1975.
5. **State Rental Tax** – Under section 40-12-222 of the Code of Alabama, a lease tax is levied upon the lessor of tangible personal property measured by the gross proceeds received by the lessor. The economic burden of the lease tax may not be passed on to the state, a municipality, or a county unless the flat amount collected by the lessor includes both the tax and the leasing fee. Each contract entered into by the municipality must be reviewed by the municipality to determine whether the total rental price includes the lease tax. 2007-038
6. **Special Court Costs** – State laws require that municipal courts shall assess, in addition to the cost established by the municipality for the operation of the court, the following special costs:
  - An additional \$8.50 cost upon conviction of any offense involving a traffic infraction, to be remitted to the state treasurer to the credit of the State Driver’s Fund for distribution pursuant to Section 32-5-313, Code of Alabama 1975. Section 12-14-14, Code of Alabama 1975.
  - An additional \$12 for every conviction in municipal court. Five dollars of this amount is to be remitted to the state general fund; \$5 is remitted to the municipal general fund; and \$2 is remitted to the Police Officers Annuity and Benefit Fund. Section 12-14-14, Code of Alabama 1975.
  - An additional \$1 cost for each traffic infraction and an additional \$5 cost in each such proceeding where the offense constitutes a misdemeanor and/or a violation of a municipal ordinance other than a traffic infraction to be remitted to the Alabama Peace Officers Annuity and Benefit Fund. There shall be no additional costs for offenses related to the parking of vehicles. Section 36-21-67, Code of Alabama 1975.
  - An additional \$16 cost for every criminal conviction in municipal court, this is called the “fair trial tax.” A municipality may retain that portion of the proceeds so collected necessary to pay for the cost of defending indigents before the municipal judge. The remaining money is remitted to the state treasurer to the credit of the Fair Trial Tax Fund. Sections 12-19-250 and 12-19-251.1, Code of Alabama 1975.
  - An additional \$2 cost for each traffic infraction and an additional \$10 cost for each such proceeding where the offense constitutes a misdemeanor and/or a violation of a municipal ordinance other than traffic infractions, to be remitted to the Crime Victim Compensation Commission. There shall be no additional costs imposed for violations relating to the parking of vehicles. Section 15-23-17, Code of Alabama, 1975.
  - Any person who drives a motor vehicle on a public highway without a driver’s license, upon conviction, shall be guilty of a misdemeanor and shall pay a fine of not less than \$10 and nor more than \$100. The respective municipality may retain that portion of the proceeds to distribute into their general fund. In addition, there shall be imposed or assessed an additional penalty of \$50. This penalty shall be forwarded to the State Comptroller to be deposited as follows: \$25 to the Traffic Safety Trust Fund and \$25 to the Peace Officers Standards and Training Commission Fund. Section 32-6-18, Code of Alabama 1975. The Attorney General’s office has held that the additional \$50 penalty on unlicensed drivers provided by Act 97-494 does not apply in municipal courts. AGO 1997-246.
  - In addition, any person convicted or pleading guilty to a misdemeanor shall be ordered to pay a victim compensation assessment of not less than \$25, nor more than \$1,000, for each such misdemeanor for which such person was convicted or otherwise disposed of when the court orders that costs be paid. In imposing this penalty, the court shall consider factors such as the severity of the crime, the prior criminal record, the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant. Such additional assessment shall be collected by the clerk of the court imposing the same and the first \$12.50 of each misdemeanor assessment shall be promptly paid over to the Commission. The remaining \$12.50 shall be paid to the Office of Prosecution Services. Any victim assessment fees ordered above the minimum shall be paid to the Commission fund. Sections 15-23-1 through 15-23-23, Code of Alabama 1975.

- Section 32-5A-191 of the Code of Alabama 1975, specifies the penalties assessed against a person convicted of Driving under the Influence. A first conviction for Driving under the Influence, shall carry no more than one-year imprisonment in a municipal jail, or a fine no less than \$600 and no more than \$2,100, or by both a fine and imprisonment. A second conviction carries a fine not less than \$1,100 and no more than \$5,100 and imprisonment for no more than one year. A third conviction carries a fine no less than \$2,100 and no more than \$10,100 and a minimum of 60 days imprisonment but no more than one year. A fourth or subsequent conviction carries a fine not less than \$4,100 and no more than \$10,100 and imprisonment of no less than one year and one day and no more than 10 years. The Attorney General has held that a municipal court does not have jurisdiction over a fourth DUI offense. AGO 1998-015. Fines collected for violations of this section charged pursuant to a municipal ordinance shall be deposited as follows:
  - The first \$350 collected for a first conviction, the first \$600 collected for a second conviction within five years, and the first \$1,100 collected for a third conviction, and the first \$2,100 for a fourth or subsequent conviction shall be deposited into the state treasury with the first \$100 collected for each conviction credited to the Alabama Chemical Testing Training and Equipment Trust Fund and the second \$100 to the Impaired Drivers Trust Fund after deducting five percent of the \$100 for administrative costs and the balance credited to the State General Fund.
  - Any amounts collected over these amounts shall be deposited as otherwise provided by law.
- Section 12-19-310, Code of Alabama, 1975, requires the collection of \$40.00 additional dollars in all criminal cases, except traffic cases, including cases in municipal courts, and an additional \$26.00 in traffic cases, except parking violations. The city retains \$10.00 of this amount.
- Section 12-19-311, Code of Alabama, 1975, requires the collection of bail bonds in misdemeanor cases of a \$35.00 filing fee as well as a bond fee of 3.5% of the total face value of the bond, or \$100.00, whichever is greater, not to exceed \$450.00. The municipality retains a portion of this fee.

### **Selected Attorney General's Opinions and Court Decisions**

**NOTE:** These summaries are not intended as a substitute for reading the opinions or decision itself.

- The criminal history processing fee found in Section 12-19-180(a) is a "court cost" as that phrase is used in Section 12-19-150, and may be assessed against the defendant in a criminal case (except a non-DUI traffic, conservation, or juvenile case) is dismissed upon payment of the docket fee and the other court costs by order of the judge. AGO 1999-287.
- Corrections fund monies may be used to remodel the city hall auditorium, where the municipal court is located, even though there may be an incidental benefit to the municipality when the remodeled facility is used for city council meetings. AGO 2000-124.
- Corrections fund monies may be used to repair, remodel and renovate a city's court complex. AGO 2000-136.
- Corrections fund revenues collected pursuant to Section 11-47-7.1, Code of Alabama 1975, cannot be used by a municipality to build or construct a police facility with or without a court complex. AGO 1999-012.
- Court-ordered settlement funds can be used only for the purposes set out in the court's order and do not revert to the general fund at the end of the year. AGO 1997-289.
- In *Prattville v. Welch*, 681 So.2d 1050 (1995), the Alabama Supreme Court held that it was not an unreasonable violation of equal protection to tax private liquor stores while exempting state liquor stores from the tax.
- In *Mobile v. M.A.D., Inc.*, 684 So.2d 1283 (1996), the Alabama Supreme Court held that Alabama's tax on liquor is not a consumer tax and cannot be excluded when computing the license tax owed the city of Mobile. *See also, Montgomery v. Popular Package Stores, Inc.*, 684 So.2d 1288 (Ala. 1996).
- In *Opinion of the Justices*, 694 So.2d 1307 (1997), the Alabama Supreme Court held that because the purpose of a local act imposing a tax on beer was to raise revenue, rather than regulate liquor traffic, as is allowed by Section 104, Alabama Constitution, 1901, and is invalid because it conflicts with a general law on the same subject.
- The meaning of "capital improvement," as used in Section 11-66-2 of the Code of Alabama 1975, does not apply to the purchase of a dump truck and a bulldozer and as such, capital improvement funds may not be used to purchase such items. AGO 2006-043.
- The district attorney's restitution recovery division has the authority to collect court costs, fines and other enumerated sums on behalf of municipal courts that wish to contract with the district attorney's office for such collection. AGO 2003-139.



- For purposes of administering the state coal severance tax, severance occurs when coal is parted from the earth in which it has been imbedded, rather than when the coal is ultimately removed from the earth out of the mouth of the mine. AGO 2005-103.
- Corrections fund monies may be used to pay the cost of police officers transporting prisoners from the county jail to municipal court and for the magistrate to travel to the jail for 48-hour hearings. Provided however, the governing body must determine that the expenditures are necessary for the operation and maintenance of the jail and court. The determination of the appropriate costs, including mileage rate, per diem, or actual expenses, is in the discretion of the governing body. AGO 2006-066.
- A City may use Corrections Fund monies collected pursuant to Section 11-47-7.1 of the Code of Alabama to purchase a computer-aided dispatch system to be housed in the City Public Safety Facility. Corrections Fund monies should be contributed or used only to the extent that the jail or court complex benefits from the use of this dispatch system. AGO 2008-127.
- Money from the Municipal Capital Improvement Fund may be used to repay a debt incurred for the purpose of renovating city hall. AGO 2009-025.
- A business that sold materials from spoil piles that remained on its site after other companies' mining operations had ended, was a "producer" as defined by the Alabama Uniform Severance Tax Act, and, thus, the severance tax applied to severed materials purchased from the business and the business was responsible for the collection of the severance tax, even though it had never been engaged in mining or quarrying operations. The business processed the materials that had been severed from the ground during the mining operations and sold them to purchasers on whom the tax was levied. *Wilburn Quarries, LLC v. State Dept. of Revenue*, 50 So.3d 1078 (Ala.Civ.App.2010).
- A city is authorized to retain within its coffers the amount of the issuance fee levied by its city council. A municipal license-plate issuing official is required to remit all other taxes and fees in the same manner as the county license-plate-issuing official. If a city retains fees and commissions that are required by general law to be allocated to the county, an audit conducted by the Alabama Department of Examiners of Public Accounts would determine any shortages. Section 2(a) of Act 2012-196, as amended by Act 2014-007, states that the city is responsible for any shortages as determined by an audit. AGO 2014-098.

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