



Peter Franchot  
Comptroller

May 24, 2022

The Honorable Lawrence J. Hogan, Jr., Governor  
The Honorable Adrienne A. Jones, Speaker of the House  
The Honorable William C. Ferguson, IV, President of the Senate  
State House  
100 State Circle  
Annapolis, Maryland 21401-1991

Dear Governor Hogan, Speaker Jones, and President Ferguson:

As you may have seen in news reports, the Governor yesterday sent a letter calling on me to utilize every regulatory and statutory authority to prevent the mandated increase to the State's motor fuel tax triggered by increases to the Consumer Price Index (CPI) rate and the Sales and Use Tax Equivalent (SUTE) rate as required by Maryland law.

State law as enacted by the legislature and signed into law by the Governor is clear on my ministerial responsibilities pertaining to the automatic increases to the motor fuel tax triggered by increases to the CPI and SUTE rates, as found in Maryland Tax-General Code § 9-305 and 9-306 (emphases added):

*On or before June 1 of each year, the Comptroller shall determine and announce:*

- (i) the growth in the Consumer Price Index for all urban consumers as determined by the Comptroller under paragraph (3) of this subsection; and*
- (ii) the motor fuel tax rates effective for the fiscal year beginning on the following July 1 as determined by the Comptroller under paragraph (4) of this subsection.*

*Comptroller to determine and announce average annual retail price of motor fuel and sales and use tax equivalent rate. -- On or before December 1, 2015, June 1, 2016, and June 1 of each subsequent year, the Comptroller shall determine and announce:*

- (1) the average annual retail price of motor fuel; and*
- (2) the sales and use tax equivalent rate effective on the first day of the following month.*

The Governor's Office has correctly cited examples in previous years when I unilaterally extended deadlines for tax return filing and tax payments. State law provides discretion for my ability to take these actions, but the law makes no mention of my ability to halt – temporarily or permanently – increases to tax rates.

After an exhaustive review of Maryland's Tax Code and the State Constitution, our agency counsel has advised – and Attorney General Frosh has confirmed to me personally – that I lack the statutory authority to halt or suspend the automatic increase to the motor fuel tax or *any* tax rate. Simply put, if I was legally able to prevent the motor fuel tax increase from going into effect, I would have done so already.

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While there appears to be continued disagreement between the Governor and my office – and the Attorney General’s interpretation of law – on whether or not I have existing authority to suspend the automatic increase to the gas tax set to go into effect on July 1, one thing is for certain: the executive and legislative branches have unquestionable authority to prevent an 18% increase to the gas tax – from 36 cents to 43 cents – from taking effect. This amounts to a new, highly regressive \$200 million tax on Maryland families and small businesses.

**Therefore, to definitively resolve this question and swiftly address this crisis, I am calling on you to convene a special session of the General Assembly before next Wednesday, June 1.** Emergency legislation passed during a special session of the General Assembly would be required to grant my office the statutory discretion we currently lack to temporarily suspend this new tax increase from taking effect. If I am granted legislative authority, I intend to temporarily suspend the enforcement of this provision of law for one fiscal year, from July 1, 2022 to July 1, 2023. As automatic increases to the gas tax are identified as revenue sources for bonds acquired to fund transportation projects, a temporary suspension – utilizing authority granted by the legislature – should not compromise our coveted bond ratings while providing relief to Marylanders.

As a longtime proponent of gas tax relief, I believe that allowing this tax increase to take effect in the middle of one of the worst economic crises in recent history would be tremendously harmful to Marylanders and small businesses. In addition to granting me authority to unilaterally and legally halt the automatic increase that is set to go into effect on July 1, **I am also calling on the legislature to enact a four-month gas tax holiday to provide immediate relief from the current motor fuel tax.**

The 30-day gas tax holiday that passed in March with overwhelming bipartisan support was a much-needed reprieve from rising gas prices at the outset of the Russian invasion of Ukraine. Now that regular gas prices are hovering around \$5.00 per gallon, and with no end to the Russian conflict in sight, I believe it is once again necessary for the legislature to enact a second gas tax holiday – this time for four months – to commence upon enactment of emergency legislation authorizing the holiday until September.

Thanks to our historic \$7.5 billion surplus, our State was able to replenish any lost revenue due to the monthlong gas tax holiday that ended on April 17. With a robust Rainy Day Fund and hundreds of millions of dollars in our General Fund balance, we are in a strong fiscal position to deliver both a four-month gas tax holiday *and* a one-fiscal-year suspension of the automatic increase to the gas tax triggered by the CPI and SUTE rates without sacrificing funding to priorities like the Transportation Trust Fund.

My positions on both the gas tax holiday and the implementation of the automatic, mandated increases to the gas tax are well-documented. As you know, I advocated for a three-month gas tax holiday in March, after I reported a \$7.5 billion surplus. In 2012, as the legislature debated the very law that is set to automatically increase the gas tax during an economic crisis, I spoke out in strong opposition to this law.

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It is my hope that the real and significant financial harm posed to Maryland families and small businesses by the largest increase in the State's gas tax in history will lead you to take immediate action. Letting the clock run out without returning to Annapolis to address this gas tax crisis will lead to dire financial consequences for our residents.

To address this crisis with the urgency and speed that it requires, I propose that we all meet as soon as possible to resolve this matter expeditiously and definitively. My office will reach out to your staff to propose dates for this meeting.

I stand ready to work with you to prevent a morally and economically irresponsible tax hike from taking effect, and I look forward to meeting with you soon.

Sincerely,

A handwritten signature in black ink that reads "Peter Franchot". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

PETER FRANCHOT  
Comptroller