

**JANUARY 2015**

**REPORT ON MOTOR FUEL TAX  
IN ERIE COUNTY**



**STEFAN I. MYCHAJLIW  
ERIE COUNTY COMPTROLLER**

---

**HON. STEFAN I. MYCHAJLIW  
ERIE COUNTY COMPTROLLER'S OFFICE  
DIVISION OF AUDIT & CONTROL  
95 FRANKLIN STREET  
BUFFALO, NEW YORK 14202**

January 27, 2015

The Honorable  
Erie County Legislature  
92 Franklin Street, Fourth Floor  
Buffalo, New York 14202

Dear Honorable Members:

At the request of Legislator Ted B. Morton, my office completed an analysis of the cost of a gallon of gasoline in Erie County. We went into the analysis knowing that local gas prices seem higher than in other areas of the country. County auditors found that our prices are generally 38 cents higher than the national average. This price differential costs Western New York families over \$200 per year.

While there are a number of factors that determine the price consumers pay at the pump, one factor makes it more expensive in Erie County, New York. That factor is taxes. On average, 66 cents of the cost per gallon is taxes. The majority of those taxes are paid to the state and federal government. Adding insult to injury, there are taxes applied to the taxes. The county collects the smallest portion, which is the 4.75% sales tax that is applied.

Erie County derives millions in annual revenue from the sales tax applied to gasoline. That revenue is very volatile and decreases as the price at the pump declines. The report outlines the impact gas prices may have on the county budget. Should you have any questions about this report, please feel free to contact me at any time.

Sincerely,

STEFAN I. MYCHAJLIW  
Erie County Comptroller

## Table of Contents

The Price of Gasoline .....	4
Forecast for Gasoline Prices.....	5
New York State and Erie County Sales and Compensating Use Tax.....	6
Effect of Declining Gasoline Prices on Erie County Budget.....	7
Effect on Local Sales and Compensating Use Tax of Gasoline Tax “Cap” .....	9

## The Price of Gasoline

The price of gasoline includes the cost of the commodity itself, as well as a number of taxes and fees charged by various governing entities. These taxes and fees include:

Federal Excise Tax	18.4 cents/gallon
New York State Excise Tax	8 cents/gallon
New York State Petroleum Business Tax	17.8 cents/gallon
New York State Spill Tax	.3 cents/gallon
New York State Petroleum Testing Fee	.05 cents/gallon
New York State Sales Tax	8 cents/gallon
Erie County Sales Tax	4.75%

The Erie County Sales Tax is computed based on the price of the commodity, as well as the federal excise tax, New York State petroleum business tax, New York State Petroleum business tax, New York State spill tax and the New York State Petroleum testing fee. Erie County sales tax is charged on some of the taxes imposed by the federal government and New York State. Erie County sales tax is not charged on the New York State excise tax or the New York State sales tax.

### Examples of Tax Charged at Various Price Points

**\$3.54** (The price per gallon of gasoline on October 1, 2014)

Total Taxes per Gallon:	\$0.68
Total Taxes on 15 Gallon Purchase:	\$10.19
Erie County Sales Tax on 15 Gallon Purchase:	\$2.30

**\$2.54** (The average price per gallon of gasoline in Erie County on January 26, 2015)

Total Taxes per Gallon:	\$0.64
Total Taxes on 15 Gallon Purchase:	\$9.50
Erie County Sales Tax on 15 Gallon Purchase:	\$1.62

**\$2.71** (The projected average price per gallon of gasoline in Erie County for 2015)

Total Taxes per Gallon:	\$0.64
Total Taxes on 15 Gallon Purchase:	\$9.62
Erie County Sales Tax on 15 Gallon Purchase:	\$1.73

## Forecast for Gasoline Prices

The Erie County Comptroller's office is not charged with projecting future gasoline prices for 2015. However, the U.S. Energy Information Administration (EIA), which provides independent statistics and analysis for the U.S. Department of Energy, is so charged.

It is generally acknowledged that the price of gasoline will not be static throughout the year. Refinery maintenance season, a seasonal shift to Environmental Protection Agency cleaner burning gasoline in the late winter/early spring and changes in seasonal driving habits all have impacts on price. Other factors are more difficult to determine, including the price of crude oil used to produce gasoline and weather patterns, such as hurricanes, that may shutter production for periods of time.

The following are national average fuel price projections for 2015:

<u>Month</u>	<u>National Average</u>	<u>Erie County Average</u>
January	\$2.15	\$2.53
February	\$2.13	\$2.51
March	\$2.19	\$2.57
April	\$2.27	\$2.65
May	\$2.37	\$2.75
June	\$2.38	\$2.76
July	\$2.39	\$2.77
August	\$2.41	\$2.79
September	\$2.44	\$2.82
October	\$2.42	\$2.80
November	\$2.40	\$2.78
<u>December</u>	<u>\$2.39</u>	<u>\$2.77</u>
Average	\$2.33	\$2.71

The price of gasoline locally is consistently higher than the national average. While the amount above national average is not static, it is generally about 38 cents above the national average. Erie County projections were based on the projected national average adding 38 cents to that number.

The projection for 2015 may be revised. The EIA releases monthly reports projecting fuel prices. In November, 2014, EIA projected that the national average price of gasoline in 2015 would be \$2.94 per gallon. In December, 2014, that figure was revised downward to \$2.60. The \$2.33 average price is based on projections released on January 13, 2015. The EIA's next report is due to be released on February 10, 2015.

## New York State and Erie County Sales and Compensating Use Tax

The New York State portion of the 8.75% sales and compensating use tax charged on purchases in Erie County is 4%. In 2006, New York State Tax Law was amended to fix an amount for New York State to charge for sales and compensating use tax on gasoline, rather than allow the amount to change depending on market factors.

Pursuant to New York State Tax Law §1111 (m), New York State has set the sales and compensating use tax for purchases of motor fuel at 8 cents per gallon. Although this has been referred to as a “gas tax cap,” this terminology is not precise. If the total price per gallon of gasoline drops below \$2.25 per gallon in Erie County, the New York state portion of sales and compensating use tax does not decrease below 8 cents per gallon. As a result, the actual sales and compensating use tax collected by New York State has the effect of increasing above 4%. Erie County has not experienced gasoline prices in that range since spring in 2009.

New York State Tax Law §1111 (m)(4) permits appropriate municipalities, including counties, to take steps to set sales and compensating use taxes on gasoline in a similar fashion. The law allows the appropriate municipalities to set the tax at an amount based on its local tax, rounded to the nearest cent, at the two or three dollar amount. As applied to Erie County, the law allows the county to take steps to set the sales and compensating use tax at 10 cents or 14 cents per gallon, in lieu of collecting sales and compensating use tax at the rate of 4.75%.

By way of comparison, the local sales and compensating use tax collected in Erie County is 10 cents per gallon at \$2.36 and 14 cents per gallon at \$3.25. Therefore, if the local sales and compensating use tax was fixed at the two dollar level, local tax would tend to increase above 4.75% at a price point of \$2.35 or lower at the pump. Similarly, if the local sales and compensating use tax was fixed at the three dollar level, local tax would tend to increase above 4.75% at a price point of \$3.23 or lower at the pump.

## Effect of Declining Gasoline Prices on Erie County Budget

### Impact on Revenue

On October 1, 2014, the day that revenue projections for the 2015 Erie County Budget were submitted to the legislature, the average price of gasoline in Erie County was \$3.54 per gallon. The revenue projections did not specifically comment on gasoline prices, nor did the budget message submitted two weeks later. On January 26, 2015, the average price of gasoline in Erie County was \$2.54 per gallon.

The New York State Energy Research and Development Authority approximates that 370,000,000 gallons of gasoline were sold in 2012 in Erie County. Speculating that the revenue projections anticipated an average gasoline price of \$3.54 per gallon, and that gasoline sales remained constant, Erie County would collect \$56,610,000 in local taxes on gasoline. Based on a projected price of \$2.71 per gallon, calculated by using the EIA 2015 national average fuel price estimate and adding 38 cents to arrive at the average Erie County price of gasoline, Erie County would collect \$42,784,010 in local taxes on gasoline this year. The difference in sales tax collections between these two amounts is \$13,825,990.

This does not mean that Erie County should anticipate a budget deficit of \$13,825,990 as a result of declining gasoline prices. Several factors would make such a statement inaccurate.

As a result of declining gasoline prices, the EIA estimates that the average household can expect to spend \$750 less for gasoline in 2015 than in 2014. The effect of such savings on sales tax collections depends on what households do with the windfall. If the households spend the savings on items subject to sales and compensating use tax, then the impact on sales tax collections will be minimal. If the households use the savings predominantly to reduce debt or increase savings, then the impact on sales tax collections will be significant.

Although it is difficult to accurately predict exactly how a household will spend an extra \$750, it may be helpful to examine the Economic Stimulus Act of 2008. As part of that program, married couples were delivered a check for \$600 in an effort to stimulate the economy. Researchers found that families receiving the checks increased spending 3.5% when the rebate arrived, and overall nondurable consumption increased 2.4% nationally the quarter that the checks were distributed. As such, the researchers concluded that the increased household income increased spending.

Saving \$750 over the course of the year is not the same as receiving \$600 in a lump sum check. This may or may not impact the decision on how consumers spend additional money. However, the research does seem to indicate a correlation between windfall income and increased spending on consumer goods. As such, the effect on sales tax collections in Erie County as a result of falling gasoline prices would be muted.

Even making the unlikely assumption that households will use their projected \$750 savings from falling gasoline prices entirely for debt reduction or some other purpose not subject to sales and compensating use tax, the total impact on the Erie County budget will still be less than \$13,825,990. Erie County

shares its sales tax revenue with cities, towns, villages and school districts. A more thorough explanation of the breakdown can be found later in this report. As a result of the sales tax sharing agreements, the decrease in revenue to Erie County in the highly unlikely event that households spend the entirety of their savings due to falling gasoline prices would be \$8,176,734, based on current projections.

#### Impact on Expenses

While the precise impact of falling gasoline prices on sales tax revenue is uncertain, falling gasoline prices should have a positive effect on reducing expenses for the county. Erie County is a significant consumer of gasoline, especially in the Department of Public Works and the Sheriff's Office. Decreasing gasoline prices would tend to lower expenditures, further muting any decrease in revenue as a result of falling gasoline prices.

In 2013, this office conducted an audit of the gasboy fuel management system for the years 2011 and 2012. The audit revealed that amount of fuel usage is not static and is dependent on factors such as usage, mileage and fuel efficiency. In 2011, the combined usage of diesel and unleaded gasoline for Erie County was 664,672 gallons. In 2012, the amount of fuel consumed decreased to 621,580 gallons. Like gasoline, the price of diesel has dropped significantly since 2014. While EIA projects gasoline to \$1.03 cheaper per gallon in 2015 as compared to 2014, it projects diesel fuel to be \$1.02 cheaper in 2015 as compared to 2014.

The price that Erie County pays per gallon of gasoline differs from that paid at the pump due to contractual volume and tax structure. However, as the volume and taxing structure may vary somewhat from year to year, it can be assumed that Erie County will see a similar decrease in the price that it pays for motor fuel as is seen at the pumps.

Fuel usage is difficult to predict. A significant amount of fuel is used for plowing roads. As such, one might assume less fuel usage in years when Lake Erie freezes early, thus reducing lake effect snow, when compared to years when the lake freezes late. This is not a direct correlation. For example, the lake froze (reached 32°F) on January 7, 2011 and the county used 664,672 gallons of fuel that year. The lake did not freeze in 2012. One might predict higher snowfall due to lake effect, yet the 2011-2012 snowfall season ranks as the third least snowfall for the season for Buffalo. Temperatures were at a degree not conducive to snow accumulation. Fuel usage for Erie County was 43,092 gallons less in 2012.

Lake Erie froze (reached 32°F) on January 9, 2015. As such, 2011 fuel usage may serve as a rough comparator for fuel usage, not accounting for increased fuel efficiency in certain portions of the county's fleet. If the county uses 664,672 gallons of fuel again in 2015, the savings for fuel would be approximately \$681,289. Falling motor fuel prices will decrease expenses for Erie County in 2015.

## Effect on Local Sales and Compensating Use Tax of Gasoline Tax “Cap”

As stated previously, the New York State law permits the county an option of fixing a set amount of sales and compensating use tax per gallon of gasoline, rather than collecting on a percentage basis.

The effect of setting the local sales and compensating use to a fixed amount on the 2015 budget in large part depends on the effective date of the law. For illustrative purposes, an effective date of April 1, 2015 will be used. According to EIA, the average price of gasoline for the last nine months of 2015 is projected to be \$2.39 per gallon. Adding 38 cents to that amount to project gasoline prices in Erie County for the last nine months of 2015, the average gasoline price locally is projected to be \$2.77 per gallon. Assuming that 277,500,000 gallons of gasoline are sold during that time period, the county would collect \$32,843,019 in sales and compensating use tax using the currently applicable method.

If Erie County fixed their sales and compensating use tax on gasoline based on three dollars (14 cents per gallon), collections would increase to \$38,850,000. This would be an increase of \$6,006,981 over the current collection formula.

If Erie County fixed their sales and compensating use tax on gasoline based on two dollars (10 cents per gallon), collections would decrease to \$27,750,000. This would be a decrease \$5,093,019 over the current collection formula. The entire burden of this decrease in collections would not be borne solely by Erie County.

Erie is one of only a few counties in New York State that share sales and compensating use taxes with local municipalities and school districts. The first 3% of the local sales and compensating use tax is shared as follows:

Erie County	35.3055%
School Districts	29%
Cities (Buffalo, Tonawanda & Lackawanna)	10.0087%
Cities, Towns and Villages	25.6858%

Of the remaining 1.75% of the tax collected, \$12,500,000 of the first 1% is shared with the cities, towns and villages, with the remainder used by Erie County. The full .75% is reserved solely for Erie County purposes. Of course sales and compensating use tax does not apply solely to gasoline. Because of that fact and due to the volume of sales tax collections in Erie County, the budgetary impact of fixing tax will consider that Erie County receives the full 1.75% and shares the remaining 3%.

Based on the above numbers, fixing sales and compensating use tax collections at the \$2.00 level would result in a loss of revenue to Erie County of \$3,012,028. The total loss in revenues to cities, towns and villages would be \$1,148,165. The loss in revenue to school districts would be \$932,827. It should be noted that the resulting impact on school districts may also increase the amount of STAR rebates received by property tax payers. The STAR rebates are calculated using a formula that only considers

property tax paid, not total tax paid (including sales and compensating use tax). Thus, assuming that school budgets expenditures do not change and adjustments are made to compensate for the reduction of sales and compensating use tax revenue, STAR rebates for eligible individuals may increase.

Further, the loss in revenue may be mitigated somewhat by an increase in spending. In addition to the discussion above regarding consumer behavior upon receiving a \$600 stimulus check per household in 2008, cognizance of wages and purchasing power may be informative. The median household income in the United States was \$55,589 in 2008. It was \$53,891 in 2014, a decrease of \$1,698. Also during that same period, due to small inflationary increases, purchasing power has eroded. As such, consumers may not be able to afford the same basket of goods today that they could in 2008. Therefore, small increases in income, such as the savings from fixing the sales and compensating use tax on gasoline, could increase household spending on consumer goods.

If the entire amount of savings from fixing the sales and compensating use tax were spent on taxable goods, this would result in an increase of \$241,918 in sales and compensating use tax collections. As a result, the impact on Erie County would be reduced by \$143,071 to \$2,868,957.

Fixing sales and compensating use tax collections at the \$3.00 level would result in an increase in revenue to Erie County of \$3,552,548. The total increase in revenues to cities, towns and villages would be \$1,354,207. The increase in revenue to school districts would be \$1,100,226. Because of the fact that Erie County shares sales and compensating use tax with school districts, and assuming that school budget expenditures were not changed as a result of the increased revenue, households receiving a STAR rebate could see their rebate checks decrease due to the increased income to schools.