

PROGRAM: STUDENT DRIVER TRAINING FUND

**STATUTORY AUTHORITY: ORS 336.810, 336.805, 802.110, 807.040, 807.150
807.370**

SUMMARY OF PROGRAM: Before a driver license or driver license renewal is issued, all applicants for driving privileges and renewal of driving privileges must pay the \$3.00 Student Driver Training Fund eligibility fee. ORS 807.040, 807.150, 807.370. Although the statute states that this is an eligibility fee⁴ and not part of any fee required to be paid for driving privileges, no driver license can be issued or renewed unless the fee is paid. ORS 807.040, 807.150.

After payment of ODOT's expenses for collecting this fee, the funds collected go into the Student Driver Training Fund. ORS 802.110. This money is statutorily dedicated to pay the administrative expenses associated with administering the statutes relating to student driver training courses in public and private secondary schools and community colleges. The fund also reimburses each school offering such a course \$150 for each student who completes it. ORS 802.110, 336.805. ODOT administers this program by collecting the fee, establishing the course curriculum, establishing teacher qualifications, and paying the tuition reimbursement to each school.

PORTIONS OF PROGRAM AT RISK: The Student Driver Training Fund eligibility fee, assessed as a requirement for obtaining a driver license or renewal of a driver license, is an excise. An excise is defined as "a tax imposed on the performance of an act, the engaging in an occupation or the enjoyment of a privilege." BLACK'S LAW DICTIONARY 563 (6TH ed 1991) (as cited in *Automobile Club v. State of Oregon*, 314 Or 479, 492, 840 P2d 674 (1992)). The definition of excise in the most recent edition of BLACK'S is "a tax imposed on the manufacture, sale, or use of goods (such as a cigarette tax), or on an occupation or activity (such as a license tax or an attorney occupation fee). BLACK'S 585 (7th ed 1999)

Although labeled as an "eligibility fee" and not part of any fee required to be paid for the granting of driving privileges, no driver license or license renewal can be issued unless the fee is paid. It is therefore an excise imposed on the enjoyment of the privilege of driving, since issuance of driving privileges, as evidenced by a driver license, is necessarily a prerequisite to the legal operation or use of motor vehicles on public

⁴ Although the statute uses the term "eligibility fee" it is not clear what is meant by this term. Apparently the legislature was attempting to distinguish this from a tax or excise by labeling it as an "eligibility fee."

highways. ORS 807.010. This is not a regulatory fee.⁵ Revenues collected from any tax or excise levied on the operation or use of motor vehicles are Highway Funds.

Because the Student Driver Training Fund consists exclusively of Highway Funds, those funds can only be used if the program primarily and directly facilitates motorized vehicle travel. The funds are used to support the Traffic Safety Education Program. That program constitutionally uses Highway Funds. (See Student Driver Training Program below, pages 11- 12. Therefore, the statutorily dedicated use of the Student Driver Training Fund is constitutional.

⁵ A tax is something that all of the people of the state or all the property in it are required to pay to fund public structures or services unrelated to the source of the funding. Taxes are general revenue generating measures. See *Scappoose Sand and Gravel v. Columbia County*, 161 Or App 325, 984 P2d 876 (1999). If the levy is designed to raise revenues and not to regulate activities, then it is a "tax". *Union Pacific Railroad v. PUC of Oregon*, 899 F2d 854, 859 (1990). If designed to recoup the costs of a regulatory program from the members of the group regulated, rather than to raise general revenues, the levy is not a tax. *Union Pacific*, 899 F2d at 858, 859. A regulatory fee must serve the peculiar needs of or be responsive to regulatory needs that are occasioned by those on whom it falls. *Scappoose Sand and Gravel v. Columbia County*, 161 Or App at 334.

The Student Driver Training Fund eligibility fee has attributes of a regulatory fee – it is assessed only upon those who obtain or renew driving privileges and is used to fund the training of persons who presumably will eventually become members of the class. But, it also looks like an excise tax – it is imposed for the privilege of driving and the fee is assessed against those who only tangentially benefit. The real beneficiaries of the fund are those who are not yet qualified to have a driver license and are students of a secondary school. So the fund is not really responsive to the regulatory needs that are occasioned by those on whom it falls.

PROGRAM: STUDENT DRIVER TRAINING (TRAFFIC SAFETY EDUCATION) PROGRAM

STATUTORY AUTHORITY: ORS 336.790 to 336.815, ORS 802.345, ORS 807.065

SUMMARY OF PROGRAM: ORS 336.800 authorizes any public or private high school, education service district, or community college to offer a traffic safety education course. This is a student driver training course. In 1999, the statutes were amended to give ODOT the responsibility for establishing the curriculum and teacher qualifications and for paying tuition reimbursement from the Student Driver Training Fund to each school that has a driver training course. The Transportation Safety Division (TSD) has adopted administrative rules that establish the curriculum requirements, the teacher qualifications and the record keeping requirements for the tuition reimbursement. OAR 737-015-0010 to 737-015-0100. Curriculum requirements include a minimum of 30 hours of classroom instruction taught by a licensed teacher or private instructor, six hours of practice driving in a vehicle, and six hours of practice driving observation (watching another student).

The costs of administering this program and the tuition reimbursement payments come from the Student Driver Training Fund. As discussed previously, moneys in the Student Driver Training Fund are Highway Funds.

For a person under the age of 18 years, completion of a traffic safety education course is an eligibility requirement for obtaining a provisional driver license. ORS 807.065. But this requirement is not mandatory. In lieu of completion of a traffic safety education course, a person under the age of 18 years can certify to ODOT that he or she has had at least 50 additional hours of supervised driving experience.⁶ Further, this eligibility requirement applies only to a person who is issued a driver license when he or she is under the age of 18 years. For example, completion of a traffic safety education course is not a licensing requirement if the person took the course at age 17 but did not obtain a driver license until after age 18.

PORTIONS OF PROGRAM AT RISK: None, but Highway Funds cannot be used for tuition reimbursement for a person who is not eligible for a provisional driver license at the time the person completes the student driver training course.

Because it is an eligibility requirement for provisional driver licensing, Highway Funds can be used for the costs of administering the traffic safety education course. Although completion of the course is not mandatory because there is an alternative way to fulfill the requirement that does not require use of state funds, this does not mean that Highway Funds cannot be used for this purpose. Because driver licensing includes the costs of administering those programs that determine eligibility, the traffic safety education

⁶ To obtain a provisional driver license, a person under the age of 18 years must certify to ODOT that he or she has completed 50 hours of supervised driving experience. A person who does not complete a traffic safety education course must complete an additional 50 hours of supervised driving experience, for a total of 100 hours of supervised driving. ORS 807.065.

course is a program that directly and primarily facilitates motorized vehicle travel. Highway Funds can be used for the costs of administering this program.

But Highway Funds cannot be used for tuition reimbursement as required under ORS 336.805 if a person who takes the traffic safety education course cannot obtain a provisional driver license before attaining age 18. In other words, Highway Funds can be used for this purpose if the person taking the course will be eligible to obtain a provisional driver license upon completion of the course. If the person cannot qualify for a provisional license or is exempt from the requirement under ORS 807.065(2), then the student driver training course is not an eligibility requirement for that person and Highway Funds cannot be used.⁷ However, Highway Funds may be used for tuition reimbursement for a person who is eligible for a provisional license at the time the person completes the student driver training course regardless of whether the person actually obtains a provisional driver license. That is because the course is taken as part of a licensing eligibility requirement, even if the person is not actually issued a provisional driver license, whether that failure to obtain a provisional driver license is because of bad driving skills, a decision not to pursue a provisional driver license, death or any other reason.⁸

⁷ A person under the age of 18 issued driver license by another state is not required to complete the traffic safety education course or to certify hours of driving experience. ORS 807.065.

⁸ Failure to obtain a provisional driver license despite taking the course is, in a sense, similar to an inspection of a motor carrier for out-of-service defects that shows the vehicle has no defects. Highway Funds may be used to fund the student driver training course and motor carrier inspection because both activities primarily and directly facilitate motorized vehicle travel. The former does this by addressing an eligibility requirement, the latter by looking for evidence of defects that would remove the vehicle from the highway. The fact that in the former case no provisional license is obtained, or in the latter that the vehicle is not removed from service, does not prevent Highway Funds from being used for these purposes.