# A bicycle tax?

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(NOTE: This entry is the full-length version of Death, taxes and...free riders? originally published as a Legally Speaking column on December 19, 2008)

Benjamin Franklin once observed that there is nothing certain in this world but death and taxes. In our own time, we've observed that when it comes to the subject of cyclists, it's all but certain that non-cyclists will bring up scofflaws and taxes.

In the past few weeks, the subject of taxes—specifically, taxes on bicycles—has come up once again. On November 12, Bikeportland reported that the Bicycle Transportation Alliance (a bicycle advocacy organization based in Portland, Oregon) and Metro (the regional government for the Portland metropolitan area) both support a recommendation by Oregon Governor Ted Kulongoski's Transportation Vision Committee to create a "point-of-sale excise tax on the purchase of adult bicycles." The proposed excise tax—a fee in the range of $5-$20 per bike—"should be used to enhance bicycle transportation, including Safe Routes to Schools."

Karl Rohde, the Government Affairs and Public Relations Director for the Bicycle Transportation Alliance (commonly known by its acronym, BTA), explained that there are two reasons for the BTA's support for the tax. First, Bikeportland reports, Rohde feels that it will be an important political tool to counter arguments that bikes don't pay their share to maintain and build roads. Second, the BTA believes that the revenue generated by a bike excise tax would provide a more reliable funding stream for bike programs than the gas tax. Interestingly, although supportive of the bike excise tax, Metro apparently contradicts that second argument, arguing that the purpose of the tax is to "address concern, however mistaken, that cyclists don't carry their weight. This may be an important equity effort, rather than a key funding source."

In a follow-up report in Bikeportland on November 19, Rohde elaborated on the BTA's support of the tax, noting that opposing a tax would make it much more difficult for the BTA to pursue other funding goals "like increasing the state's mandatory bike spending fund (The Bicycle Bill) by .5% and going for $20 million for 'non-motorized corridors'." Additionally, the BTA believes that a bike excise tax might raise as much as $2 million annually. With an estimated administration cost of $500,000 per year, that would leave $1.5 million to fund the Safe Routes to Schools program. Currently, the Safe Routes to Schools program teaches bike safety to 5,000 kids every year; with a $1.5 million increase, the program could be expanded to teach an additional 50,000 kids each year.

A few weeks later, on December 7, the Seattle Times published Impose license fee on King County cyclists, an opinion piece by James Vesely, in which he argued that "a $25 annual fee for

owning a bike" would "make cyclists true members of the world of transportation, rather than free riders on the tax rolls," because revenues raised from the proposed fee would be used to offset the costs of cycling infrastructure.

Vesely continued with this theme in his column the following week, Tales of two cycling cities: Chicago has no license fee, Honolulu does. Arguing that his proposal "is not about emotion, but about public policy," Vesely asked

> How does a city and a region maintain its quality of life in harsh economic times? Normally, through a fee-based structure that asks for special use permits. Why should we exempt the politically powerful, such as cyclists' organizations?

In support of this argument, Vesely compared bicycle legislation in Chicago and Honolulu. Chicago's "new bicycle ordinance is one of the most progressive in the country," Vesely noted, with "heavy fines on motorists who interfere with cyclists." This is interesting rhetoric, in light of Vesely's claim that his proposal is "not about emotion." Think about it for a minute. Chicago places "heavy fines on motorists who interfere with cyclists." What does that mean? To the non-cycling public, whom Vesely is addressing, it may conjure up frightening images of scofflaw cyclists run amok, with motorists who get in the way of these lawless, politically powerful untouchables subject to "heavy fines." Hammering home his rhetoric, Vesely notes that Chicago cyclists are scofflaws who don't stop at stop signs. The reality? The Chicago ordinance imposes fines on motorists who door a cyclist, or who pass a cyclist with less than 3 feet of clearance, or who right hook a cyclist.

Apparently finding Chicago's bicycle legislation objectionable, Vesely offers Honolulu's legislation as a better model for Seattle. The difference? According to Vesely, while Chicago places heavy fines on motorists, Honolulu collects a $15 fee on new adult bicycle sales, and a $5 fee when bicycle ownership changes. These fees are deposited in a special bikeway fund, and can only be used for cycling projects and programs.

What's going on here? What does an ordinance that imposes fines on negligent motorists who injure or kill cyclists have to do with a proposed ordinance for a bicycle license fee? Nothing. Nothing at all. Vesely claims that his proposal is "not about emotion"…and yet, in support of his proposal, dredges up every negative emotion he can about cyclists, including that ne plus ultra bogeyman, Critical Mass. If it wasn't about emotion, Vesely would have talked up the benefits of Honolulu's legislation. Instead, he brought up free riders on the tax rolls, scofflaws, Critical Mass, and fines for motorists. Of course it's about emotion.

Even in Oregon, cycling advocates are bending to the political might of the trucking and highway lobbies, the forces behind the bicycle tax idea, despite the fact that everybody involved knows that the "cyclists don't pay their way" argument is false. If it isn't about emotion, why make the false, but emotionally appealing argument that cyclists don't pay their way? Of course it's about emotion. So what's going on? Is the bicycle tax a way for those who resent cyclists to stick it to them, or does it provide real benefits to cyclists? To sort out fact from fiction, let's take a closer look at the issues involved.

**Are cyclists "free riders on the tax rolls"?**

This is the second main argument that anti-cyclists make against us (the first being that we're all scofflaws). And as I pointed out in Bicycling & the Law, it's a false argument. All roads are paid for by taxes, tolls, or development fees, and the source of financing depends upon the type of road.

Generally, new streets in residential subdivisions are paid for by developers, and those costs are then passed on to the homeowners in the purchase price of the house. The maintenance of roads however, is generally paid for from state and local general funds, which typically come from sales taxes, income taxes, and property taxes. The state highways are usually paid for from each state's general funds. Interstate highways are jointly funded by the state and federal governments, again from the general fund. Although motorists do pay gas taxes, those taxes are usually paid into the general fund, rather than into a "roads fund"; the general funds always pay for a variety of government services, including roads. Thus, all of us, motorists and cyclists alike, pay for the construction and maintenance of roads. In any case, most cyclists also own cars, and they pay fuel taxes every time they buy gas for their cars.

In Oregon, however, the state constitution mandates that gas taxes must be paid into the state highway fund, rather than into the general fund. Thus, Oregon is more dependent upon the gas tax for road construction and maintenance than are other states. Nevertheless, even in Oregon, the gas tax is not the sole source of funding for road construction and maintenance. However, because gasoline usage has dropped as gasoline prices have risen, gas tax revenues are considered to be an unreliable source of revenue; therefore, the Governor's Transportation Vision Committee "recommends a series of funding options, including bonding, a new vehicle title fee, and a path to transition away from the gas tax as the central funding source for transportation."

But what about bicycle infrastructure? In Oregon, the Bicycle Bill mandates that the highway fund must allocate a minimum of 1% of the funds for the construction of walkways and bikeways. The Bicycle Bill does not require that the State Highway Fund be the sole source of funds for walkways and bikeways, merely that it must provide at least 1% of the highway funds toward pedestrian and cyclist projects. Local and state governments are free to allocate additional funds from the general fund.

Thus, in Oregon, the gas tax does fund bicycle infrastructure, although local and state government may choose to allocate additional funds from the general fund towards bicycle infrastructure. Thus, whether Oregon's bicycle infrastructure is funded largely by the gas tax, or by a variety of tax revenues, is a choice made by local and state representatives. Nevertheless, all cyclists pay taxes, and whether they buy gasoline or not, those taxes are paid into funds that allocate funds toward bicycle infrastructure. In other states, the gas tax does not play such a central role as a source of revenue for transportation infrastructure, and therefore, arguments that cyclists are "freeriders on the tax roles" are even more specious.

**What about motorists?**

On December 12, in response to James Vesely's first column, the Seattle Times ran an opinion piece submitted by David Hiller, the Advocacy Director for the Cascade Bicycle Club, in which he made the observation that motorists don't pay their way:

> The 37 percent of people who don't drive, or drive less, pay far more in taxes dedicated to roads than they receive in return. If we broaden our perspective to include driving's externalities, like crash damages, medical expenses, congestion, pollution, and public safety costs, subsidies for driving are estimated at a dollar per mile. Further, the Victoria Transport Policy Institute estimated the monetized benefits for shifting trips from cars to bicycling or walking to be between $1.43 and $2.75 per mile.

So who pays for the costs of motorists? We all do. Bicyclists pay the same taxes as motorists

(including, for many cyclists, gas taxes). Among other things, those taxes pay for the construction of roads—roads on which cyclists are literally at the margin, and subject to the abuse of motorists and the indifference of law enforcement. The taxes cyclists pay also fund the maintenance of roads, even though, like pedestrians, cyclists place virtually no wear and tear on roads.

And of course, these facts raise a question—if cyclists pay the same taxes as motorists, and if the true cost of driving is being subsidized by all taxpayers, including cyclists, doesn't that make motorists something approaching "freeriders on the tax rolls"? If so, why hasn't Vesely singled out motorists for additional taxes? Or alternatively, why hasn't Vesely called for more support for alternative means of transportation? As David Hiller noted in his response to Vesely,

> Failing to adequately support investments in walking and bicycling has led to a $1.2 billion backlog in unfunded capital projects statewide, according to a 2007 state study. Even though more than 2 million people in Washington do not drive, they are often deprived of safe, equitable access to our public rights of way. Compare the cost of serving this unmet need with a recent billion-dollar project begun on Interstate 90, which serves a mere 29,000 vehicles a day. For the price of a project that moves fewer vehicles than many arterial streets, we could build every planned trail, sidewalk and bike lane in the entire state…
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> Facing tremendous challenges in combating global warming, now is hardly the time to undermine growth in walking and bicycle use. Extreme weather brought about by human activity is taking its toll on our crumbling infrastructure. Bicycles not only produce zero emissions, but have nearly zero impact on road surfaces when compared with motor vehicles…Let's use public dollars to encourage those who travel by bike in our communities, as they are doing a service for the economy and the environment while paying more than their fair share in taxes.

**Do bicycle tax ordinances provide real benefits to cyclists?**
In Honolulu, the registration fees collected from cyclists are deposited in the bikeway fund. Although Vesely argues that those funds can only be used for cycling projects and programs, Honolulu has in fact transferred funds from the bikeway fund to the general fund. Nevertheless, the bikeway funds have generally been used to paint bike lanes, construct bike paths, and to fund BikeEd Hawaii, a bicycle safety program jointly sponsored by the City and County of Honolulu and the Hawaii Bicycling League. The most recent figures from BikeEd indicate that approximately 5,800 children were taught bicycle safety in the 2006-2007 school year.

Compare this number with the 5,000 children taught bike safety each year in Oregon, and the additional 50,000 children the BTA claims the Safe Routes to Schools program will be able to reach with a bicycle tax in effect.

Or take a look at Colorado Springs, which has raised $2 million in revenue since its $4 fee was instituted 20 years ago (see 20 years later, city's tax keeps on giving). According to Colorado Springs city planner Craig Blewitt, "There's no way we could have put in the facilities we've put in in the last 20 years without the bike tax." Of course, there's a reason for that—as the article notes, the bicycle excise tax was the last Colorado Springs tax enacted before the Colorado Taxpayers Bill of Rights went into effect. Since then, any new taxes must be approved by the voters. Without the excise tax, Colorado Springs could still have built bicycle infrastructure, but would have had to allocate funds from the general fund—something that might raise protests that cyclists "don't pay their way."

And that's how they do it in King County—they build bicycle infrastructure without an excise tax, something that caused James Vesely to protest that cyclists don't pay their way. That's how they do it in Oregon, something that caused the trucking and highway lobbies to protest that cyclists don't pay their way.

The thing is, we do pay our way. Will paying an additional fee be seen as a tacit acknowledgement that we haven't been paying our way? Or is it an acknowledgment of political reality, with the benefits outweighing the trade-off?

Bob

(Research and drafting provided by Rick Bernardi, J.D.)