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Session #3

Basics of Airport Revenue Use and Diversion



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Speaker



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Following the Money...

- Why do I need to think about this?
- What is airport revenue?
- What are the permissible uses of airport revenue?
- What are the prohibited uses of airport revenue?
- But what about...
- What are the consequences of violating the rules?



Foundational Concepts



This area is **highly regulated** by the federal government

Revenue “diversion” is a **violation of federal law**

Intended to guard against sponsors raiding the airport piggy bank

Important differences between aeronautical and non-aeronautical uses

Grant Assurances provide another level of regulation

The Basics

Obligation to operate as a **closed fiscal system**.





It's the Law

- Governing Statutes/Legislative History
 - Airport and Airway Improvement Act of 1982 (AAIA)
 - Airport and Airway Safety and Capacity Expansion Act of 1987
 - FAA Authorization Act of 1994
 - FAA Reauthorization Act of 1996
- Codified at 49 U.S.C. §§ 47107(b)(1), 47133
- 64 Fed. Reg. 7696 (Feb. 16, 1999) (FAA Revenue Use Policy)
- Grant Assurance 25



What is “Airport Revenue”?

“All fees, charges, rents, or other payments received by or accruing to the sponsor for the right to conduct an activity on the airport or use or occupy airport property, for the sale or other transfer of airport property, or from the sponsor’s aeronautical activities.”

OK, but what is “Airport Revenue”?

Airport Revenue

Airline Charges
Land/Facility Rent
Landing Fees
Concession Fees
Parking Revenue
Mineral Rights
Taxes on Aviation Fuel*



Not Airport Revenue

Property Tax
Other Sales Tax
Hotel Taxes
Parking Citations
(Some) Rental Car Fees
Tenants' Revenues





Permissible Uses of Airport Revenue

- Operating and capital costs of:
 - The airport
 - The airport system
 - Other facilities **owned or operated by the airport sponsor** and **directly and substantially related** to transportation by air of passengers and cargo

EASY EXAMPLES:

New airport
operations
vehicle

Salary for
operations
manager

Construction of
public taxiway

Paper towels for
terminal
restrooms

Other Permissible Uses, with Strings

- Marketing expenses related to the airport
- Promotional expenses
- Costs incurred by government officials
- Portions of ground access projects
- Structured air carrier incentive programs
- Generally applicable tax assessments
- Reimbursement for owner/operator contribution to capital and operating costs
- Community activities



Another Permissible Use: Indirect Costs

CAUTION

- Typically arises
- General costs
 - HR
 - IT
 - Data processing
 - Finance
 - Procurement
- Double counting direct & indirect costs
- Unclear allocation methodology
- Disproportionate allocation methodology
- Charges for impermissible or unused services

Prohibited Uses – Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes *other* than the capital or operating costs of an airport (where no grandfathering exception applies).

Common Examples

- Payments exceeding reasonable value to the airport
- General economic development
- Inconsistent cost allocation formulae
- Nonaeronautical uses at less than fair market value
- Minimum revenue guarantee programs



Specific Topics

State and Local Taxes on Aviation Fuel

- Airport revenue includes state or local taxes on aviation fuel (except taxes in effect on December 30, 1987).
- In addition to other permitted uses of airport revenue, state or local taxes can be used to support a state aviation program, or on- or off-airport noise mitigation.
- Many pending [Fuel Tax Action Plans](#).





Specific Topics

Nonaeronautical Use of Airport Property

- Generally, must receive fair market value (FMV)
- Determined *only* by appraisal
 - See [Compliance Guidance Letter 2018-03](#), *Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property*

Fair Market Value: “The highest price estimated in terms of money that a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser or tenant who buys or rents with knowledge of all the uses to which it is adapted and for which it is capable of being used.”



Specific Topics

Exceptions to the FMV Obligation

- Community purposes
 - Enhances public acceptance
 - Would not otherwise produce revenue
 - Does not preclude airport reuse
 - No capital or operating costs
- Non-profit aviation organizations
 - Reasonably justified by the tangible or intangible benefits to the airport
- Public transit projects



Specific Topics

Non-Airport Revenues

- Not subject to *Revenue Use Policy*
- Handling of non-airport revenues must be consistent with Grant Assurance 22
- Common example: Airline Subsidies
 - Sponsor's role limited to technical assistance



Consequences and Compliance



Why should we care?

- Very serious issue for the FAA
- Often involves complex financial calculations
- Six-year lookback period (i.e., statute of limitations)
- Can result in penalties above and beyond the amount diverted
- But, FAA focus is usually on compliance (corrective action and repayment) not punishment
- More severe penalties for failure to disclose and remedy



Consequences and Compliance



Usual Stumbling Blocks for Sponsors

- Ignorance of airport revenue rules
- Sharing of costs for general government services
- Police and Fire
- Less-than-FMV leases and property uses
- Recordkeeping problems



An Intentionally Oversimplified Example



Facts

- In 2020, the Springfield Police Department built a new barracks located on the Springfield Executive Airport.
- The fair market rental value of the property where the barracks is located is \$1 million per year.
- There is no written agreement for the use of the property and no transfer of money from the City's general fund to the airport fund.



An Intentionally Oversimplified Example



Revenue diversion!

- Non-aeronautical use of airport property by the sponsor requires FMV compensation to the airport.
- The benefit can be realized in dollars or in services provided...but there is no evidence of that here.
- Amount foregone by the airport fund for use of the property (potential revenue diversion):

$\$1 \text{ million} * 6 \text{ years} = \underline{\$6 \text{ million}}$

An Intentionally Oversimplified Example



Additional Facts

- The barracks houses 100 officers.
- The total cost to the City for salaries and benefits for these officers is \$10 million per year.
- Five (5) officers are assigned full time to the airport terminal and property.
- The other 95 officers respond to calls in the City, unincorporated Springfield County, and occasionally on airport property.



An Intentionally Oversimplified Example



Value received mitigates potential revenue diversion

- Dedicated airport-related police salaries and benefits:
 $\$100,000 * 5 \text{ officers} * 6 \text{ years} = \3 million
- Use of airport property for airport support:
 $5\% \text{ of } \$1 \text{ million FMV} * 6 \text{ years} = \$300,000$
- Value received by the airport in exchange for use of property:

\$3.3 million

An Intentionally Oversimplified Example



One Other Fact

Reasoning that the barracks is located on airport property, the City has historically transferred \$5 million per year *from* the airport fund to the police department to pay for the costs of the force.



An Intentionally Oversimplified Example



The math and why

- Amount paid by airport fund: \$5 million * 6 years = *\$30 million*
- Amount foregone by airport fund for use of property: *\$6 million*
- Total potential revenue diversion: **\$36 million**

- Value received by the airport: **\$3.3 million**

- Total revenue diversion: \$36 million - \$3.3 million = **\$32.7 million**

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Questions?




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Thank You!




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