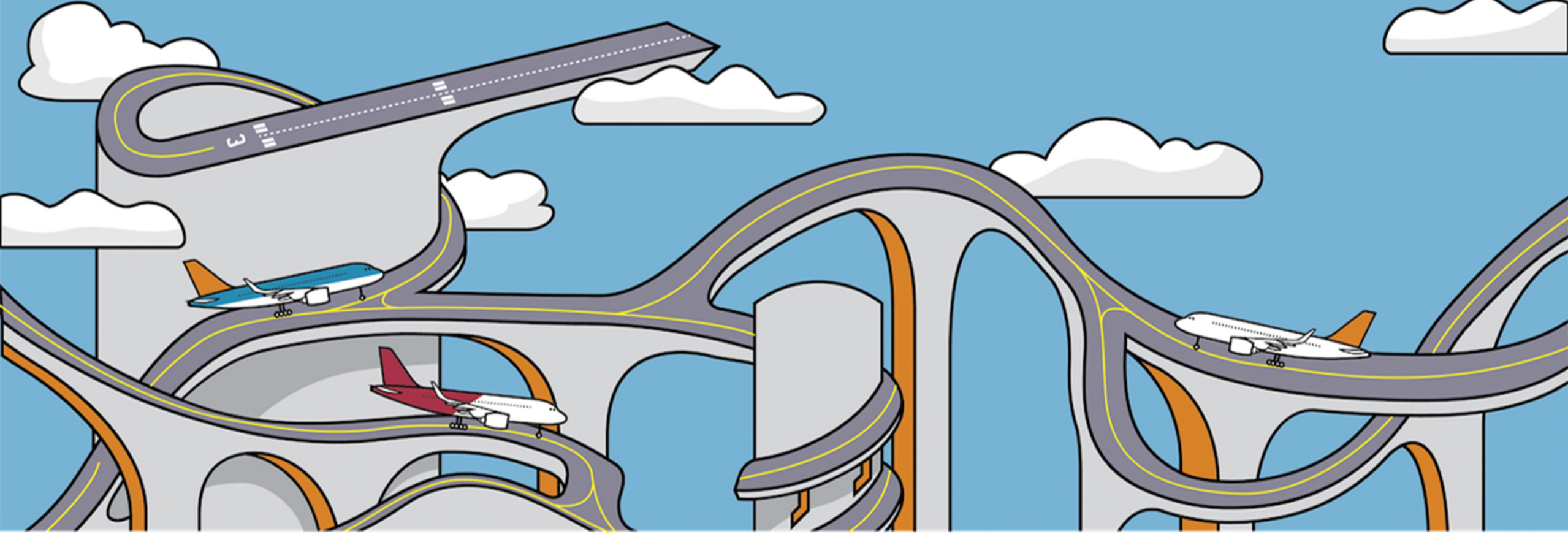


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Fundamentals #2
Regulation of Airport Finances

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Today's presentation



- Introduction - basics of airport finances
- Discussion - counterintuitive requirements governing airport revenue
- Understanding - different sources and uses of airport revenue
- What are permissible – and impermissible – uses of airport revenue
- State law requirements – another layer of complexity
- Airport bonds
- Practical application of these principles



This should not be frightening.....



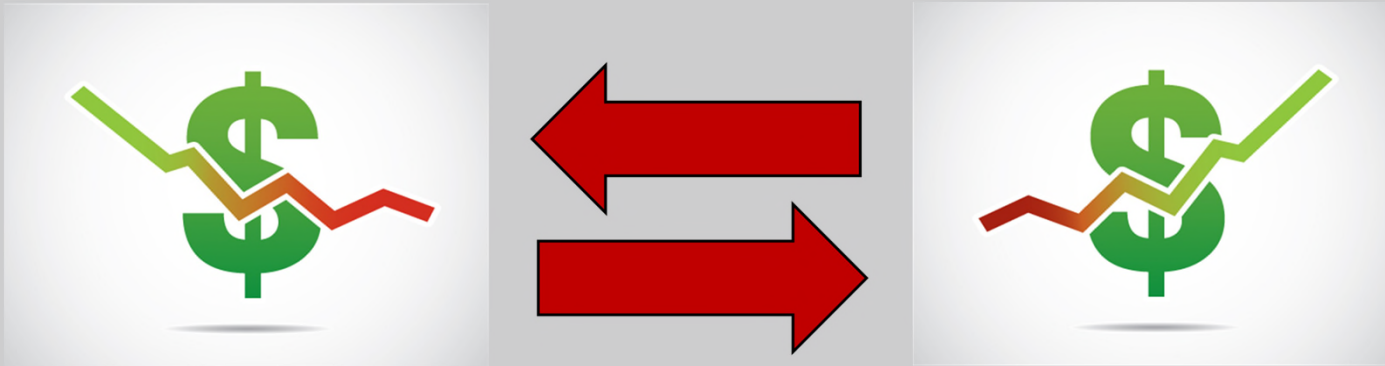
Airport finance is **NOT** intuitive – but, once you know the principles, you can work with them *and* make them work for you



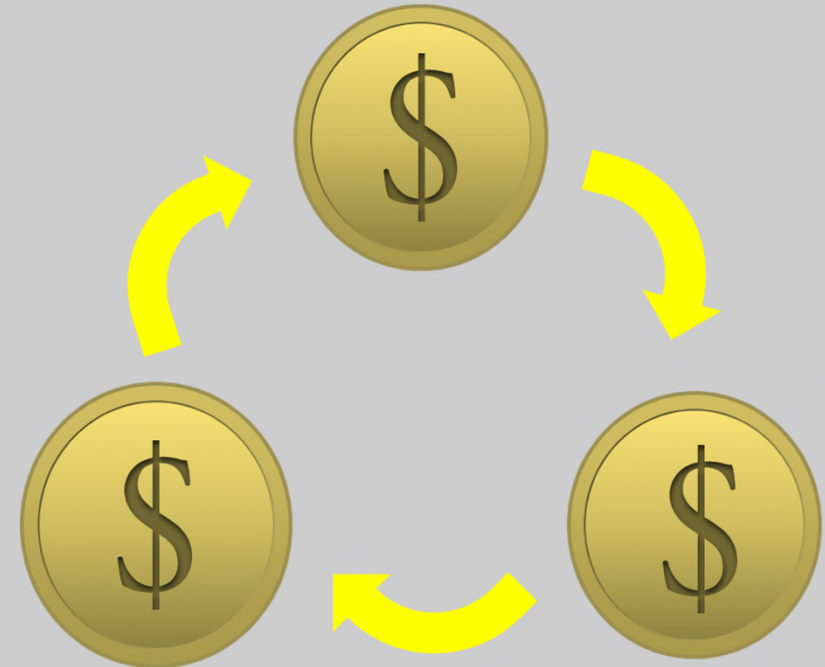
Two overarching principles



Essential to understand
the specific source and use of funds



Airports must have a
closed fiscal system





Basics of airport finances

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Foundational concepts



Airports – and use of revenues – are highly regulated by the federal government

Airports are a closed loop financial system

Revenue “diversion” – it’s a sin (unless you’re “grandfathered”)

Aeronautical vs. non-aeronautical use/tenant

“Reasonable” rates vs. fair market rental

Grant Assurances

Self-sustaining requirement

Federal “logic” – e.g., no head taxes, except for PFCs



Use of airport revenue limited by federal law



- *See* 49 U.S.C. §§ 47107(b), 47133
- Permissible uses:
 - 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
- Operational costs and debt service
- Capital projects



What is airport revenue



- *See Revenue Use Policy, § II.B*
- Revenue generated at the Airport, not pursuant to generally applicable taxes or fees.
Examples:
 - Landing fees
 - Terminal rentals
 - Concession fees
 - Federal Inspectional Services (FIS) charges
 - Parking revenues
 - Rental car fees and Customer Facility Charges (CFCs)
 - Ground transportation fees
 - Sale or lease of airport property
 - Mineral rights



What is *not* airport revenue



- Revenues generated through taxes or fees of general applicability.
Examples:
 - Sales taxes
 - Motor fuel taxes (*but see* 79 Fed. Reg. 66,282 (11/7/2014) re: aviation fuel taxes imposed after Dec. 30, 1982)
 - Hotel taxes
 - Generally applicable rental car fees (but what if only local RAC facilities are on-airport?)
 - Parking taxes
 - Airport tenant revenues
 - Parking citations



Some key terms



- Airport revenue – *Revenue Use Policy*, § II.B
- Non-airport revenue
- Aeronautical vs. non-aeronautical users – *Airport Compliance Manual* §18.3
- Passenger Facility Charges (PFCs) – 49 U.S.C. § 40117
- Signatory vs. non-signatory airline
- Residual rates – *Rates & Charges Policy* § 2.1.1
- Compensatory rates – *Rates & Charges Policy* § 2.1.2
- General Airport Revenue Bonds (GARBs)
- Airport Layout Plan (ALP) – 49 U.S.C. § 47107(a)(16) (*see* 2018 Reauthorization Act, § 163)



Key federal statutes



Anti-Head Tax Act: 49 U.S.C. § 40116

- Limitation on “head taxes” & state taxation of airports
- Charges must be “reasonable”

Airport Improvement Program: 49 U.S.C. 47101, et seq.

- 47107 – Grant Assurances required
- 47107(b), (k), (m) – revenue use, illegal diversion, penalties

PFC Act: 49 U.S.C. § 40117

- Permits imposition and use of charge per enplaned passenger of up to \$4.50
- Uses limited to “eligible airport-related projects”



Key federal policies and regulations



Rates and Charges Policy: 61 Fed. Reg. 31,994 (1996); *revised* 78 Fed. Reg. 55,330 (9/10/13)

- Limited by *Air Transp. Ass'n of Am. v. DOT*, 119 F3d 38 (1997)
- Legal standards generally revert to caselaw
- “Congestion pricing” added in 2013

Revenue Use Policy: 64 Fed. Reg. 7,696 (2/16/99)

- Fed. Reg. guidance especially helpful

PFC Regulations: 14 CFR Part 158

- Additional PFC Assurances
- Detailed guidance



Other important legal sources



- Grant Assurances
 - Mandated by 49 U.S.C. § 47107
 - Contractual vs. statutory obligations
 - Most have life of lesser of 20 years and useful life of project
 - See, especially, GA 22, 24, 25
- Airport Compliance Manual – FAA Order 5190.6B change 1
 - Guidance for FAA staff, but often cited
 - Includes guidance not found elsewhere
- AIP Handbook – FAA Order 5100.38D (9/30/14)
- PFC Handbook – FAA Order 5500.1 (8/9/2001)
- FAA Air Carrier Incentive Guidebook: A Reference for Airport Sponsors (Sept. 2010)



Revenue diversion



Theft by another name
is still theft.....



What is revenue diversion . . .



- Use of airport revenue for *anything other than* the capital and operating costs of
 - Airport
 - Local airport system
 - Other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property

...and why should we care



- Very serious issue to FAA
- Often involves complex financial calculations
- FAA focus is on compliance (corrective action and repayment) not punishment
- Common problems
 - Intra-government transfers
 - Special deals for government 'friends'
 - Less-than-fair-market transactions
 - Careless recordkeeping



Sources and uses of airport funds

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Major sources and uses of airport funding... by acronym!



- Airport Improvement Program (AIP) – Federal Grants
- Passenger Facility Charges (PFC)
- Airline Rates and Charges (R&C)
- Customer Facility Charges (CFC)
- Airport Bonds
 - General Airport Revenue Bonds (GARB)
 - General Obligation Bonds (GO)
- Bipartisan Infrastructure Law (BIL)



AIP...where is my federal money?



Authority is in 49 U.S.C. Subtitle VII, Part B: Airport Development & Noise



- National Plan of Integrated Airport Systems (NPIAS)
- Project grant agreements
- Apportionments (Entitlements)
- Discretionary
- State block grant
- Noise abatement and mitigation



Thanks for the AIP grants, what can I do with them?



Safety and
standards

Airfield/airport
security

Airport
planning

Airport
development

Environmental
mitigation

Public use
facilities



Thanks for the AIP grants, what can I NOT do with them?



Revenue
producing
facilities

Aesthetics

Air traffic
communications

Non-FAA
owned federal
buildings

Operational
costs

Maintenance
costs



Besides signing the grant, what else do I need to sign to get the AIP grants...



Grant Assurances!

- Key assurances that are often challenged:
 - #21 Compatible Land Use
 - #22 Economic Nondiscrimination
 - #23 Exclusive Rights
 - #24 Fee and Rental Structure
- Sponsor lawyer signs all grant applications



PFC...is it a tax? It's not a tax...



Its authority is in 49 U.S.C. Section 40117 and 14 CFR Part 158.

- The Anti-Head Tax Act – 49 U.S.C. 40116
- PFCs – an airline per passenger fee
- Federally regulated and must go through an application and approval process
- Airline comments: Eligibility, not approval.



I like these PFCs...how can I use them?



- \$1, \$2, \$3, \$4, or \$4.50 per eligible passenger - **\$4.50 is the most common!**
- Eligibility:
 - Airfield generally OK
 - Terminals primarily for movement of passengers and baggage in non-revenue producing areas
 - Excludes revenue-producing areas
- Despite federal approval, PFCs are considered local funds
- Can be used on a pay-as-you-go basis or leveraged (i.e., PFC-backed debt)



Airline R&C...how much should the airlines pay...



- Rate setting must comply DOT's Policy Regarding the Establishment of Airport Rates and Charges (1996), as amended.
- DOT encourages rate setting at the local level through negotiation between the airport sponsor and airlines
 - Residual
 - Compensatory
 - Hybrid
- Make the airport available on fair and reasonable terms
- Fees may not unjustly discriminate
- Airport needs to be a financially self-sustaining as possible



Rental car CFCs...I get those too!



- Customer Facility Charges are per transaction (day) fees charged to rental car users.
- Regulated at the state or local level, not federal
- Generally used to fund rent-a-car (RAC) facilities (e.g., CONRAC), or RAC 'related' projects
- Airport controls the \$ amount



Bonds, airport bonds



The two most common types of airport bond funding:

- GARBS

- Issued by the airport entity
- Generated from Airline R&C and airport non-airline revenue such as parking, RACs, terminal concessions, airport development leases
- Typical coverage requirement of 125% to protect the bondholders

- GO

- Issued by the municipal entity and impacts that entity's borrowing capacity
- No coverage requirement



An Act of Congress...



Congress has passed several laws over the last three years...

- COVID-19 related funding spent or earmarked for defined purposes.
- Bipartisan Infrastructure Law (BIL) still has available funding to be allocated.





Questions?

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