

**FAA COMPLIANCE REQUIREMENTS WITH THE RULING DIVERTING THE USE OF REVENUES FROM AVIATION FUEL***December 8, 2015 "Action Plan" Deadline*

The Federal Aviation Administration (FAA) pursuant to last year's ruling requires that every state and local government (whether or not an airport sponsor or operator, or FAA grant recipient) redirect certain general sales tax revenues derived from the sale of aviation fuel to airport capital and operating costs. Note that implementation and enforcement of the ruling is two years out and set for December 8, 2017. MuniServices has communicated this issue to its full client base since earlier this year and commenced trying to identify sales and use tax revenue to comply with the requirement for impacted jurisdictions. Any communication from MuniServices with respect to sales tax revenues will be sent to clients under a secure portal. Please contact your MuniServices Client Manager for more detail.

The FAA ruling includes a mandate that all state and local jurisdictions impacted by the ruling submit an "action plan" to the FAA prior to December 8, 2015. Note that the below draft action plan includes optional language beyond the mandated FAA requirements and are included for consideration.

The remainder of this report is organized as follows:

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THE STATE'S PLAN/ DEPARTMENT OF FINANCE CONTACT

We understand the California Department of Finance (DOF) on behalf of the State is expected to submit an "action plan" to the FAA. MuniServices, at the time of this communication, has not seen formal submission from the State to the FAA. Jay Chamberlain with the DOF is available to talk with your jurisdiction regarding the status of the State's letter and effort and can provide any assistance to help comply with the ruling. Mr. Chamberlain's contact is Jay.Chamberlain@dof.ca.gov or can be reached at 916.322.2263.

The State Board of Equalization (BOE) will need to be a major stakeholder in the implementation. There will be a need to identify only the amount of tax coming from the sale of jet fuel and aviation gas at the airports and not comingled with non-fuel related sales.

FAA CONTACT AND POINT OF REFERENCE

Last week, MuniServices spoke with a primary FAA staff contact (Mr. James Brown) who is responsible for implementing this ruling to confirm the plan requirements, to share our perspective and concerns with how this policy was developed and the burden on impacted local governments. Mr. Brown works in the FAA's Finance Management division and is available to speak with local governments and can be reached via email at James.T.Brown@faa.gov. or at 202.267.5879.

**WHAT'S NEXT - PREPARING AND SUBMITTING AN ACTION PLAN TO THE FAA BY DECEMBER 8, 2015**

At the time of this communication MuniServices' interest again is to inform local government clients with the mandated requirements of the FAA ruling requiring that local governments (and the State) sales tax revenues from aviation fuel are for the benefits for airports, including capital and operations, state aviation programs and airport noise mitigation.

We have prepared a sample draft "action plan" letter that includes optional language beyond the mandated FAA requirements and are included for consideration. We encourage local jurisdictions to submit an "action plan" to the FAA prior to the December 8th deadline.

WHICH JURISDICTIONS ARE IMPACTED AND WHAT IS THE CRITERIA

The FAA ruling will affect jurisdictions that a) have an airport and b) have a sales tax that was in effect after December 31, 1987 where revenue is derived from aviation fuel. This also means local voter-approved and several transportation authorities' district tax effective following December 31, 1987 will apply.

The rule does NOT apply to sales taxes in effect on December 31, 1987 including the local Bradley Burns 1.25% rate or the 4.75% state general fund rate in effect at the time. Several other state rates may be affected, as well as most local transactions and use tax rates. Since Proposition 172 is effective post 1987, those revenues would be subject to the FAA rule. However, Proposition 172 is a permanent state-wide half cent (0.5% tax rate) sales tax that is collected by the BOE and allocated back to all the counties based upon each of their proportion of sales tax. Within each county, those funds are distributed based upon proportion of ERAF loss.

ENFORCEMENT AND IMPLEMENTATION COMMENCES DECEMBER 8, 2017

The ruling included a three year period from the time it was adopted until December 8, 2017, during which FAA will withhold enforcement actions. For implementation purposes, there is going to be an issue with some of the taxpayers that comingle sales tax reporting of their retail gas stations NOT at an airport and their jet fuel sales at the airport. Also, there may be some businesses that sale and/or lease other tangible personal property other than jet fuel that will like require the BOE to require separate reporting by those businesses. This issue will likely be vetted at the BOE level; MuniServices expects to work with staff and stakeholders to ensure local governments receive the proper revenues.

ACTION PLAN CRITERIA COMPONENTS OUTLINED IN THE FAA RULING

- Commitment to undertake and initiate the legislative process by amending non-compliant State laws and local ordinances to conform to the federal law on use of aviation fuel tax revenues
- Detail the process necessary to develop reporting requirements and tracking systems for discrete information on aviation fuel tax revenues (Note: "tracking systems" is not clearly defined in the Federal Register)
- Plans may include a reasonable transition period, not to exceed three years, during which the FAA would agree, in any exercise of its discretion, to implement the necessary processes to become compliant with the rule



SAMPLE 'ACTON PLAN' THAT INCLUDES THE FAA CRITERIA

Please note the FAA required "Action Plan" is due December 8. This letter includes optional language beyond the "Action Plan Requirements" for consideration.

Mr. James T. Brown (Email: James.T.Brown@faa.gov)
Finance Management
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591

Subject: Compliance with an FAA Requirement for a Submitted "Action Plan" Due by December 8, 2015: FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel 79, Fed. Reg 66282, November 7, 2014). Revenue Implications, Concerns with Implementation Requirements and Other Issues. Suggested Action Consideration

Dear Mr. Brown:

The **JURISDICTION NAME** was notified on the above-referenced rule after its final adoption and via a private party. The **JURISDICTION NAME** nor its advocates or industry representatives were aware of the rulemaking process surrounding this policy change.

The **JURISDICTION NAME** is concerned and impacted by this ruling because **LIST REVENUE SOURCE AND AIRPORT**. State and local governments provide many services to the airports that are funded from general sales taxes, including infrastructure, transportation, fire and public safety. Other services include lighting, security, roadways, buildings and terminals, and noise controls, etc., and these far exceed aviation fuel revenues. The funding makes sure that airports remain viable and meet the needs of local businesses and communities. In some cases, state and local governments or airport authorities use tax-exempt bonds to fund major capital improvements. The redirecting of these revenues creates an unfair burden for jurisdictions that must pay for the services for the entities benefiting from the ruling shift.

Also note that California's Proposition 172 (Public Safety Augmentation Fund) is a permanent state-wide half cent (0.5% tax rate) sales tax that is collected by the State Board of Equalization and allocated back to all the counties based upon their proportionate share of sales tax. Within each county, those funds are distributed based upon proportion of ERAF (educational revenue augmentation funds) loss. (Please refer to <http://www.californiacityfinance.com/ERAFfacts.pdf> for additional information.) There is not an easy nexus between the 1% and Proposition 172. These funds have already been earmarked for local public safety purposes.

Executive Order 13132 (Federalism) establishes the principles and criteria that apply to regulations, legislative comments, and other policy statements that have a substantial effect on States. We are concerned with the FAA's position / belief that "Federalism implications (if any) are substantially mitigated because of the prior legislative intent." The final policy amendment does impose substantial direct requirement costs on State and local governments, and should have been subjected to Federalism implications. Local jurisdictions rely on State and National organizations for policy direction on those issues impacting our interests. These include for example the National League of Cities, California State Association of Counties, US Conference of Mayors, and Governance Finance Officers Association. **(LIST OTHERS IF APPLICABLE OR YOUR FEDERAL LOBBYIST, ETC.,)** The FAA adoption of the ruling has caught our own local community off guard. The cost, loss of revenues, and current and future workload involved as a result of this unforeseen ruling is substantial.



This following serves as the intent to comply with the ruling based on our understanding of what is required of any "action plan" submitted:

Action Plan Requirement: Applicable Law

- **Local:** INSERT the revenue source (for example Proposition 172 or the transactions and use tax was adopted by the voters)
- **State:** California's Department of Finance (DOF) will provide guidance on any laws, regulations and procedures that may need amending. JURISDICTION NAME at the time of this communication has not seen a State prepared action plan.

Action Plan Requirement: Tracking System

- The JURISDICTION NAME in conjunction with its sales tax consultant has commenced trying to identify sales and use tax revenue to comply with the requirement. For implementation purposes, there is going to be an issue with some of the taxpayers that comingle sales tax reporting of their retail gas station locations not at an airport and/or non-fuel related sales and their jet fuel sales. The internal process to undertake this effort – which is to identify, track and segregate the revenue, is extensive; a process is being develop for the reporting requirements and tracking systems for discrete information on aviation fuel tax revenues. We would appreciate the FAA provided a descriptive definition of the requirements for the mandated "tracking system."

Action Plan Requirement: Transition Period

- It is the JURISDICTION NAME's intent to comply with the requirements set forth and will notify the FAA if a reasonable transition period, not to exceed three years, is needed to become compliant with the rule.

In consideration of the broader concerns outlined above we also request that the FAA consider a re-evaluation or immediate sunset of the ruling and commence an open and full public process discussion with all stakeholders to ensure full participation by impacted parties. We appreciate the FAA's consideration of this request and look forward to working with your team and others impacted by this ruling.

Sincerely,

cc: INSERT NAME OF LOCAL GOVERNING BODY, FINANCE OFFICIALS, MAYOR AND/OR OTHERS

Senator Diane Feinstein (Ellen_Freedman@feinstein.senate.gov)

Senator Barbara Boxer (Laura_Schiller@boxer.senate.gov)

House Representative INSERT

Senator INSERT

Assembly Member INSERT

Jay Chamberlain, Department of Finance (Jay.Chamberlain@dof.ca.gov)

RESOURCES

- FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel 79, Fed. Reg. 66282, November 7, 2014). This ruling was effective December 8, 2014. <https://www.federalregister.gov/articles/2014/11/07/2014-26408/policy-and-procedures-concerning-the-use-of-airport-revenue-proceeds-from-taxes-on-aviation-fuel#h-8>
- State Board of Equalization – District Sales and Use Tax Rates <http://www.boe.ca.gov/pdf/boe105.pdf>
- California City Finance – FAA Rule Requires Use of State and Local Tax Revenues for Airport Purposes <http://californiacityfinance.com/FAA150701.pdf>
- Department of Finance, FAA Policy Change on the Use of Sales Tax Revenues (August 11, 2015) (see attached)