



REQUEST FOR IMMEDIATE ACTION

Support Proposed Amendment to Overturn FAA Policy and Procedures Concerning the Use of Airport Revenue (Federal Regulation 66282, November 7, 2014)

ISSUE

- Congressman Lowenthal (Long Beach) is proposing an amendment to overturn the FAA rulemaking of 2014 and re-establish 29 years of FAA interpretation by clarifying Congress' original intent that general sales taxes are not subject to 49 U.S.C. Sections 47107(b)(1) and 47133(a), and that "local tax on aviation fuel" means local excise taxes on aviation fuel.
- It is our understanding the amendment will be proposed this week in the House Committee on Transportation and Infrastructure when a markup of the 21st Century Aviation Innovation, Reform, and Reauthorization Act - the 21st Century AIRR Act - H.R. 2997 is considered. The U.S. Senate will also mark up its version this week.
- Note that implementation and enforcement of the ruling is set for December 8, 2017. As previously reported the FAA ruling affects 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.
- MuniServices, an early stakeholder in this issue, yesterday submitted a letter of support for the proposed amendment, and joins a coalition of support that includes the National Governor's Association, the National Conference of State Legislatures, the State of California, the California League of Cities, the California State of Association of Counties, and California Self-Help Counties.

BACKGROUND

- In 1987 Congress passed the FAA authorization amendments that required airports to spend aviation fuel excise tax revenue on airport uses. The conference report for the 1987 amendments to the FAA statute (H.R. Conf. Rept. No. 484, 100th Cong., 1st Sess. 1987 accompanying P.L. 100-223) clearly stated that the requirement that local taxes on aviation fuel must be spent on airports "is intended to apply to local fuel taxes only, and not to other taxes imposed by local governments, or to state taxes".
- On December 8, 2014 (79 FR 66282), FAA made a final rulemaking that contradicts the Congressional intent and 29 years of practice by saying that "the agency interpreted the provisions of Sections 47107(b) and 47133 to apply to any state or local tax on aviation fuel, whether the tax was specifically targeted at aviation fuel or was a general sales tax on products that included aviation fuel without exemption."

**SUGGESTED ACTION, SAMPLE EMAIL, AND DISTRIBUTION***Suggested Immediate Action*

MuniServices recommends that impacted jurisdictions send an email as soon as possible to the Chair and Ranking Member of the House Transportation and Infrastructure Committee, and *all* California Representatives on the Committee.

Sample Email

Dear Chairman Shuster and Ranking Member DeFazio:

On behalf of the JURISDICTION NAME, I write to request your support for an amendment by Representative Alan Lowenthal that would clarify that local voter-approved sales tax measures of general application are not subject to provisions for the above-referenced ruling that requires states and localities to spend aviation fuel excise tax revenue on airport uses. The JURISDICTION NAME voters approved a sales and use tax measure in INSERT YEAR. California voters in 1996 approved Proposition 218, Right to Vote on Taxes Act, to protect taxpayers by limiting the methods by which local governments can create or increase taxes. The FAA ruling directly impacts California's Constitution. A change to the FAA rule, to exempt local voter-approved revenues, will preserve the trust of voters. State and local governments provide many services to the airports that are funded from general sales taxes, including infrastructure, transportation, fire and public safety. It is estimated that the FAA's policy amendment will mean a loss of over \$100 million for the State of California and its local governments. Specifically, for the JURISDICTION NAME, approximately INSERT AMOUNT OF REVENUE AT RISK AND WHAT THE REVENUE PAYS FOR. The redirecting of the revenues creates a burden for jurisdictions, including INSERT that must pay for the services for the entities benefiting from the ruling shift. For these reasons, it is imperative that Congress pass language that would restore congressional intent and reestablish 29 years of federal interpretation that local sales tax measures of general application are not subject to the provisions of the Conference Report to the 1987 Airport and Airway Improvement Act (PL 100-223) that require states and localities to spend aviation fuel excise tax revenue on airport uses. Should you have any questions or if you need any additional information please do not hesitate to contact me.

Distribution

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MUNISERVICES' PREVIOUS COMMUNICATION & CONTACTS

- http://www.muniservices.com/wp-content/uploads/112315_MuniServices_Policy_Update_-_FAA_Ruling_on_Use_of_Jet_Fuel_Revenues__Sample_Draft_Action_Plan_Final.pdf
- http://www.muniservices.com/wp-content/uploads/MuniServices_-_FAA_Rule_79_FR_69789_-_Request_for_Assistance.pdf
- Please contact your respective MuniServices Client Manager for additional information, or a member of the Government Relations team, Fran Mancía (Fran.Mancia@MuniServices.com) or Brenda Narayan (Brenda.Narayan@MuniServices.com).