January 27, 2016

RE: Opinion No. 20160106
Local Aviation Fuel Tax Applicability

Dear [Name],

I am writing in response to your request for a Revenue Legal Opinion on the following:

On [Date], [County] held a county-wide special election on two (2) ballot measures. One was for a [Percentage] county-wide sales tax to fund a capital improvement bond to construct a new county jail, and the other was for a [Percentage] county-wide sales tax to fund the operation and maintenance of the jail. Both measures, hereinafter referred to collectively as “jail taxes,” were approved by the voters of [County]. I have enclosed a copy of the ballot measures for ease of reference, to the extent that any such reference is required.

Each of these local sales taxes are collected by retailers within [County] (“County”), which include those within the corporate limits of the City. Consequently, the Airport collects them on sale of aviation fuel and remits the collections to the State of Arkansas Department of Finance and Administration (“Department”). Until sometime in 2015, the Department distributed the proceeds of the local sales taxes to the City without regard to whether they were collected on the sale of aviation fuel at its airport. In turn, the City then forwarded said proceeds to the County.

At some point in 2015, the Department began [disbursing] that portion of the jail taxes collected on the sale of aviation fuel at the Airport to the City’s Airport account, where they remain segregated from the City’s general fund. The assumption is that such a distribution from the Department was to be in compliance with 49 U.S.C. § 47133(a) and the Federal Aviation Administration policies, to-wit:
Prohibition – Local Taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operation costs of –
(A) the airport;
(B) the local airport system; or
(C) 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.

49 U.S.C. § 47133(a)

On or about January 13, 2016, the County, by and through its attorney, demanded that the City remit that portion of the jail taxes collected on the sale of aviation fuel at the Airport to the County – stating that such taxes were dedicated for the construction and/or maintenance and operation of the County Detention Center, and that neither the City nor the State of Arkansas can confiscate said funds. I have attached a copy of letter and enclosures for your reference. The current amount in controversy is approximately $36,000.

With this background information, and on behalf of the City of, we pose two (2) questions for your consideration:

1. Is the current distribution by the Department of either or both of the local county-wide jail taxes collected on the sale of aviation fuel to the City’s Airport account in compliance and accord with 49 U.S.C. § 41733(a) and the Federal Aviation Administration policies?

2. Can the City or its Airport voluntarily redirect either or both of the local county-wide jail taxes collected on the sale of aviation fuel to the County, so that same may be used for the purposes(s) for which the voters approved?

RESPONSE

As explained more fully below, the current distribution of taxes that you have described is in compliance with the requirements of 49 U.S.C. § 47107(b), 49 U.S.C. § 1733(a), and Federal Aviation Administration policies. With respect to your second question, any action by the City and County that would reduce the amount of funds provided to the Airport based on the application of the taxes to the sale of aviation fuel, would be in violation of the previously listed Federal requirements and potentially subject the Airport to corrective or punitive measures by the F.A.A.

1. Whether the current distribution of local tax revenue is in compliance with federal requirements.
As a condition of receiving federal grants for the support of airports under the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47107, and the Federal Aviation Authorization Act of 1994, 49 U.S.C. § 47133, the Federal Government conditioned the receipt of these block grant funds for support of airports on the earmarking of any and all sales tax levied on the sale of aviation fuel at the airports to be used by the airports for the capital and operating costs of the airports, airport system, or facilities owned or operated by the airport that relate to air transportation. Specifically, the United States Code states:

49 U.S.C. § 47107

Written Assurances on use of revenue – (1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenue generated by a public airport will be expended for the capital or operating cost of –

(A) the airport;
(B) the local airport system; or
(C) 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.


49 U.S.C. § 47133

Prohibition – Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of –

(A) the airport;
(B) the local airport system; or
(C) 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.


As explained in FAA Policy & Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel (79 Fed. Reg. 66282)(Amendment), all local sales tax revenue generated by taxes that took effect January 1, 1988 or later on the sale of aviation fuel must be dedicated to the use of the airport, or as described in the code quoted above. This provision of law has been in effect since 1987 when Congress amended the 1982 Airport and Airway Improvement Act.
Upon review of the Department’s procedures in 2015 to ensure continued compliance with Federal and State laws, the Department audited all local sales taxes. Local sales taxes that were not in effect as of December 30, 1987, were flagged to ensure that the amount reported to the Department as tax on aviation fuel was distributed to the applicable airport in accordance with Federal requirements.

2. Whether the City may redirect the aviation fuel tax proceeds from the Airport.

Any reduction in the amount of local tax revenue to the Airport will be seen as a violation of the Federal Aviation Administration requirements subjecting the Airport to remedial action by the Federal Aviation Administration.


This limitation applies solely to those revenues that are designated for the Airport as described in response to your first question. Whether the City wishes to offset tax revenue subject to the Federal requirements with tax revenue from other sources for the County is a question best addressed by those entities.

If you have further concerns or questions regarding this, you may reach me at my direct line, 501-683-1536, or through email at joel.dipippa@dfa.arkansas.gov.

Sincerely,

Joel DiPippa, Attorney Supervisor
Revenue Legal Counsel