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Memo

To: Senate Transportation Committee

From: Michele Boomhower, Division Director
Lenny LeBlanc, VTrans Chief Financial Officer

Date: April 3, 2018

Re: Federal Aviation Administration Fuel Tax Compliance Follow-up

On Friday, March 30, 2018, VTrans staff (Michele Boomhower and Lenny LeBlanc) participated in a conference call with representatives from the FAA including the following:

Elizabeth Newman, Headquarters General Counsel for Compliance
James Brown, Headquarters Fiscal Analyst for Compliance
Lorraine Herson-Jones, Headquarters Compliance Manager
Olu Okegbenro, Headquarters Compliance Review Officer
Jorge Panteli, New England Regional Compliance Officer

VTrans staff provided an overview of efforts to date to bring the State into compliance with Department of Transportation, Federal Aviation Administration, Policy and Procedures Concerning the Use of Airport Revenues and Proceeds from Taxes on Aviation Fuel. FAA staff indicated that Vermont efforts appear to be moving the State into alignment with the federal regulations. FAA staff requested that the State file a letter or request for an extension to January 1, 2019 come into compliance which would be in alignment with the anticipated implementation of all elements of the proposed legislation.

The following questions were discussed with the FAA:

1. Is there an allowable use off airport property for noise mitigation if South Burlington continued to collect the Local Option Sales Tax?

Non-sponsor entities (ie. municipalities or other governmental organizations) may apply to the FAA for Airport Improvement Program (AIP) grants. Local Option Sales Tax revenues could be used as a match for those grants.

2. Could the City of South Burlington enter into an agreement with the Burlington International Airport (BTV) to return the Local Option Sales Tax resources to BTV to be used for an allowed use?

Yes.

3. How flexible is the definition of “allowed use”?

The matter of use of these funds was discussed at length. The specific example we lead with was the use of these funds to improve/maintain the ground transportation system access to the airport which is a direct cost to the City of South Burlington. FAA staff indicated that unless there was a dedicated access road, or principally dedicated access road for which a pro-rata share could be reasonably calculated, this use is not allowed. They further clarified that in the case of South Burlington where the access to the airport is part of the general transportation network use would not be allowed.

The FAA staff then went on to discuss examples of municipal services which may be paid for by the City of South Burlington but used at the airport, such as fire, rescue, law enforcement. The FAA staff indicated that unless these staff are dedicated to the airport, paying for these services would not be an allowed use of the funds.

4. What is the definition of “Local Airport System” does that extend to funding of access roads to the airport?

The “Local Airport System” was defined as activities occurring directly on the airport in service of the direct airport functions. As outlined above, it does not extend to the transportation system access or other services which are not dedicated to the airport.

5. Discussion of other taxes collected on airport for concessions such as food, rental cars, accessory shops.

Local and State sales taxes on other items such as concessions, restaurants, hotels, car rentals, etc. are allowed and do not fall within the restricted category so long as they are applied across the municipality or state. In other words, you may not use revenues generated from the tax on rental cars for general purposes if the only location in the municipality where rental cars are taxed is at the airport. (49 U.S. Code § 40116)

6. Are we already in compliance because we invest more in State funds than we receive in fuel tax revenues?

Fuel Tax off-sets are allowable and need to be documented in order to identify the amount of non-fuel tax state funds are invested against the amount of fuel tax revenue collected. In either case, a detailed reconciliation of aviation fuel taxes collected, and airport system investments is required to be developed on an annual basis and available for FAA examination.

7. Is the collection of a fee to fund the Petroleum Clean Up Fund allowable?

Yes, so long as the state can document that the resource will be available for an aviation related clean up event.