AIRPORT FINANCE 101

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Airport Finance 101
An Introduction to Airport Finance
Airport finance is **NOT** intuitive – but, once you know the principles, you can work with them *and* make them work for you.
What We Will Cover Today

✓ Basic concepts & principles
✓ Basic terms – these are your friends (apologies to Crash Davis)
✓ The applicable law – and where to find it
✓ Permissible – and impermissible – uses of airport revenue
✓ Sources of airport revenue
✓ State law requirements – another layer of complexity
✓ Airport bonds – GARBs, special facilities and double barrels, oh my!
✓ COVID-19 and the CARES Act
✓ Practical application of these principles
A Few Basic 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, but PFCs are OK
A Few Definitions

- 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)
- Don’t worry – we’ll get to the sources of law soon!
Airport Revenue

- *See Revenue Use Policy, § II.B*
- Revenue generated at the Airport, not pursuant to generally applicable taxes or fees
  - 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
Non-Airport Revenue

- Revenues generated through taxes or fees of general applicability, such as:
  - Sales taxes
  - Hotel taxes
  - Generally applicable rental car fees (but what if only local RAC facilities are on-airport?)
  - Parking taxes
  - Airport tenant revenues
  - Parking citations
“All activities that involve or are directly related to the operation of aircraft, including activities that make the operation of aircraft possible and safe” (ACM § 18.3(a))

Services directly and substantially related to the movement of passengers, baggage, mail and cargo by air
Non-Aeronautical: All Other Airport Uses

- Not required to be located at an airport:
  - Flight kitchens
  - Airline reservation centers

- Public parking
- Rental cars
- In-terminal concessions
- Hotels
The Haves and the Have-Nots

Large and Medium Hub Airports

- Higher cash flow
  - Operational revenues
  - Passenger-generated revenues
- Significant PFC revenue
- More self-sufficient

Small and GA Airports

- Cash flow challenged
-Rentals – hangars, FBOs; fuel flowage fees
- Often require public subsidy
- Funding for major capital improvements difficult without grants
- Often important to local economy
Airport Capital Funding Sources

- Airport Improvement Program grants – the “hook”
- Passenger Facility Charges
- Customer Facility Charges
- Airport bonds
- Airport equity
- State and other grants
Airline Rate Methodologies

- **RESIDUAL**
  Designating a particular airport user group (typically airlines) to be responsible for making up any shortfall in revenue so that airport revenues equal (but don’t exceed) airport expenses.

- **COMPENSATORY**
  Charging aeronautical users their allocated share of the airport sponsor’s actual cost to build, operate, and maintain the airport facilities they use.

- **HYBRID**
  Combination of the two

- Consider risk allocation between airport sponsor & airlines
HYBRID
(Most Common)
NEW ISSUE BOOK-ENTRY ONLY

In the opinion of Kutak Rock LLP, Bond Counsel to the City, under existing laws, regulations, rulings and judicial decisions and assuming the accuracy of certain representations and containing compliance with certain covenants, interest on the Series 2018 Bonds is excludable from gross income for federal income tax purposes, except for interest on any Series 2018A Bond for any period during which such Series 2018A Bond is held by a "substantial user" of the facility financed or refinanced by the Series 2018A Bonds, as a "related person" within the meaning of section 1441(o)(2) of the Internal Revenue Code of 1986, as amended (the "Code"). Bond Counsel is further of the opinion that (a) interest on the Series 2018A Bonds constitutes income for purposes of the federal alternative minimum tax imposed on individuals, and for taxable years beginning before January 1, 2018, on corporations, by the Code, and (b) interest on the Series 2018B Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Bond Counsel notes that no federal alternative minimum tax applies to corporations for taxable years beginning on and after January 1, 2018. Bond Counsel is further of the opinion that, under the existing laws of the State of Utah, as presently enacted and construed, interest on the Series 2018B Bonds in exempt from state of Utah individual income tax. See "FEDERAL MATTERS" herein.

$850,550,000

SALT LAKE CITY, UTAH

$783,855,000 Airport Revenue Bonds, Series 2018A (AMT)

$96,695,000 Airport Revenue Bonds, Series 2018B (Non-AMT)

SALT LAKE CITY INTERNATIONAL AIRPORT

Dated: Date of Delivery: July 1, 2018 as shown on the inside cover page hereto

Salt Lake City, Utah (the "City") issuing its Airport Revenue Bonds, Series 2018A (AMT) ("the Series 2018A Bonds") and its Airport Revenue Bonds, Series 2018B (Non-AMT) ("the Series 2018B Bonds") to finance portions of the "Terminal Redevelopment Program" and the "North Concourse Program", as described herein, and related costs of the City's Department of Airports (the "Department") at Salt Lake City International Airport (the "Airpport"). The Series 2018B Bonds will be issued pursuant to a Master Trust Indenture (the "Master Indenture") and a Supplemental Indenture (the "Second Supplemental Indenture"); and with the Master Indenture, the "Indenture"); each by and between the City and Wilmington Trust, National Association, as trustee (the "Trustee"). The Series 2018B Bonds are limited obligations of the City payable solely from and secured by a pledge of the Airport Revenues, (b) certain funds and accounts held by the Trustee under the Indenture, and (c) other amounts payable under the Indenture, as all defined herein. The Series 2018B Bonds will be secured by a pledge of Net Revenues on parity with the City's Airport Revenue Bonds Series 2017A and Series 2017B, which as of October 1, 2018 were outstanding in the aggregate principal amount of $1.0 billion. None of the properties of the Airport System, as defined herein, are subject to any mortgage or other lien for the benefit of the owners of the Series 2018 Bonds, and neither the full faith and credit nor the taxing power of the City, the State of Utah (the "State") or any political subdivision or agency of the State is pledged to the payment of the principal of or interest on the Series 2018B Bonds.

The Series 2018B Bonds will be issued as fully registered bonds and, when issued, will be registered in the name of Cede & Co., as registered owner and custodian for The Depository Trust Company, New York, New York ("DTC"). Purchasers will acquire beneficial ownership interest in the Series 2018B Bonds in denominations of $5,000 or integral multiples thereof and will not receive physical delivery of bond certificates. As long as Cede & Co. is the registered owner of the Series 2018B Bonds, principal and interest on the Series 2018B Bonds will be payable by the Trustee to Cede & Co., as nominee for DTC. See "APPENDIX E — Book Entry Only System" herein.

The Series 2018B Bonds will bear interest from the date of original delivery, payable each January 1 and July 1, commencing on July 1, 2018.

The Series 2018B Bonds are subject to optional and mandatory redemption prior to maturity as described herein. See the inside cover page hereto for maturation, principal amounts, interest rates, yields and prices of the Series 2018B Bonds.

This cover page contains information for quick reference only. It is not a summary of this issue. Investors must read this entire Official Statement to obtain information essential to the making of an informed investment decision.

The Series 2018B Bonds are offered when, as and if issued by the City and received by the Underwriters, subject to the receipt of an unqualified approval opinion as to validity of Kutak Rock LLP, Denver, Colorado, Bond Counsel to the City, and certain other conditions. Certain legal opinions will be issued upon the City by the City Attorney, Margaret D. Paine, and Bredenburg Counsel to the City, Kaufman Kirsh & Rockwell LLP, Boston, Massachusetts, and for the Underwriters by their counsel, Gibson, Dunn & Crutcher, Salt Lake City, Utah. FDS Financial Advisors LLC, San Francisco, California, serves as Financial Advisor to the City. Delivery of the Series 2018B Bonds to DTC or its custodial agent is expected in New York, New York on or about October 31, 2018.

Goldman Sachs & Co. LLC

BofA Merrill Lynch
Citigroup
Morgan Stanley
RBC Capital Markets
Zions Bank

October 17, 2018
The Law

- Constitutional preemption of state and local laws in certain areas
- U.S. Constitution – commerce clause
- Statutory regime
- Airport Improvement Program (AIP) – with dollars come strings!
  - Grant Assurances
- Regulations & Policies
- Guidance

- Caselaw
- Administrative decisions – Part 16 & Part 13
- FAA website: www.faa.gov/airports/compliance
- Kaplan Kirsch & Rockwell LLP: Airport Law Desk Reference
Federal Statutes Relating to Airport Finance

- 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”
Policies & Regulations

- Legal standards generally revert to caselaw
- “Congestion pricing” added in 2013

- Fed. Reg. guidance especially helpful

PFC Regulations: 14 CFR Part 158
- Additional PFC Assurances
- Detailed guidance
Other Key Sources of Airport Law

- **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 (9/30/2009)**
  - Guidance for FAA staff, but often cited
  - Includes guidance not found elsewhere

- **AIP Handbook – FAA Order 5100.38D (9/30/14)**


- **FAA Air Carrier Incentive Guidebook: A Reference for Airport Sponsors (Sept. 2010)**
Decisional Guidance

Caselaw

- *ATA v. DOT*, 119 F.3d 38 (D.C. Cir. 1997)
- *Air Canada v. DOT*, 148 F.3d 1142 (D.C. Cir. 1998)
- *City of Los Angeles v. DOT*, 103 F.3d 1027 (D.C. Cir. 1997), on remand, 165 F.3d 972 (1999) *see also* related DOT admin. decisions
- *Twp. Of Tinicum v. DOT*, 582 F.3d 482 (3d Cir. 2009)

Administrative Decisions
Uses of Airport Revenue Are Limited

- 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
# Federal Influence and Use of Funds

<table>
<thead>
<tr>
<th>Source</th>
<th>Vehicle</th>
<th>Federal Involvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIP</td>
<td>Federal funds via FAA Authorization and Appropriations</td>
<td>Eligible projects provided capital funding through user fees</td>
</tr>
<tr>
<td>PFC</td>
<td>Local funds via FAA Authorization</td>
<td>Sets rate structure and defines eligibility criteria</td>
</tr>
<tr>
<td>TSA</td>
<td>Federal funds via DHS Authorization and Appropriations</td>
<td>Eligible projects provided capital funding through user fees</td>
</tr>
<tr>
<td>Airport revenue bonds</td>
<td>Local funds via tax legislation and bond counsel</td>
<td>Defines use of tax-exempt and private activity bonds instruments</td>
</tr>
<tr>
<td>Other</td>
<td>FAA Authorization (use of airport revenue) and leases</td>
<td>Federal AIP grant assurances bound local use and revenue use requirements</td>
</tr>
</tbody>
</table>
Examples of Airport Revenue Use Requiring Careful Analysis

- Air Service Incentive Programs
- Transit and roadway connection
- Fire and public safety
- Reimbursement of government units for services
- Charitable contributions/community involvement
Sources of Airport Revenue – Aeronautical

- Guiding principles: reasonableness, fair approximation of use, no unjust discrimination
- Airlines:
  - Rates & charges
  - Compensatory vs. residual vs. hybrid
  - Negotiated agreement vs. imposed ordinance
- FBOs
- Other tenants
  - General aviation
  - Maintenance, Repair, Overhaul (MRO) facilities
  - Hangars
- Fuel flowage fees
Sources of Airport Revenue – Non-aeronautical

- Guiding principles: fair market value; compatible use
- Sources:
  - Parking
  - Concessions and rental cars (RACs)
  - Ground transportation
  - Airport tenants (e.g., flight kitchens)
  - Hotels
  - Unrelated development – commercial, industrial, convenience
  - Tolls (e.g., DFW)
Other Airport Revenue

- Airport - imposed fees
  - PFCs – 49 U.S.C. § 40117
    - 14 CFR Part 159
    - Uses regulated and limited
  - CFCs – State/local law
    - See, e.g., Hertz & Advantage bankruptcies re: trust treatment
    - Not a tax – see Arizona case…

- Airport Improvement Program (AIP) Grants

- Airport-generated funds that are not airport revenue
  - Generally applicable taxes and fees
  - Revenues earned by tenants
State Law Requirements

- All (but 1) U.S. commercial airports are governmentally owned
- State/local enabling legislation governs and constrains powers
- “Dillon’s Rule” still applies
- There are always local twists – check the law!
- “Grandfathered” authority under revenue use laws – both consolidated use of revenues and use of fuel tax revenues
Airport Bonds – for Non-Bond Lawyers

- Definitions
- Indenture requirements and rate methodologies
  - “Flow of funds” – waterfall
  - Elements of airline rates & charges
- Tax law issues (IRC §§ 103, 141-150)
  - Tax-exempt bonds
  - Taxable bonds
- Securities law issues (SEC Rules 10b-5 and 15c2-12)
- Types of bonds – follow the money
  - GARBs
  - PFC-backed bonds
  - Hybrid – “double-barrel bonds”
  - Special facilities revenue bonds
  - General obligation (“GO”) bonds
Bond Covenants – Another Requirement

DEBT SERVICE COVERAGE
- Fixed vs. rolling

RATE-SETTING
- Remedies for shortfall
- Ability to waive/reduce rates?

RESERVES
- Debt service reserve
- Operating reserve
- Other

Additional debt tests
# Key Bond Documents

<table>
<thead>
<tr>
<th>Document Type</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust Agreement / Bond Indenture</td>
<td>• Regulates &amp; prioritizes use of revenue</td>
</tr>
<tr>
<td></td>
<td>• Contains key covenants</td>
</tr>
<tr>
<td>Official Statement</td>
<td>• Contains all “material” information</td>
</tr>
<tr>
<td></td>
<td>• Regulated by federal securities laws – due diligence required (SEC Rule 10(b)(5))</td>
</tr>
<tr>
<td>Continuing Disclosure Agreement – SEC requirement (Rule 15c2-12)</td>
<td>• Annual filings</td>
</tr>
<tr>
<td></td>
<td>• Event notices</td>
</tr>
<tr>
<td>Tax Agreement</td>
<td>Your tax lawyer should explain requirements – translate from legalese</td>
</tr>
<tr>
<td></td>
<td>• Includes requirements to be met for the life of the bonds</td>
</tr>
<tr>
<td>Bond Purchase Contract</td>
<td>• Know the “outs”</td>
</tr>
</tbody>
</table>
COVID-19 and CARES Act

- FAA Guidance (culminating in May 29, 2020 documents)
  - Derived from existing requirements – but responsive to pandemic
  - Application in the real world
- CARES Act Grants
  - Usable for “any lawful airport purpose”
  - Four year term
  - Planning for use is critical
- Future of FAA COVID Guidance
  - Additional pronouncements?
  - Status once pandemic eases/ends?
Practical Application of These Principles

“The Mayor/Governor just called, and …”

“How will we address this problem?”

“What if we did it this way?”

“But other airports are doing …”

“We need to fund …”