



**District Aviation**

**Florida Department of Transportation**

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# Airport Revenue Diversion

Frequently  
Asked  
Questions





## Why should this issue concern airports and elected officials?

By accepting federal/state financial grants or property transfers, the airport agrees to abide by certain binding contractual obligations (i.e., signing a contract with federal/state government where the government provides the funding and the recipient agrees to follow certain rules). One of those rules specifies that all airport-generated revenues should be spent at the airport.

Violating any of the grant assurances (including the revenue retention provision) is like violating the terms of a contract. It can result in losing the privilege to receive grants in the future and can also lead to lawsuits and civil penalties. Congress allows the Secretary of Transportation to withhold transit and rail funds from any local government that violates the airport revenue retention restriction.

In other words, it can be too expensive for the grant recipient to violate the terms of the contract with the federal/state government. If that happens, the airport sponsor can be required to repay the grant, suffer hefty financial penalties, and lose eligibility for receiving grants in the future. In addition, the local jurisdiction can also lose federal/state general (non-aviation) transportation dollars.

time. FAA ruled that only 34 percent of the total amount the City received constituted illegally diverted airport revenue. Under the present policy, the entire proceeds would have been considered airport revenue and would have to be returned to the airport.

## My airport revenue is sent “downtown” and I have little say over what is spent on the airport. What should I do?

It is the city/county airport owner’s responsibility to develop and maintain a clear accounting system of all revenue generated by the airport, all fees paid by the airport to the city/county government, and all services and payments provided by the city/county government to the airport. All direct and indirect fees assessed to the airport have to be calculated consistently for all city/county departments and have to be based on a reasonable and transparent cost allocation formula in order for the airport sponsor not to default on a contractual grant agreement with federal/state government. Airports can also maintain their own accounting system to keep track of payments to the city/county budget and receipts (either in-kind or monetary) benefiting the airport.



This prohibition did not stop the city of Los Angeles from diverting airport revenue from LAX. In 1985 the state of California had condemned some 1.5 million square feet (34 acres) of airport land to build the Century Freeway, which connected the airport with the I-405 freeway. Back then the state paid \$43 million for the land, which the City put in the airports account.

But by 1994, the city of Los Angeles, facing financial problems, requested to transfer the money to the city general account claiming that the proceeds were not subject to revenue diversion restrictions. In 1995, Los Angeles transferred \$58.5 million (condemnation proceeds plus interest) from the airport account to the city's general fund.\*\*

***The FAA Authorization Act of 1994 specifically prohibited against airport payments for city services unrelated to the operation of the airport, imposed new reporting requirements on airports, and authorized civil penalties of up to \$50,000 that can be assessed without going to court.***

Both the Aircraft Owners and Pilots Association (AOPA) and the Air Transport Association (ATA) filed a complaint against the city of Los Angeles. FAA concluded that the revenue was diverted illegally and ordered the City to return \$20.1 million plus interest to the airports account.\*\* That amount resulted from the interpretation of the rules that existed at that

## **Why is FDOT interested in this issue?**

The intent of federal/state aviation funding is to ensure that the national network of airports is well-functioning, efficient and financially viable. Since the federal and state governments are capable of providing only a fraction of airports' development needs, airports need to spend all the revenues they generate for the operations and development of the airport to ensure adequate infrastructure investment.

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The ultimate goal of any airport development grant is to make the airports as self-sustaining as possible and minimize the need for further federal/state assistance. The diversion of airport revenue for non-aviation use limits the effectiveness of grant assistance and jeopardizes the goal of achieving self-sustainability.

The main rationale for the revenue retention provision is the intent of government to ensure an effective, efficient and safe aviation system. The state and federal contributions to this goal can only be maximized when local aviation-related funds are solely used to achieve the same purpose.

\*\*Gwartney, T., Estimating Land Values, July 1999, online: [www.henrygeorge.org/ted.htm](http://www.henrygeorge.org/ted.htm), accessed: Mar. 28, 2007.

## What is considered airport revenue?

In general, any revenue received by the airport sponsor for airport activity is considered airport revenue.

This includes fees and proceeds received from the air carriers, tenants, and other parties for the right to conduct their activities at the airport and/or occupy airport property, as well as the revenues from the sale, transfer or disposition of real property. Airport revenue also includes all revenues received by the sponsor from the activities conducted by the sponsor as an airport owner and operator.

The airport retention provision, however, does not apply to all revenues generated by the facilities. The airport revenue retention provisions do not apply to revenues generated by the airport tenants or users themselves, but only to the revenues (land leases, rentals, access charges, landing fees, passenger facility charges, etc.) that the airport is paid by those tenants or users for their use of the land or airport facilities. Retention provisions apply to any and all such revenue received by the airport. For example, revenue retention would not apply to revenues generated by a convention center that, while located on the airport property, serves neither the airport nor any transportation purpose. Only the amount attributable to the use of airport property (rent that a commercial tenant would pay for land or facility rental) would be considered airport revenue.

## Have there been cases where airports have been sanctioned?

Yes. There are multiple cases where sponsors of both commercial and GA airports were ordered to reimburse the airports for illegally diverted funds and also lost the privilege of receiving AIP grants in the future.

The most infamous case of airport revenue diversion occurred at Los Angeles International Airport (LAX).

In 1993, the City of Los Angeles proposed to increase landing fees at LAX and to establish an airport surplus fund to help finance the City's police, fire and ambulance services. The new mayor called for using LAX revenues to fund an expansion of the City's police force. The City also held a referendum known as, "Proposition K," that eliminated the prohibition on revenue diversion contained in the City Charter. Later that year, LAX increased landing fees by 300 percent resulting in large protests and complaints from the air carriers. The City also demanded that the airport paid \$8.7 million in back "reimbursement" for the newly calculated indirect City service costs for the years 1983-1992.\*

These events led to the passage of provisions in the FAA Authorization Act of 1994. The new statute articulated again the long-standing federal prohibition against revenue diversion. It specifically prohibited airport payments for city services unrelated to the operation of the airport, imposed new reporting requirements on airports, and authorized civil penalties of up to \$50,000.

\*U.S. Internal Revenue Service

Federal transportation officials can also withhold general transportation funds from any local government that diverts revenue generated by a public airport. Under 49 USC §47107, the U.S. Secretary of Transportation “may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant if the sponsor fails to reimburse the airport for unlawfully diverted revenue.” This means that the U.S. Secretary of Transportation has the authority to withhold not only aviation, but also transit and rail funds from local governments that fail to reimburse airports for illegally diverted funds.

Among other actions, the Secretary of Transportation (USDOT) may also withhold the approval of any application to impose a passenger facility charge (PFC) at any airport in response to the violation of airport revenue retention restriction by the sponsor. In addition, the Airport Revenue Protection Act of 1996 gives the U.S. Secretary of Transportation the authority to obtain (in court) civil penalties from the airport sponsor in the amount of up to three times the illegally diverted airport funds.

Finally, diverting revenue from the airport can result in a decrease in an airport’s credit rating leading to a downgrade in airport bonds and an increase in the cost of borrowing.

In some cases the lease arrangement for land or facility may also include provisions that the airport sponsor receive a portion of the revenue produced by its use, such as a percent of event ticket sales, concessions, retail sales, fuel flowage, parking charges, and so on. In such cases, the airport sponsor’s share of these funds is also considered airport revenue, and subject to all retention requirements.

### **If my airport gets FDOT funds but not federal funds, must I be concerned?**

Yes. Both federal and state grants have the provision prohibiting the diversion of airport revenue for non-aviation use. FDOT grant assurances closely mirror federal assurances and are designed to maximize the effectiveness of the state aviation grant program.

When an airport sponsor accepts a grant, whether it originates from federal or state government, the sponsor enters a legally binding agreement.

In addition, if the airport sponsor received airport property (real estate) from the federal government, the sponsor is subject to revenue retention obligations, even if no AIP grants have ever been given to the airport. The revenue use requirements apply to every airport that receives “federal financial assistance”, which includes airport development and noise mitigation grants, transfers of federal property under the Surplus Property Act, and deeds of conveyance issued under specified federal statutes. Therefore, federal obligations regarding revenue diversion apply to all federal surplus property airports, even if no federal grants have been received by the airport sponsor.



## What can be considered fund diversion?

In general, revenues are considered to be diverted when an airport fails to use revenues generated from the activities that take place on the airport property for aviation purposes. More specifically, the following uses of airport revenue constitute revenue diversion:

- direct or indirect payments that are not based on a reasonable, transparent cost allocation formula calculated consistently for all units or cost centers of government
- use of airport revenue for general economic development, marketing and promotional activities unrelated to airports
- payments in lieu of taxes or other assessments that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government
- payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates
- loans of airport funds to a state or local agency at less than the prevailing rate of interest
- land rental to or use of land by the sponsor for non-aeronautical purposes at less than the amount that would be charged to a commercial tenant
- impact fees assessed by a non-sponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities

- charging interest on a subsidy provided to the airport
- loans to the airport from internal government funds at greater than the prevailing rate of interest charged to other units or cost center of the government, or under otherwise less favorable terms

## What penalties or sanctions could be imposed if it is determined that funds have been diverted?

If it is determined that revenues have been diverted, the grantor can immediately demand the repayment of the grant.

It is stated in FDOT Aviation program assurances that: “if the agency takes any action that is not consistent with these assurances, the full amount of the Agreement will immediately become due and payable to the Florida Department of Transportation.” In addition, violation of the revenue retention requirement can result in losing the privilege of receiving federal/state grants in the future. This alone can be an extremely significant deterrent for some smaller airports.

Diverting airport revenue for non-aviation uses constitutes a violation of the grant agreement and can also result in lawsuits and civil penalties. The federal/state government is entitled to the same legal options as any other party to a contract that has been breached.

