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May 16, 2011

REPORT TO HONORABLE MAYOR AND CITY COUNCIL

**LEGAL ISSUES RELATED TO THE PROPOSED CITY ENDORSEMENT OF THE
AIRPORT AUTHORITY'S TAXICAB TRIP FEE**

INTRODUCTION

The San Diego Metropolitan Transit System (MTS), on behalf of the City of San Diego, regulates the taxicab industry within the City. In this capacity, MTS determines how metered taxicab rates are calculated and enforces a prohibition on taxicab operators from charging passengers in excess of the metered fare. The San Diego Regional Airport Authority (Airport Authority) has imposed a \$0.50 per trip fee (Trip Fee) on taxicab trips originating from the San Diego International Airport (Airport). The Airport Authority has requested that MTS add the Trip Fee to all metered fares originating from the Airport. MTS has requested that the City provide policy guidance to MTS on the question of whether to implement the Airport Authority's request. This memo is intended to address the legal implications to the City should the City endorse the Airport Authority's request to add the Trip Fee into the MTS taxicab meter fares.

QUESTION PRESENTED

Is the Airport Authority Trip Fee a tax that requires voter approval under Proposition 26?

SHORT ANSWER

Maybe. Airport Authority proposes to add the Trip Fee to the taxicab meter fares. This would allow for the fee to be collected directly from taxicab passengers as opposed to the taxicab operators under current practice. This fee is a charge, levy, or exaction and therefore a tax unless it falls under one of the exceptions provided within Proposition 26. It is possible that a court may find the fee to be a charge for the use of local government property and thus not a tax. However, the nexus between the taxicab which is using the local government property and the passenger who is paying the fee is attenuated. Until the courts have an opportunity to interpret Proposition 26, the status of the Trip Fee will remain unclear.

BACKGROUND

MTS is authorized by California Public Utilities Code section 120266 to enter into contracts to regulate transportation services within a city in its area of jurisdiction. Since July of 1988, the City has delegated to MTS its authority to regulate the operation of taxicabs and other vehicles for hire. This authority includes the collection and administration of all fees, fines, and forfeitures related to taxicabs.

The Airport Authority was created by California Assembly Bill 93 enacted on October 14, 2001, with a mission to operate and manage the Airport. On January 7, 2010, the Airport Authority adopted by resolution a Comprehensive Ground Transportation Management Plan (Ground Transportation Plan)¹. This Plan identified various users of ground transportation facilities at the Airport and identified sources of revenue from these users to fund the general capital, operational, and maintenance costs of the Airport. Among these users of ground transportation facilities at the Airport are taxicabs. The Plan outlines a combination of yearly permit fees and per trip fees for taxicabs with the stated intent to generate revenue to recover costs to support ground transportation at the Airport. The Plan also examines the possibility of charging privilege fees to other types of businesses that benefit from the presence of the Airport.

Upon adoption of the Plan, the Airport Authority began imposing a \$0.50 Trip Fee on taxicab operators leaving the Airport. The Trip Fee was not approved by the California State Legislature nor was it approved by voter proposition. Taxicab operators are currently prohibited from passing this Trip Fee onto the taxicab passenger by MTS Ordinance 11 which makes it unlawful for a taxicab operator to charge a passenger more than the taxicab meter fare. MTS Ordinance 11, section 2.2(i), adopted on August 7, 2003.

On November 2, 2010, the voters of the State of California passed Proposition 26. Proposition 26 amended article XIII C of the California Constitution by redefining a tax as “any levy, charge, or exaction of any kind imposed by a local government” with a series of exceptions. The intent of this Proposition is to curtail the use of fees as a means for the State and local governments to raise additional revenues without being adopted by two-thirds of the state legislature for state taxes, or by voter approval for taxes enacted by local governments. Because it is new, the Courts have not yet had the opportunity to interpret Proposition 26. How Proposition 26 may apply to different fees and charges is uncertain, and is the subject of discussion among public agencies statewide.

ANALYSIS

The use of fees to generate revenues to support the operation of commercial airports has been common practice both within California and throughout the country. Within the Airport Authority enabling legislation, this practice was anticipated in that “[t]o the extent practicable, the authority shall endeavor to maximize the revenues generated from enterprises located on the property of the authority.” Cal. Pub. Util. Code § 170064(c).

Prior to Proposition 26, the Fourth District Court of Appeals upheld a fee imposed by the Orange County Board of Supervisors, based upon the gross receipts of rental car companies operating in the proximity of, but not within, John Wayne Airport. This fee was challenged on the grounds that it was a special tax and thus required voter approval under article XIII C of the California Constitution. The Court upheld this fee on the basis that an off premises rental car company derives a benefit flowing “from all phases of the Airport operation.” *Alamo Rent-a-Car, Inc. v. Board of Supervisors of Orange County*, 221 Cal. App. 3d 198, 208 (1990). Thus the fee being charged to a business taking advantage of its proximity “need not relate only to use of the airport roads and shuttle stops, but may apply to general airport maintenance and operational costs.” *Id.* at 207. The fee is charged not for the right to use the airport ground transportation

¹ Resolution 2010-0006: A Resolution of the Board of the San Diego Regional Airport Authority Approving the Implementation of the Comprehensive Ground Transportation Management Plan, Jan. 7, 2010.

facilities, but is levied for the economic benefit gained from operating near the airport. Proposition 26 has considerably changed the definition of what is considered a 'tax' within article XIII C of the California Constitution. It is not clear that the rationale of *Alamo* would apply today.

I. THE AIRPORT AUTHORITY IS SUBJECT TO THE RESTRICTIONS OF PROPOSITION 26.

The Airport Authority was created by California Assembly Bill 93, which added Public Utilities Code sections 170000-170084, also known as the San Diego Regional Airport Authority Act (Airport Authority Act). The Airport Authority Act provides in detail the purpose, scope, and governance of the Airport Authority and directs the Airport Authority to raise the revenues necessary to fund its operations. The Airport Authority Act further specifies that these sources of revenue may include "imposing fees, rents, or other charges for facilities, services, the repayment of bonded indebtedness, and other expenditures consistent with the purposes of the authority." Cal. Pub. Util. Code § 170064(b). The legislature did not grant the Airport Authority taxation powers to generate revenue to fund their operations.

The Airport Authority is considered a "special district" as it was formed pursuant to general law for the "local performance of governmental or proprietary functions within limited geographic boundaries." Cal. Const. art. XIII C, § 1(c). Furthermore, local governments are defined to include any "special district." Cal. Const. art. XIII C, § 1(b). Therefore, the Airport Authority is a local government subject to the provisions of article XIII C of the California Constitution related to taxation.

II. AIRPORT AUTHORITY TRIP FEE MIGHT BE CONSIDERED A TAX WITHIN THE MEANING OF PROPOSITION 26.

A. The Airport Authority Trip Fee meets the general definition of tax under Proposition 26.

Tax is defined as "any levy, charge, or exaction of any kind imposed by a local government" unless one of seven exceptions apply. Cal. Const. art. XIII C, § 1(e). This definition is deliberately broad and intended to foreclose any classification that does not specifically fall within one of the given exceptions as a tax. The proposed Airport Authority Trip Fee is certainly a levy, charge, or exaction, and is being imposed by a local government. Therefore, it is a tax subject to the voter approval provisions of article XIII C, section 2 of the California Constitution unless it falls under one of the listed exceptions.

B. The Airport Authority Trip Fee might fall within the exceptions to the definition of a tax listed within Proposition 26.

Proposition 26 includes several exceptions to its general definition of tax for which voter approval is not required. The exceptions that might apply to the Trip Fee are discussed below.

1. Specific Benefit

A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not

charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
Cal. Const. art. XIII C, § 1(e)(1).

Currently, the Trip Fee is paid by taxicab operators to the Airport Authority. However, if the City were to endorse the Airport Authority's proposal and MTS were to incorporate the Trip Fee into the taxicab meter fares, then the fee would be paid by the airport patrons who use a taxicab to leave the Airport. It could be argued that the passenger who elects to pay this fee is granted the benefit or privilege to use the ground transportation facilities to leave the Airport via taxicab. Other commercial users of ground transportation facilities at the Airport, such as limousines, charter buses, and hotel courtesy buses also pay various fees to operate at the Airport.² However, private vehicles, rental car courtesy buses, and public transit operators pay no fee to use the Airport's roadways.³

A specific benefit or privilege provided to those paying the fee must be denied to those not charged. In this case, the taxicab fee is imposed to offset costs incurred to the Airport Authority in providing ground transportation facilities at the Airport. The Ground Transportation Plan estimates that 59.7 percent of all ground transportation expenses are attributable to private vehicles. These private vehicles are not subject to any fee for using the Airport's roadways. While the court in *Alamo* found that "fair and reasonable" fees assessed to those benefiting from their "exploitation of the presence of the Airport" were not taxes subject to super majority legislative or voter approval, it is likely that this interpretation has been superseded by the plain language of Proposition 26. *Alamo*, 221 Cal. App. 3d at 208. Unless all users of the Airport's ground transportation facilities are charged a Trip Fee, it is likely that this exception would not apply and any fee would be found to be a tax.

Setting the benefit/privilege criteria of the exception, the amount of the Trip Fee itself appears to be reasonable. The Ground Transportation Plan states that in Fiscal Year 2009, the Airport Authority's annual costs to provide, operate, and maintain the ground transportation facilities at the Airport to be approximately \$9.2 million and that approximately 6,669,000 vehicles trips were made using the Airport's ground transportation facilities.⁴ By dividing the \$9.2 million in ground transportation costs by the 6,669,000 trips in Fiscal Year 2009 an approximate per trip fee of \$1.38 for all vehicles can be determined.⁵ As the \$0.50 Trip Fee currently being charged taxicab operators is less than the \$1.38 per trip needed to achieve full cost recovery for all vehicles using the Airport, it is likely that the Trip Fee would be found reasonable. However, should the Trip Fee charged taxicab passengers exceed those costs found to be attributable to all vehicles using the ground transportation facilities at the

² See San Diego Regional Airport Authority Comprehensive Ground Transportation Management Plan, Table 4, page 14, adopted on Jan. 7, 2010.

³ See San Diego Regional Airport Authority Comprehensive Ground Transportation Management Plan, page 16, adopted on Jan. 7, 2010.

⁴ These costs include \$5.4 million in operating expenses, \$1.3 million in administration and overhead, and \$2.5 million in an annual allocation of capital costs. See San Diego Regional Airport Authority Comprehensive Ground Transportation Management Plan, pages 13 through 19 and Tables 3, 5, 6, and 7, adopted on Jan. 7, 2010.

⁵ The Airport Authority uses a calculated per-trip fee of \$2.44 for taxicabs and \$1.22 for other vehicles for hire. These calculations do not allocate any costs to certain transportation users such as private vehicles. See San Diego Regional Airport Authority Comprehensive Ground Transportation Management Plan, Table 7, page 19, adopted on Jan. 7, 2010.

Airport, a court may find this Trip Fee unreasonable and thus a tax requiring voter approval under Proposition 26.

2. Specific Government Service or Product

A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

Cal. Const. article XIII C, §1(e)(2).

The Airport Authority may provide services to support the general use of ground transportation facilities at the Airport, and may be entitled to recover these costs from the various users of these services. However, unless all users of these services are charged fees and the fees do not exceed the reasonable costs to provide the services, the fee would be classified a tax.

A Trip Fee to recover costs to provide services exclusively used by taxicabs and other vehicles for hire, such as ground transportation starters⁶, may fall within this specific government service exception. However, any fee must not exceed the reasonable costs to provide those services exclusively attributable to taxicabs and must take into consideration any other fees imposed upon taxicabs.

3. Regulatory Costs

A charge imposed for the reasonable regulatory costs to the local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

Cal. Const., article XIII C, § 1(e)(3).

The stated intent of the fee is to recover costs incurred to the Airport in “providing, operating, and maintaining the facilities used by the commercial vehicle operators doing business at the Airport.”⁷ There is no discussion of regulatory costs related to the operation of taxicabs at the Airport. The Airport Authority already requires that all taxicabs at the Airport possess an annual permit to operate at the Airport. This permit is in addition to the MTS permit that all taxicabs must possess to conduct business within the City. The cost of an Airport Authority annual commercial vehicle permit for a taxicab ranges between \$200 and \$500⁸. The Airport Authority has estimated that revenues from taxicab annual permit fees to be \$59,000 in Fiscal Year 2009. If the Airport considers the Trip Fee a mechanism to recover regulatory costs, the

⁶ See San Diego Regional Airport Authority Comprehensive Ground Transportation Management Plan, Table 6, page 18, adopted on Jan. 7, 2010. The \$749,845 in annual Ground Transportation Starter expenses allocated 87.9% to taxicabs and 12.1% to other Vehicles for Hire.

⁷ See San Diego Regional Airport Authority Comprehensive Ground Transportation Management Plan, page 2, adopted on Jan. 7, 2010.

⁸ See San Diego Regional Airport Authority Comprehensive Ground Transportation Management Plan, Table 4, page 14, adopted on Jan. 7, 2010.

Trip Fee amount would need to be considered along with the annual permit fees charged taxicab owners for their Airport operating permits.

4. Entrance, Use, Purchase, Rental, or Lease of State Property

A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

Cal. Const., art. XIII C, § 1(e)(4).

The ground transportation facilities at the Airport are the property of the Airport Authority and it is possible that a fee imposed upon taxicab operators to use that property could fall within this exception. However, if the Airport Authority's proposal were adopted, and the Trip Fee were added into the taxicab meter fares, then the fee would not be paid by the taxicab operator, but by the airport passenger who wishes to be transported from the Airport by a taxicab. The Trip Fee might be considered to be a reasonable charge for a taxicab passenger's use of the Airport property, in that the taxicab patron's use is different than those who use private transportation. However it is not clear how the courts will interpret this exception where the nexus between those paying for the use of local governmental property and the actual user of that property are so attenuated.

CONCLUSION

The Trip Fee proposed by the Airport Authority to be added into the MTS taxicab meter rate might be a tax under the recent changes to article XIII C of the California Constitution imposed by Proposition 26. While there is no body of case law in which to predict the eventual interpretation of the State courts, it is uncertain whether the exceptions related to fees paid in return for a specific benefit or privilege will apply. It is possible that the Trip Fee may be upheld as paying for a specific governmental service exclusively benefiting taxicabs and other vehicles for hire. Any fees recovered must be reasonable in relation to the cost incurred and any other fees imposed upon taxicabs and other vehicles for hire. The Trip Fee might be upheld as a fee paid for the entrance or use of local government property. However, the Trip Fee would be paid by a taxicab customer and not the taxicab operator. It is unknown whether a Court would support the extension of this exception beyond the operator of the taxicab.

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