KAPLAN KIRSCH ROCKWELL

M E M O R A N D U M

TO: Kevin Smith, General Manager
Truckee Tahoe Airport District

FROM: KAPLAN KIRSCH & ROCKWELL LLP

DATE: February 6, 2015

SUBJECT: District Use of Property Tax Revenue

This memorandum is in response to your request for a preliminary analysis of the issues involved in the use of property tax imposed and collected by the Truckee Tahoe Airport District. Specifically, the District is interested in its ability to treat property tax revenue as non-airport revenue, and without the limitations imposed by federal law, and FAA regulations, guidance and grant agreements.

The District includes parts of two counties, and covers considerable property that is not on the Truckee Tahoe Airport (off-airport property). It is also our understanding that there is no real property on the Airport that is subject to the District's property tax (including any possessory interest tax). The fact situation here is somewhat unusual in that the District is both the owner of the Truckee-Tahoe Airport, and the entity that levies a tax on real property within the District boundaries but exclusively outside the Airport.

The normal principle is that all revenue generated by a public airport is considered airport revenue. A federally obligated airport is subject to complex regulations on the use of airport revenue and is permitted to use airport revenue only for the capital or operating costs of 1) the airport, 2) the local airport system, or (3) any other local facility that is directly and substantially related to the air transportation or passengers or property. See e.g., 49 USC 47107 (b).

The analysis, of course, depends on whether the District's property tax revenue is considered to be "airport revenue," and is therefore subject to the spending and use limitations imposed by federal law and FAA guidance. In the FAA *Compliance Manual*, FAA Order 5190.6B, airport revenue is defined in Section 15.6. The section most relevant to the issue here is found in 15.6.b:

> **15.6. Airport Revenue Defined.** Airport revenue generally includes those revenues paid to or due to the airport sponsor for use of airport property by the aeronautical and nonaeronautical users of the airport. It also includes revenue from the sale of airport property and resources and revenue from state and local taxes on aviation fuel.

> b. **Taxes assed by a special taxing district surrounding the airport and dedicate for support of the airport, but not derived from the use of the airport, are generally not considered airport revenue subject to the *Revenue Use Policy.* These tax revenue funds should be kept separate from airport revenue accounts and may be used for purposes other than those listed in 49 U.S.C. § 471017(b) and Section § 47133.** (emphasis added)

Generally, a number of factors are used to determine whether the various statutes and policies apply to airport revenue. These factors include whether the use of the revenue is on- or off-airport, whether the revenue is from a federal grant or from airport concessions; or whether the funds come from the airport sponsor or a third party. In this situation, however, even though the District is both the airport sponsor and the taxing entity, it would appear that the District has wide latitude in using District property tax revenue, even for purposes unrelated to the cost of operating and maintaining the Airport. In order to take advantage of that flexibility, moreover, the District would need to ensure that its property tax revenue is segregated from its normal airport revenue.

There are likely to be issues of state law that are important, including in particular any limitations imposed by the California Public Utilities Code as it pertains to Airport Districts. We assume that Mr. Collinson will address those issues.

As the District focuses more specifically on a particular non-airport use, we may recommend additional research to address more precisely the facts at that time.