

Sales Tax Revenue Bonds Provide Critically Needed Transportation Funding Source

Funding transportation infrastructure in California is becoming increasingly difficult, as diminished gasoline taxes and other state and federal funding sources continue to be insufficient to provide fully for burgeoning capital improvement needs and critical infrastructure gaps resulting from extended deferred maintenance of existing facilities.

Highlighting this issue, on January 22, 2016, the California Transportation Commission (CTC) slashed its transportation funding availability projections by \$754 million over five years—the largest such reduction since the current funding structure was established almost twenty years ago. CTC Chair, Lucy Dunn, noted that such reductions would mean “that almost every county in California that relies on this source of funding for projects that improve traffic and air quality will have to cut or delay projects indefinitely.” One way to increase the availability of funds for transportation projects locally is for California county transportation commissions and authorities (“transportation authorities”) to enact ordinances authorizing the imposition of an incremental sales tax within the county. Residents of the county must then approve the proposed sales tax measure and the proceeds of such sales tax are made available for projects specified in the expenditure plan approved in connection with the measure.

As transportation funding needs increase across the state, many communities are considering bringing new or extended sales tax measures before voters. In addition to addressing the political hurdles such measures can sometimes face, including a requirement that they be adopted by a two-thirds majority of voters in an election, transportation authorities should ensure that certain legal issues have been carefully considered in the proposed sales tax measure and expenditure plan prior to adopting their ordinance and putting the measure before voters.



The following is a list of some of the issues to consider when drafting a sales tax ordinance:

FLEXIBILITY AND INCLUSIVENESS. Sales tax measures and related expenditure plans should clearly include potential improvements under consideration by the transportation authority. A well-drafted expenditure plan can, however, preserve significant flexibility for the transportation agency with respect to implementation, scheduling and delivery of such projects. Sales tax measures may also permit amendment and modification of the expenditure

plan by the transportation authority under certain circumstances.

CLEAR BONDING AUTHORITY. Bond financing allows transportation authorities to accelerate project delivery for the benefit of the county and its residents. Sales tax measures should provide clear authorization for a transportation authority to issue bonds payable from and secured by sales tax revenues imposed pursuant to the measure. Care should be taken when preparing an ordinance so that the transportation authority retains the ability to issue other forms of sales-tax-revenue-backed debt, including commercial paper or bond anticipation notes, which can provide a transportation authority with significant timing and funding flexibility.

LEVERAGE ADDITIONAL FUNDING AND FINANCING OPPORTUNITIES. Given the increasing number of alternative funding sources and financing opportunities available to transportation authorities, including tolls, new federal grants, TIFIA loans, and public-private partnerships, transportation agencies should consider how they might best leverage these opportunities when drafting sales tax expenditure plans. As one example, the expenditure plan could include a policy statement confirming that the governing body of the transportation authority intends to use proceeds of the sales tax to leverage such additional funding and financing opportunities, as available, including by applying proceeds of the sales tax as qualifying local matching funds where necessary or helpful.

A proven track record of success

Advice from competent bond counsel can help transportation authorities ensure that these and other issues have been analyzed and addressed in their sales tax ordinances and expenditure plans. Orrick's attorneys have assisted transportation authorities in the issuance of billions of dollars of sales tax revenue bonds for a wide variety of projects, including a number of extremely innovative financing arrangements which allowed issuers to tap additional sources of transportation funding and financing, such as tolls, TIFIA loans and federal grants, and to accelerate the availability of state funding for certain local and regional transportation projects.

Contact Us

For additional information concerning sales tax ordinances, measures, expenditure plans or any aspect of structuring or disclosure relating to sales tax revenue bond issuance, please contact:



Jenna Magan
Sacramento
+1 916 329 7980
vcmorgan@orrick.com



Devin Brennan
San Francisco
+1 415 773 4261
dbrennan@orrick.com

Disclaimer

This publication is designed to provide Orrick clients and contacts with information they can use to more effectively manage their businesses and access Orrick's resources. The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters. Orrick assumes no liability in connection with the use of this publication.

orrick.com

US | EMEA | ASIA

Orrick, Herrington & Sutcliffe LLP | 51 West 52nd Street | New York, NY 10019-6142 | United States | tel +1-212-506-5000
Attorney advertising. As required by New York law, we hereby advise you that prior results do not guarantee a similar outcome.

© 2016 Orrick, Herrington & Sutcliffe LLP. All rights reserved.

