

**Government Finance Officers Association
National Association of Counties
National Association of State Auditors, Comptrollers and Treasurers
National League of Cities
US Conference of Mayors**

October 31, 2006

The Honorable Bill Thomas
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Thomas:

The Government Finance Officers Association; the National Association of Counties; National Association of State Auditors, Comptrollers and Treasurers; the National League of Cities; and the US Conference of Mayors appreciate the opportunity to provide suggestions to H.R. 6264 the *Technical Corrections Act of 2006*, with regard to Section 512 of the *Tax Increase and Prevention Act of 2005 (TIPRA)*.

Section 512 of *TIPRA*, imposes an excise tax on financing transactions, such as sale-in-lease-out (SILOs) and lease-in-lease-out (LILOs), that state and local governments and their agencies entered into until the *American Jobs Creation Act* labeled them as “listed transactions” in 2004. Prior to the *JOBS Act* state and local governments, and especially transit authorities, had entered into these financings with the encouragement and approval of the U.S. Department of Transportation.

TIPRA allows for a retroactive application of an excise tax penalty on transactions that were completed years ago with the full knowledge of the Department of Transportation and Treasury Department. The retroactive imposition of a substantial excise tax could have substantial negative repercussions to many governments, and ultimately the citizens that they serve.

We believe that a remedy for this retroactive application in *TIPRA*, is a clear definition of the term “proceeds” and “net income.” We are concerned that the Treasury and the IRS have insufficient guidance in defining these terms and may promulgate regulations with overly broad definitions that would be detrimental to governments and transit authorities. Therefore, we respectfully request that a provision be added to H.R. 6264 that would clarify the meaning of “proceeds,” as well as “net income.” This would allow guidance to be written which would provide for the allocation of both “net income” and “proceeds” to avoid substantial retroactive consequences.

Allowing for this technical correction, and subsequent regulations from the Department of the Treasury, these transactions would be in parity with the exact same type of transit agency SILO

financing transactions that were “grandfathered” by both the *JOBS Act* and *TIPRA*. Under the current application of the law, the same type of SILO transaction receives potentially different treatment, solely due to the date when the transaction was pending approval by the Department of the Transportation. We believe that this is unfair and should be rectified so that all of the financings receive the same treatment as the grandfathered deals. As we have stated, this could be accomplished with a consistent application of the terms “proceeds” and “net income.”

Another item worth noting is that Section 512 casts a shadow over all future financial transactions entered into by state and local governments. Because the legislation is written so broadly, the Treasury has the power at any time in the future to administratively impose an excise tax retroactively on state and local governments by designating a type of transaction as a “listed transaction”. Thus, transactions that close today could be listed in the future, with no debate or public hearing, resulting in state and local governments incurring a tax liability with no means of challenging the determination. This allows the IRS to tax state and local governments without specific Congressional approval, and could adversely affect the tax-exempt bond marketplace. Although the IRS can already challenge the tax-exempt status of state and local bonds, the potential application of Section 4965 creates another avenue for the IRS to weaken the bond market, without the possibility of judicial review.

Mr. Chairman, we again very much appreciate the opportunity to comment on the *Technical Corrections Act of 2006*, and encourage inclusion of a provision to clarify the terms “proceeds” and “net income” with regard to Section 512 of *TIPRA*. A more detailed letter that was sent to Treasury by the GFOA regarding this provision is attached for your review.

If you have any questions about our comments, please contact Susan Gaffney, Director of GFOA’s Federal Liaison Center at 202-393-8020 x209.

Sincerely,

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National Association of Counties
National Association of State Auditors, Comptrollers and Treasurers
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