

October 24, 2006

The Honorable Charles E. Grassley
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington D.C. 20510

Dear Chairman Grassley:

The Metropolitan Atlanta Rapid Transit Authority (MARTA) would appreciate the opportunity to share with you our concerns regarding the application of the newly enacted section 4965 of the Internal Revenue Code to the Metropolitan Atlanta Rapid Transit Authority as a result of MARTA's role as a lessee in transactions commonly referred to as LILOs and SILOs.

MARTA is concerned that the excise tax (The Tax Increase Protection and Reconciliation Act, Section 516) may be applied retroactively to transactions that were entered into prior to the IRS issuing any guidance or stating any concern that certain transactions may be tax shelters. MARTA was the lessee in several LILO and SILO transactions involving assets with an appraised fair market value in excess of \$2.2 billion. Retroactive imposition of a substantial excise tax could have a material adverse impact on MARTA's ability to serve our riding public.

The Tax Increase Protection and Reconciliation Act and its legislative history do not provide a clear definition of "proceeds." As a result, MARTA is also concerned that the Treasury and the IRS have insufficient guidance in defining this term during the regulatory process and may promulgate regulations with an overly broad definition of this key term. We believe that the Senate Finance Committee has the opportunity to provide the U.S. Department of the Treasury with a clear definition of "proceeds" while the Treasury drafts the implementing regulations. Therefore, MARTA asks the Committee to focus on the economics of the transaction and provide a technical clarification of the definition of proceeds that is also consistent with the position taken by the IRS in Revenue Rulings and court filings. Additionally, MARTA requests that the Chairman consider adding a provision to the recently introduced Tax Technical Correction bill (H.R. 6264) that would clarify the meaning of net income and proceeds and would provide guidance on the allocation of both net income and proceeds that is consistent with the treatment of net income and proceeds by the IRS.

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Thank you for your consideration of our views. For a more detailed explanation of the issue, we have attached a copy of our comment letter to the Treasury Department and IRS. If you have any further questions, please contact me at 404-848-5377.

Sincerely,


Richard J. McCrillis
General Manager/CEO

Attachments

August 7, 2006

CC:PA:LPD:PR (Notice 2006-65)
Room 5203
Internal Revenue Service
POB 7604
Ben Franklin Station
Washington, DC 20044

Comments re: Tax Increase Prevention and Reconciliation Act of 2006
IRC Section 4965

Dear Sir/Madam:

The Metropolitan Atlanta Rapid Transit Authority (MARTA) is the ninth largest transit system in the United States and serves the metropolitan Atlanta, Georgia area. MARTA, like many other transit agencies throughout the United States, has executed several transactions that are potentially affected by this legislation. These transactions, executed between 2001 and 2005, involved assets valued in excess of \$1 billion and generated more than \$100 million in revenues for MARTA during a time when the economy was lagging and the competition for limited federal funds continued to grow. The retroactive imposition of an excise tax on these revenues will create undo financial hardship that will have to be passed on to the transit riders and tax payers in the region in the form of increased fares and/or reduced transit services.

MARTA has reviewed the Tax Increase Prevention and Reconciliation Act of 2006 (TIPRA) and has significant concerns, primarily with the implementation of the Internal Revenue Code Section 4965. This legislation, as drafted, may have a severe adverse impact upon MARTA and other transit providers throughout the United States that have entered into lease-in/lease-out (LILO) and sale-in/sale-out (SILO) leveraged lease transactions. TIPRA imposes a new excise tax that may penalize not-for-profit entities for transactions entered into while such transactions were still legal and, in the case of MARTA, encouraged by various branches of the Federal government.

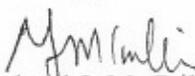
The following outlines MARTA's issues with TIPRA:

- **The U.S. Government has imposed a tax on transit properties that participated in LILO/SILO transactions after having been encouraged to do so by the U.S. Government.** The LILO transactions of the type entered into by MARTA were approved by U.S. Government Agencies, including the U.S. Department of Transportation, Federal Transportation Administration (FTA). Additionally, FTA published guidance promoting the benefits of these transactions under the banner of "Innovative Financing" and encouraged participation by transit properties and other governmental entities. As a result of Section 4965, MARTA having followed the advice of the U.S. Government Agencies and participating in transactions that are now "listed transactions" may be penalized.

- **Section 4965 was drafted so broadly that taxes may be imposed with no specific Congressional approval and judicial review.** The broad nature of the drafting empowers Treasury at any time in the future to administratively impose an excise tax retroactively by designating a type of transaction as a "listed transaction". This means that a transaction that is closed today could be listed in the future with no debate or public hearing, resulting in the imposition of an excise tax on a public entity without specific Congressional approval.
- **The Americans Jobs Creation Act of 2004 (the "2004 JOBS Act") created inconsistencies in how LILOs/SILOs are treated.** The passage of the 2004 JOBS Act grandfathered several of these transactions, one of which was a MARTA transaction that closed in September of 2005. This grandfathering created a double standard for identical transactions that are only differentiated by the date of execution. The double standard created by Section 4965 results in transactions that were executed prior to Congressional action to stop the transactions being treated more harshly than those executed after Congressional action. This retroactive penalization of transit properties and governmental entities is counter intuitive given that Treasury and IRS gave no indication that these previously executed transactions were considered abusive, yet those executed later, with the full knowledge of Treasury and IRS, were exempted from this excise tax.
- **The implementation of TIPRA in a retroactive manner results in a punitive action towards transit properties and governmental entities.** These transactions were not identified by the IRS as "listed" or "prohibited" when they were executed. The provisions of the 2004 JOBS Act that curb tax shelter leasing transactions with tax-exempt parties were not intended to target the benefits already received by the transit properties and governmental entities. The 2004 JOBS Act only limits deductions claimed by the taxpaying lessors for future transactions.

For the above reasons, MARTA believes that it would be fair and appropriate to treat transit and governmental lessees in all LILOs and SILOs entered into before the effective date of the 2004 JOBS Act in the same manner that it is treating transit and governmental lessees in LILOs and SILOs that were grandfathered by the 2004 JOBS Act. MARTA feels strongly that assurance must be provided to lessees that have participated in pre-enactment transactions closed prior to May 17, 2006 that there is no Section 4965 tax on these transactions. We believe that this equity can be achieved administratively through the "listing" process.

Sincerely,


Richard J. McCrillis

Interim General Manager/CEO

August 1, 2006

CC:PA:LPD:PR (Notice 2006-65)
Room 5203
Internal Revenue Service
POB 7604
Ben Franklin Station
Washington, DC 20044

Comments re: Tax Increase Prevention and Reconciliation Act of 2006

The Metropolitan Atlanta Rapid Transit Authority (MARTA) has reviewed the Tax Increase Prevention and Reconciliation Act of 2006 (TIPRA) and has significant concerns, primarily with Section 4965. This legislation, as drafted, has severe adverse impact upon MARTA and other transit providers throughout the United States that have entered into lease-in/lease-out (LILO) and sale-in/sale-out (SILO) leveraged lease transactions. TIPRA imposes a new excise tax that may penalize not-for-profit entities for transactions entered into while such transactions were still legal and in the case of MARTA encouraged by various branches of the Federal government.

The following outlines MARTA's issues with TIPRA:

- **It is Unfair for the U.S. Government to impose a tax on transit properties that participated in LILO/SILO transactions having been encouraged to do so by the U.S. Government.** The LILO transactions of the type entered into by MARTA were approved by U.S. Government Agencies, including the U.S. Department of Transportation (DOT). Additionally, DOT published guidance promoting the benefits of these transactions under the banner of "Innovative Financing" and encouraging participation by transit properties and other governmental entities. As a result of Section 4965 of TIPRA, MARTA having followed the advice of the U.S. Government Agencies and participating in transactions that are now "listed transactions" may be penalized.
- **Section 4965 was drafted so broadly that taxes may be imposed with no specific Congressional approval and judicial review.** The broad nature of the drafting empowers Treasury at any time in the future to administratively impose an excise tax retroactively by designating a type of transaction as a "listed transaction". This means that a transaction that is closed today could be listed in the future with no debate or public hearing, resulting in the imposition of an excise tax on a public entity without specific Congressional approval.
- **The Americans Jobs Creation Act of 2004 (the "2004 JOBS Act") created inconsistencies in how LILOs/SILOs are treated.** The passage of the 2004 JOBS Act grandfathered several of these transactions, one of which was a MARTA transaction that closed in September of 2005. This grandfathering created a double standard for identical transactions that are only differentiated by the date of execution. The double standard created by Section 4965 results in transactions that were executed prior to Congressional action to stop the

transactions are treated more harshly than those executed after Congressional action. This retroactive penalization of transit properties and governmental entities is counter intuitive given that Treasury and IRS gave no indication that these previously executed transactions were considered abusive, yet those executed later, with the full knowledge of Treasury and IRS, were exempted from this excise tax.

- **The implementation of TIPRA in a retroactive manner results in a punitive action towards transit properties and governmental entities.** These transactions were not identified by the IRS as “listed” or “prohibited” when they were executed. The provision of the 2004 JOBS Act that curb tax shelter leasing transactions with tax-exempt parties were not intended to target the benefits received by the received by transit properties and governmental entities. The 2004 Act only limits deductions claimed by the taxpaying lessors for future transactions.

For the above reasons MARTA believes that it would be fair and appropriate to treat transit and governmental lessees in all LILOs and SILOs entered into before the effective date of the 2004 JOBS Act in the same manner that it is treating transit and governmental lessees in LILOs and SILOs that were grandfathered by the 2004 JOBS Act. We believe that this equity can be achieved administratively through the “listing” process.

Sincerely,

Richard J. McCrillis
Interim General Manager/CEO