



# Board Agenda Item 7

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DATE: May 25, 2021

TO: Board of Supervisors

SUBMITTED BY: Oscar J. Garcia, CPA, Auditor-Controller-Treasurer-Tax Collector

SUBJECT: Fiscal Year 2021-22 Tax and Revenue Anticipation Notes Issuance

RECOMMENDED ACTION(S):

**Approve and authorize the Chairman to execute resolution providing for the issuance and sale of County of Fresno 2021-22 tax and revenue anticipation notes on a federally taxable or tax-exempt basis in one or more series in an amount not exceeding \$130,000,000 and approving a form of a preliminary official statement and certain other matters related thereto**

Your Board's approval of the recommended resolution would authorize the County's issuance and sale of the tax and revenue anticipation notes (TRAN) in one or more series, in an amount not exceeding \$130,000,000 (principal amount only), such debt, plus interest, to be repaid by the County on June 30, 2022. Such approval includes approval of the form of a bond offering document known as the Preliminary Official Statement for the TRAN and the form of other related documents discussed below, and authorizes the Auditor-Controller/Treasurer-Tax Collector (ACTTC), the County Administrative Officer, and the Chairman to take any and all actions and execute any and all documents, that are necessary to the issuance and sale of the TRAN in one or more series as provided in the recommended resolution. This item is Countywide.

The draft Preliminary Official Statement for the TRAN that is presented to your Board with this item has attached to it the County's restated Financial Report for the fiscal year ended June 30, 2020, that is before your Board for receipt and filing in a separate item today.

ALTERNATIVE ACTION(S):

Your Board may choose to delay this matter to a later date. The TRAN is being presented to your Board at this time because the market is favorable. The ACTTC cannot predict the conditions of the market if the item is delayed and it could result in a higher interest rate and an increased cost of issuance.

If your Board does not approve the County's sale and issuance of Tax Revenue Anticipation Notes (TRAN) at the proposed maximum amount stated above, the County General Fund will not have sufficient operating cash prior to the County's receipt of the first installment of property tax revenues on December 10, 2021.

FISCAL IMPACT:

There will be no additional Net County Costs associated with this recommended action for Fiscal Year 2020-21. Sufficient appropriations are available within the Interest and Miscellaneous Expenditures Org 2540 to pay for the services and other out-of-pocket costs for issuing this proposed debt.

The TRAN is debt, which must be repaid with interest, and the cost of such debt would be payable from Interest and Miscellaneous Expenditures Org 2540 in Fiscal Year 2021-22. If your Board approves the

recommended authorizing Board resolution, the County would issue and sell in the public bond market one or more series of the TRAN in an aggregate principal amount not to exceed the maximum authorized amount (i.e., maximum principal amount of \$130,000,000). Upon such issuance, the County would be obligated to repay the actual amount borrowed, plus interest, on June 30, 2022.

The County's issuance of the TRAN would be a general obligation of the County and would provide necessary operating cash in fiscal year 2021-22 until the first installment of property taxes is received in that fiscal year.

DISCUSSION:

The County issues a TRAN to finance its cash flow deficits that it reasonably expects to incur due to the timing of expected revenues received versus expected expenditures incurred in the first half of its fiscal year. The largest source of the County's revenue is received in December of each year when the first installment of property taxes is received. Therefore, between July and December, the County is solely reliant on other revenues to pay for its operations and those other revenues might not fund all expenditures incurred during that time. In order to determine whether the County will have sufficient cash to pay for its obligations in the first half of its fiscal year, the ACTTC must prepare a cash flow analysis. The current cash flow analysis for the fiscal year 2021-22 reflects anticipated cash deficit sufficient to support an issuance of an amount not to exceed \$130,000,000 (principal only).

The County's TRAN borrowing for fiscal year 2021-22 may be issued on a federally tax-exempt basis or on a federally taxable basis.

The size of a TRAN is limited by State law to not more than 85 percent of the estimated amount of uncollected taxes, income, revenue, cash receipts, and other moneys of the County that will be available for payment of the TRAN. The size of a TRAN is also limited by the rating agency's rating on the TRAN, and the ability of the County to repay the TRAN.

For a federally tax-exempt TRAN, interest on the TRAN is excludable from the gross income of the TRAN holders for federal income tax purposes. The effect of the exclusion from gross income is effectively a federal subsidy to issuers of municipal debt, such as the County, because it incentivizes purchasers of the TRAN to accept a lower interest rate. In order for the County's TRAN to qualify as federally tax-exempt and receive the benefit of that subsidy, the federal government imposes certain limitations on the maximum principal amount of the TRAN, discussed below under "Federal income tax compliance."

For a taxable TRAN, interest on the TRAN is taxable to the TRAN holders for federal income tax purposes. The federal government limitations on the maximum amount of a federally tax-exempt TRAN do not apply to a taxable TRAN. The other limitations, including the rating agency's rating and the County's ability to repay, still apply. The interest rate on a taxable TRAN is generally higher than the interest rate on a tax-exempt TRAN, but the County may invest the proceeds of a taxable TRAN at an unrestricted yield.

The ACTTC will decide whether to issue a federally tax-exempt or a taxable TRAN based on market conditions and the ACTTC's cash flow analysis for FY 2021-22.

The final "sizing" of the TRAN (i.e., actual principal amount to be borrowed by the County up to the maximum authorized amount that will be stated in the recommended Resolution presented to your Board for approval) and the rating on the TRAN were not available when staff prepared this agenda item.

The first series of the TRAN will be issued on or about July 1, 2021 and is expected to mature on June 30, 2022. Although the proposed financing documents provide a framework for additional series, there is no present plan for such additional series. The TRAN is not subject to redemption prior to their maturity.

The last time the County issued a TRAN was the fiscal year 2020-21 TRAN.

The County's municipal advisor KNN is assisting with the cash flow determination. KNN will also assist the County with its presentation to Standard & Poor's for a rating on the TRAN, and with the sale of the TRAN.

**Federal Securities Law Compliance-Board Members' Disclosure Obligations:**

This agenda item includes Attachment "B," which is a copy of the most current draft, as of the date this agenda item was prepared, of the preliminary official statement for the fiscal year 2021-22 TRAN issuance.

A TRAN is a short-term bond issuance that the ACTTC would, but only upon your Board's approval, pursue in the public bond market. As a bond issuance, the TRAN is subject to federal securities laws, discussed below.

The "preliminary official statement" is term of art in the municipal securities industry that describes the County's bond offering document for the County of Fresno's fiscal year 2021-22 TRAN. Once it is completed, the preliminary official statement would be considered a final document, except for the legally permitted omission of certain pricing information to be inserted in the final "official statement" assuming the County of Fresno's fiscal year 2021-22 TRAN is sold to the underwriter.

The County's preliminary official statement in the public bond market is subject to federal securities laws. These laws require the County to disclose accurate and complete statements about material information concerning the County (e.g., no misleading statements made, and no material information is omitted) upon which it intends potential investors to rely so that they are informed of what they need to know under the circumstances at such time in order to decide whether to invest in the County of Fresno's fiscal year 2021-22 TRAN. This legal requirement is referred to as "antifraud provisions" in the federal securities laws.

**If a Board member knows of material facts or circumstances that are not accurately or completely stated (e.g., material information is omitted, or misleading statement is made) in the draft preliminary official statement attached to this agenda item which in his or her view relates to the County's ability to repay the County of Fresno's fiscal year 2021-22 TRAN, the Board member shall bring such facts or circumstances to the attention of Board at this meeting (or as soon as possible thereafter) so that the ACTTC may, with the assistance of the County Counsel's office and the County's bond and disclosure counsel, Hawkins Delafield & Wood (Hawkins), review the matter to determine whether such facts or circumstances need to be clarified or included in the draft preliminary official statement before the County completes and disseminates the draft preliminary official statement to the investing bond market.**

The draft preliminary official statement (POS) for the TRAN was prepared by Hawkins. County staff have provided information to Hawkins for purposes of preparing the POS as provided in the County's Bond Disclosure Procedures. The County's Bond Disclosure Procedures were issued by the ACTTC on January 31, 2020 and were most recently revised on April 10, 2020.

The POS includes the following information about the County and representations made by the County regarding the proposed TRAN issuance:

- General information regarding the TRAN
- Security and sources of payment of the TRAN
- Constitutional and statutory limitations on taxes, revenues and appropriations
- Tax matters
- Litigation
- Rating on the TRAN
- Underwriting

- Continuing disclosure

Appendix A of the POS provides key specific economic and financial information regarding the County of Fresno's finances, as well as general demographic information concerning Fresno County.

The following topics are included in the Appendix A:

- County's Budget and Budgetary process, including mid-year adjustments and the proposed temporary recommended fiscal year 2021-22 budget
- Financial statements for the General Fund
- COVID-19 and potential impact on County finances
- Capital projects of the County
- Ad valorem property taxes
- Employees and labor relations
- Information technology
- Defined Benefit Retirement Program
- Litigation
- Insurance
- Long-term debt obligations
- County investment pool
- Impact of wildfires on the County
- State Budget for fiscal year 2021-22 and potential impacts of State Budget on the County's financial condition

The topic relating to the impact of wildfires on the County has been added to Appendix A since the County's last TRAN issuance.

The information provided in the current form of the draft POS, including Appendix A, presented with this agenda item, is a work-in-process "snapshot" of certain information as of the date this agenda item was prepared. The information in the POS will continue to be updated by staff and disclosure counsel and incorporated into the version of the draft POS presented to the Board. A redline comparison of all updates made to the POS version presented to the Debt Advisory Committee and the POS version presented today are attached to this agenda item as Attachment "C."

**Federal income tax compliance:**

The recommended resolution provides that the TRAN may be issued on a tax-exempt or taxable basis.

In order for the County to issue the TRAN on a federally tax-exempt basis, and receive the benefits of federally tax-exempt financing, the County must determine the lowest aggregate deficit during the first six months of the next fiscal year (FY 2021-22). To make that determination, the ACTTC undertakes a cash flow analysis, which results in the "sizing" of the TRAN (principal amount that may be borrowed). The County may issue the TRAN on a federally tax-exempt basis up to a limited maximum principal amount that is based on the lowest aggregate deficit and certain additional amount for a working capital reserve as provided in federal regulations.

**CARES Act:**

In 2020, the County received \$81.6 million from the federal government and \$16.2 million from the State government, for a total of \$97.8 million, under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for responding to the COVID-19 pandemic. The County is required to spend CARES Act money for eligible costs incurred between March 1, 2020, and December 31, 2021. In general, CARES Act money must be used to cover costs that are necessary expenditures incurred due to the public health

emergency with respect to COVID-19 and were not budgeted as of March 27, 2020. Any CARES Act money that the County does not use within that time and for those purposes must be repaid to the federal government. Currently, the County has about \$23,273,077 in CARES Act money remaining to be spent on eligible costs.

The ACTTC is holding the CARES Act money separately, in the County's Disaster Claiming Fund, and accounts for it by tracking and tracing expenditures of that money, so that CARES Act money is only used to reimburse eligible costs. The cash flow projection includes line items that show the eligible expenditures from the General Fund and the later reimbursement from the Disaster Claiming Fund to the General Fund for those eligible expenditures.

### **American Rescue Plan Act:**

The American Rescue Plan Act (ARPA) provides emergency funding for eligible state, local, territorial, and Tribal governments. The County expects to receive \$194.1 million in two tranches of approximately \$97.05 million each, the first in May 2021 and the second not later than May 2022. The funding is eligible to use to respond to the COVID-19 pandemic in the following categories:

- Supporting the public health response
- Addressing the negative economic impacts caused by the public health emergency
- Serving the hardest-hit communities and families
- Replacing lost public sector revenue
- Providing premium pay for essential workers
- Investing in water and sewer infrastructure
- Investing in broadband infrastructure

The ARPA money may not be used to pay principal or interest on indebtedness, costs of issuance for debt, such as the TRAN, contributions to a pension plan, or to build reserves.

In general, the ACTTC currently intends to use the same methodology to track ARPA money that was used to track CARES Act money. If the TRAN is issued on a federally tax-exempt basis, however, the County will need to establish greater restrictions and more detailed plans for the use of the ARPA money than was necessary for the CARES Act money.

### **The Recommended Actions:**

The recommended action will approve the County's sale and issuance of the TRAN. Under the recommended authorizing Board resolution (Resolution), included as Attachment "A" to this agenda item, your Board would immediately give the following key approvals:

- 1) Authorize maximum principal amount of the TRAN: The Resolution authorizes the issuance of one or more series up to a maximum principal amount - for this proposed issuance of one or more series, the maximum principal amount would be \$130,000,000. A "series" is an individual issuance of the TRAN, and the combined total of principal for all series' must be within the maximum amount authorized to be borrowed under the adopted authorizing Board resolution. Each series has a single maturity (i.e., the date when the series, plus interest, is to be repaid by the County).
- 2) Alternative methods of selling the TRAN: Your Board would authorize the ACTTC to offer the TRAN for sale in the public bond market either (a) by competitive sale to an underwriter in accordance with the Official Notice Inviting Bids (i.e., lowest responsible bid may be awarded); or (b) by negotiated sale to an underwriter in accordance with the Note Purchase Agreement.

- 3) Federally tax-exempt or taxable TRAN: Your Board would authorize the issuance of the TRAN on a federally tax-exempt or taxable basis.
- 4) Bond offering document: Your Board would approve and authorize the distribution of the form of the Preliminary Official Statement (POS) to the investing public; the POS is the preliminary bond offering document, discussed below, for the TRAN. **The POS for the TRAN that is presented to your Board with this item has attached to it the restated Financial Report for the fiscal year ended June 30, 2020, that is before your Board for receipt and filing in a separate item today.**
- 5) Continuing Disclosure: Your Board would approve the form of the “continuing disclosure certificate,” which the County agrees to execute so the TRAN complies with the federal securities disclosure laws. Under the certificate, the County would be required to publicly disclose in the secondary public bond market certain listed events (e.g., County’s bond rating changes), if they should occur, during the term of the TRAN.
- 6) Other actions to consummate TRAN: Your Board would authorize the ACTTC, the County Administrative Officer, and/or Chairman to make certain decisions and to give certain approvals to consummate the TRAN issuance, such as determining the actual principal amount of TRAN to be issued (not to exceed the maximum authorized amount under the recommended Resolution), and to make any other necessary revisions to finalize the forms of the documents approved by your Board under the recommended Resolution (including the forms of the Note, the Official Notice Inviting Bids, the Note Purchase Agreement, the Notice of Intention to Sell, the POS, and the Continuing Disclosure Certificate), and to approve and execute those final documents, and any related documents.

If your Board approves the County’s issuance and sale of the TRAN, staff anticipates that the County will distribute the POS to the investing public on or about May 26, 2021.

Once the County sells the first series of the TRAN, which staff anticipate will occur during the first week of June 2021, the County shortly thereafter will issue the (final) Official Statement, and then close the TRAN for that series on or about July 1, 2021.

**Additional Series, if needed:**

If the County issues the TRAN in more than one series, any additional series of the TRAN will be issued on parity with the first series of TRAN upon satisfaction of certain conditions including:

- 1) Confirmation from Standard & Poor’s Rating Agency that the County’s issuance of such additional series of the TRAN will not cause a reduction or withdrawal in its rating on the first series of TRAN, and;
- 2) If an additional series of the TRAN is federally tax-exempt, an opinion of the County’s Bond Counsel to the effect that interest on the additional series of the TRAN is excludable from gross income for federal income tax purposes.

By issuing any additional series of the TRAN on parity, all TRAN holders in any additional series have equal claim to pledged revenues as all TRAN holders in the first series. If any additional issue of the TRAN is deemed necessary, it might not require further Board action unless additional disclosure is required in the Preliminary Official Statement, a current draft copy of which is attached as Exhibit A to this agenda item. The ACTTC would work with County Counsel and the County’s disclosure counsel in deciding whether additional disclosure is required. If the ACTTC determines that another issue of the TRAN is necessary, additional bond counsel and disclosure counsel fees, municipal advisor fees, and costs of issuance would

result.

As stated above, although the proposed financing documents provide a framework for additional series, there is no present plan for such additional series.

OTHER REVIEWING AGENCIES:

On May 21, 2021, the County's Debt Advisory Committee considered the proposed TRAN and has recommended bringing it forward to your Board for approval.

REFERENCE MATERIAL:

BAI #3, May 26, 2020  
BAI #3, April 28, 2020  
BAI #10, May 20, 2014  
BAI #5, May 21, 2013  
BAI #10, May 22, 2012

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A - County of Fresno TRAN 2021 Resolution (including the forms of the Note, the Official Notice Inviting Bids, the Note Purchase Agreement, the Notice of Intention to Sell, the POS, and the Continuing Disclosure Certificate)  
Attachment B - County of Fresno TRAN 2021 Draft Preliminary Official Statement

CAO ANALYST:

Yussel Zalapa