February 15, 2018

Mr. David Bean
Director of Research and Technical Activities
Governmental Accounting Standards Board
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TO: director@gasb.org

IN RE: Project No. 24-16ED

Dear Mr. Bean:

We, the undersigned academics, many of whom commented favorably on your October 2014 Exposure Draft that became Statement 77 on Tax Abatement Disclosures, write to comment upon the GASB’s currently pending Implementation Guide.

Specifically, we write to oppose Questions 4.6 and 4.8 as they are currently answered. On 4.6, we recommend that the GASB instead rule that all tax increment expenditures for public infrastructure shall be disclosed as abatements under Statement 77. On 4.8, we recommend that the GASB issue an answer with the opposite finding, that tax abatements granted to private workplaces that are technically publicly owned for the sake of skirting constitutional bans on gifts to taxpayers shall also be disclosed as such under Statement 77.

Ensuring that Statement 77 data covers all tax abatements is critical to understanding the magnitude of their use and their economic and fiscal effects. Statement 77 promises to enable important new forms of analysis in the fields of municipal finance, economic development, regional economics, decision theory, local governance, and tax policy. But if some of the most common abatements are excluded, as they would be as a result of these two proposed changes, Statement 77’s analytical value and its potential to spur research in this area will be greatly diminished.

**Question 4.6 on TIF and Infrastructure**

Many of us signed a comment to the GASB at this time last year in re: the Implementation Guide No. 2017-1, specifically regarding “pay as you go TIF” and “tax rebate TIF.” We were generally pleased by your rulings on those matters, in which you correctly deemed such transactions as disclosable abatements under Statement 77 (at Question 4.40).

Specifically, the GASB wrote:
The developer is promising to take the specific action of constructing a building for purposes of economic development, and the government is forgoing tax revenues to which it is otherwise entitled by providing some or all of the additional property tax revenues above the baseline to the developer. Although many tax abatements directly reduce the amount of taxes paid and do not involve the actual collection and return of taxes, the mechanism used to conduct the transaction is not relevant to determining whether a transaction meets the definition of an abatement. Therefore, the fact that the developer pays property taxes and subsequently receives amounts from the government related to the additional property tax revenues means that the government did, in substance, forgo tax revenues. *(Question 4.40 in Implementation Guide No. 2017-1)*

We believe that all the same definitional distinctions pertain to the GASB’s now-pending Question 4.6. The fact that a developer or other taxpayer is receiving the increment back to build public infrastructure makes the expenditure no less of an abatement. The government is, in fact, foregoing tax revenue. The developer is, by contract, agreeing to a quid pro quo involving a community benefit. And that benefit is accruing in many cases to only one taxpayer or a small number of adjacent property owners whose land values are greatly enhanced by the construction or rebuilding of infrastructure.

In some cases, depending on whether a jurisdiction has employed development fees or impact fees, the increment refund may amount to a payment to the developer that allows him to avoid paying fees (tied to dwelling units and/or commercial square footage) that he would normally bear for the construction of public infrastructure.

The stakes here are large: TIF is in many places the most frequently used and/or costliest form of tax abatement for economic development. Yet the true costs of TIF districts are very poorly understood because few states monitor them closely, and their impact on intergovernmental revenue transfers are especially opaque.

That raises our final concern about Question 4.6: If an actively abating government does not report a TIF refund as an abatement, then that passage of Statement 77 which we also lauded (Paragraph B46, which requires governments that lose revenue passively to report such losses) will, we fear, be mooted. Schools, community colleges, counties and other government bodies that typically lose revenue to actively abating cities will remain uniformed about their foregone revenues. Given that local property taxes remain the largest source of revenue for most such services, Question 4.6 as currently answered would greatly reduce the fiscal-analytical value to local governments of Statement 77.

Therefore, we recommend that the GASB reverse itself on Question 4.6 and rule that tax increment refunds of all kinds are abatements to be disclosed under Statement 77.
Question 4.8 on Bond-Leaseback Transactions

On question 4.8, we want to be sure that the GASB knows that the kinds of transactions it considers here are simply the way local governments in some states commonly grant property tax abatements while winking and nodding at “gift clauses” in their constitutions.

The historical origins of many contemporary abatements can be found in Mississippi’s Balance Agriculture with Industry program, born in the 1930s. The program evolved into Industrial Revenue Bonds: tax-exempt construction bonds (costing both states and the federal government income tax revenue on the interest, yet created without IRS authorization) bundled with local public ownership that abated property taxes for the duration of the bonds.\(^1\)

The net effect, known to site location consultants, tax incentive consultants, and footloose companies, is that states with this device are able to grant property tax abatements and circumvent any legal prohibitions on public sector gifts to private businesses, thereby competing with states that allow property tax abatements without the gimmick. Given that property taxes are the largest single tax that a typical company pays in the U.S., this is no small matter.

Conversely, property taxes are the largest single revenue source for K-12 public education, so the abatement of such taxes is especially salient to understanding their fiscal impact on school districts.

Finally, we have the same concern here that we have with the passive-revenue reporting problem for TIF abatements. If a city or county that initiates a leaseback-abatement does not report the resulting revenue loss under Statement 77, school districts and other passive revenue-losing governments will not be able—or consider themselves obligated—to discern and disclose their revenue losses driven by the abatements, as required by Paragraph B46 of Statement 77.

We request that the GASB change its answer to Question 4.8 to clearly state that the transactions it describes are tax abatements and should be disclosed under Statement 77.

Thank you for considering our comment.

Sincerely,

(Organizational affiliations listed for identifications purposes only)

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As Prof. James C. Cobb explains in his book, *The Selling of the South: The Southern Crusade for Industrial Development, 1936-1960* (University of Illinois Press, 1993), pp.13-14, Mississippi’s then-governor Hugh Lawson White proposed the 1936 Mississippi Industrial Act enabling IRBs after much careful lawyering, because of the state constitution’s prohibition against public monies aiding private firms or individuals. Indeed, the state’s highest court had struck down a local bond deal for a garment factory a few years earlier. Drawing on New Deal rhetoric, White’s bill drafters also found a U.S. Supreme Court precedent (a decision upholding North Dakota’s system of state-sponsored banks, grain elevators and warehouses) in which the Peace Garden State had successfully argued that creating employment was a legitimate way to serve the general welfare.