February 15, 2018

Director of Research and Technical Activities  
Governmental Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

Via email to: director@gasb.org

Re: Project No. 24-16ED

Dear Director:

We write today to suggest that GASB reconsider one of its two proposed amendments to the Implementation Guide dated November 20, 2017, relating to Statement No. 77 on Tax Abatement Disclosures.

As background, the Georgia Budget and Policy Institute (GBPI) is a nonprofit organization that analyzes and reports on pressing budget and tax issues facing the state of Georgia. Each year we publish dozens of reports, blogs, fact sheets and op-eds designed to help educate Georgia lawmakers and citizens on how management of the state’s finances affect communities’ quality of life and the economy’s ability to thrive. We have written extensively on the issue of tax abatements since our founding in 2004.

We consider GASB’s Statement 77 project a great step forward in helping policymakers, citizens, businesses and other observers under the true cost of tax abatement policies on the state and local levels. Sound financial decisions—whether related to public budgeting for schools and other services or private sector choices made by investors and companies—rely on a crystal-clear understanding of an entity’s fiscal health and trajectory. Better reporting on tax abatements improves people’s ability to assess the true financial status of state and local governments and make decisions accordingly.

We believe the proposed new Question 4.8 on GASB’s implementation guide runs counter to these goals and could compromise Statement 77’s positive influence in Georgia. The question at hand specifically relates to whether situations that involve lease-bond transactions between Industry Development Authorities (IDAs) and private companies should be considered tax abatements.
Such transactions are common in Georgia and are widely understood to serve as a public tax incentive for a private company. They are perhaps best understood as constitutional work-arounds, designed to allow for tax abatements in a way that does not run afoul of the Gratuities Clause in our state’s constitution. The transactions involve a multistep process in which companies receive land or other forms of property under the guise of temporary public ownership.

Economic development agencies in Georgia typically execute the maneuver by issuing bonds, which are used to finance the construction of a facility or purchase of personal property that will be used solely by a private employer but technically owned by a public entity for a period of time. These agreements can last for decades, during which time the private operator(s) will enjoy a full or partial exemption from property taxes, similar to other publicly owned properties such as libraries and schools.

Here is how one law firm explains Georgia’s approach to property tax abatements:

“All Georgia communities can provide partial relief, and some can provide full exemptions, from ad valorem taxes for certain privately-used facilities through bond-lease transactions. This ability can be used as an incentive to induce the location of a new business or the expansion of an existing business in the community. This incentive can be provided whether or not the project qualifies for tax-exempt bond financing. An absolute waiver of ad valorem taxes would be illegal under the Georgia Constitution as well as under basic principles of uniformity of taxation and equal protection of the laws... However, if a development authority owns the property and leases it to a private business, the property is in a different class and can be taxed advantageously.”

-“Georgia Ad Valorem Tax Incentives through Bond-Lease Transactions in GA,”
Smith, Gambrell & Russell, LLP

As one example, in 2017 a local development authority in Georgia approved a “nearly $2 million tax break” for a moviemaker’s jet plane, executed through a lease-bond transaction in which the county’s development authority will own the plane for a 10-year period. According to one financial analysis, during that span “the county would abate more than $627,000 of tax revenue. The Cobb school system would forgo $1.2 million.”

-Source: “Tyler Perry seeks $1.8M tax break for a jet he wants to keep in Cobb.”

Under a fair reading of Question 4.8, these sorts of transactions would no longer be considered as tax abatements under Statement 77, even though they are widely viewed as such by Georgia decision-makers. For example, a recent analysis by the Atlanta Journal-Constitution reviewed the CAFRs from several local governments in the Metro Atlanta region who are already including these types of constitutional work-arounds in their tax abatement reporting. As the paper put it, “While government agencies in Georgia have been dispensing tax incentives for decades, they never previously showed up on government financial reports. That’s changing this year as a result of a rule by the Governmental
Accounting Standards Board, known as Statement 77, which requires the value of tax abatements to be disclosed in annual audits.”

The Atlanta newspaper also developed an infographic to help their readers better understand Georgia’s constitutional workaround for tax abatements, which is included below.

-Source: “New disclosures show Atlanta companies that profit from tax breaks,” Atlanta Journal-Constitution, September 14, 2017
In closing, we contend that work-around programs like those commonly found in Georgia consistently meet GASB’s standards for what constitutes a tax abatement. Their purpose is to lower tax liabilities for private actors in the name of economic development, and they take place through specific agreements involving long-term quid pro quos.

Thank you for your consideration of our comment and for your continued good work in this area.

Sincerely,

Wesley Tharpe, Research Director
Georgia Budget and Policy Institute (GBPI)