



January 29, 2015

Mr. David Bean
Director of Research and Technical Activities
Governmental Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

Dear Mr. Bean:

On behalf of the National Association of State Auditors, Comptrollers and Treasurers, we appreciate the opportunity to respond to the Governmental Accounting Standards Board's Exposure Draft (ED), *Tax Abatement Disclosures*. Providing a unified organizational response is always our goal, but this project has proven to have diverse views among our membership as to whether this project should be dropped or continued.

Many of the constituents providing us comments do not believe the project should continue. They do not agree with the Board's assertion that tax abatements limit a government's ability to raise resources in the future and would assert that the opposite is actually expected. They believe governments utilize tax abatements to grow the economy and revenue base. They do agree with the Board, however, that the benefits are difficult to estimate and should not be reported. But they also suggest that disclosing tax abatements without disclosing the associated benefits will mislead financial statement users and give those users a false sense that tax abatements have a negative long term impact on revenues.

Consistent among our membership, however, is that we believe this proposed standard has serious issues that need to be resolved before proceeding. Our specific comments regarding the issues that need to be carefully considered are as follows.

Paragraph 3

For clarification, we request that the last sentence in this paragraph be revised to insert "and affected by" immediately after the words "subject to."

Paragraph 4

We believe the simple tax abatement definition in this paragraph will lead to implementation and application problems because it does not fully help articulate what does and does not constitute a tax abatement considering the multitudes of arrangements that exist and actions that governments take. We believe this will lead to inconsistencies in governmental financial reports. For example, we note numerous situations in which it is not certain whether they should be considered tax abatements under the proposed standard:

- An agreement that reduces a government's tax revenues but does not reduce the tax obligation of a specific taxpayer. For example, a government may share with a developer a portion of tax or other revenues generated by a development but doesn't reduce any of the developer's tax obligation.
- An agreement that reduces an individual taxpayer's property tax obligation but does not reduce the government's total property tax revenues because the tax burden is shifted to other taxpayers through a higher tax rate. If this would be a tax abatement, what amount, if any, should be disclosed under paragraph 6(c) is uncertain.
- The government purchases property and leases it to an individual and that individual is required to pay an excise tax on the leased property that is less than the property tax the



individual would have paid if the individual owned the building. The difference may be considered a tax abatement.

- Disclosing revenue pledges of another government to partially offset taxes reduced via abatement.
- Changes in restrictions applicable to revenue subject to an agreement between a taxpayer and a government, for example, tax increment financing agreements that restrict the incremental revenue resulting from increases in a parcel's taxable value to pay for infrastructure supporting the parcel. The taxpayer might still be paying the same amounts for which he would have "otherwise been obligated," so the government would not "forego revenue" per paragraph 4. But because the restriction on the incremental revenue differs from those applicable to the abated taxes, it may need to be disclosed.
- Whether diversion of taxes meets the criteria of reduction in taxes, since the effects are similar.
- Differentiation between a unilateral promise by a government to provide a tax benefit if certain conditions are met, and mutual promises that a taxpayer will perform an action and the government will in return provide a tax benefit that necessarily cannot occur until after performance.
- Determination of whether an agreement exists could be open to substantial debate. For example, determining if negotiations leading to the passage of tax preference legislation constitute an agreement under the Board's proposal.
- Whether an application process for a tax incentive, or the lack thereof, may affect the determination of whether a tax incentive involves an agreement. If a tax incentive did not require pre-approval through an application process and taxpayers could simply perform the required activity and then claim the incentive, it is unclear if the tax incentive involved an implied agreement.

The Basis for Conclusions provide some assistance in attempting to understand what is or is not a tax abatement for purposes of these proposed disclosures. We ask that some of the Basis for Conclusions' more substantive and compelling portions be added to the Statement along with providing additional clarification to better define tax abatements that would be subject to these disclosures. In addition, while the Basis for Conclusions does explain "economic development" benefits, it is lacking in explaining what "or otherwise benefits" may constitute. We request that this be better articulated or defined.

As it relates to the term "taxpayer," we believe the term should be clarified. For example, clarifying that the definition of taxpayer is not solely an individual but also includes an entity.

Additionally, "taxpayer" could be interpreted as excluding those entities where all corporate taxes are abated for a specific time period, which could occur for an entity new to the governmental jurisdiction that will not pay taxes until after complete abatement of taxes ends, and therefore is not yet a taxpayer. Furthermore, it is unclear if or when a group of taxpayers becomes a specific taxpayer. For example, if a tax incentive program offered to businesses that hire a specified number of workers in a specified distressed economic area constitutes an agreement with a specific taxpayer even if many businesses participated.

Paragraph 5(b) and (e)

This paragraph includes the statement "unless otherwise specified by this Statement." However, we were unable to determine from the paragraph when the government would not need to distinguish between tax abatements resulting from its own agreements and those of other governments [paragraph 5(b)] or when the disclosure required by the paragraph would not be included from the time



the agreement commences to the time it expires [paragraph 5(e)]. We request that the exceptions to this proposed Statement that are referred to be specifically identified.

Paragraph 5(e)

For paragraphs 5e, B17 and B26, we believe the Board should clarify whether the government reporting such tax abatements in the note disclosures should ensure that the information presented is updated for any significant changes to prior years. For example, should remaining amounts to be abated in future years be part of the annual assessment during the financial reporting process, and thus the disclosure would be modified to reflect outstanding abatement “obligations.”

Paragraph 6

We are concerned about the disclosures required for reporting governments affected by another government’s tax abatements. Specifically, paragraph 5(d) allows aggregating disclosure information for tax abatements resulting from agreements entered into by other governments. However, while the dollar amounts required by paragraph 6(c) can be aggregated, it is unclear how the general descriptive information required by paragraph 6(a) could be aggregated for multiple programs. Further, the full breadth of disclosures required in paragraph 6 includes information that is either not relevant for the reporting government that did not enter into the agreement or may not be objectively measurable. For example, a tax abatement established by another government may affect a tax that is shared with the reporting government and it may be difficult to determine the dollar amounts for each government sharing the affected taxes. In the Basis for Conclusions, paragraphs B16 and B34 acknowledge situations where disclosures do not apply. This seems to conflict with the proposed requirements of this paragraph. We request that the Board further consider the need for requirements to disclose the effects of tax abatements in governments that did not initiate the abatement. Ultimately, the final standard should specifically state which of the disclosures in paragraph 6 do not apply or are to be nonquantitatively summarized for reporting governments affected by another government’s tax abatements.

Paragraph 6(a)(5)

The Board should reconsider requiring disclosure of tax abatement amounts that were recaptured and/or eligible for recapture for the reporting period. The Board notes that the amounts recaptured during the year would be recognized as revenues in resource flows statements and amounts eligible for recapture would be recognized as receivables in statements of financial position, but concedes that these recaptured amounts may not be separately distinguishable to financial statement users. If the Board’s purpose for this ED is to provide more transparency to citizens, then abatement amounts recaptured during the reporting period should be explicitly disclosed.

Paragraph 6(a)(6)

We believe the standard might require disclosing information subject to nondisclosure agreements. We are concerned about the position this places governments in. The Board might address it by adopting guidance similar to paragraph 20.

Paragraph 6(b)

A government could possibly have a single tax abatement agreement or enter into a single agreement during the year and therefore be required to disclose the number of agreements. We also believe that even the aggregation of only a few agreements won’t mask the identity of individual taxpayers within a given tax period. In these cases, the disclosures would allow easy identification of the taxpayer and effectively provide all the details of the abatement agreement with this taxpayer. This could damage the government’s ability to negotiate for economic development projects going forward. Moreover, several states have reported that laws regarding confidentiality of such information would be violated

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by these requirements. The government should not be required to provide information for financial statement users that would violate laws or agreements.

Paragraph 6(c)

We are uncertain about how to report the amount of reduction in tax revenues – that is, whether amounts should be reflected at government-wide level accrual basis or fund-based level modified basis, or actual cash amounts. We believe that the standard should explicitly state how these amounts should be reported for comparability among governments and reduced likelihood of misapplication of the requirement. We also believe that any differences between how a government records these amounts and what the Board ultimately decides could result in use of estimates, which can increase the complexity in applying this requirement.

General Comments

- We believe that an illustration/example for a state government and/or a discrete component unit should be included (the ED has examples for a small local government and large county government, but no state government).
- For some states, the fiscal year end does not coincide with that of the tax year associated with the state's tax abatement programs. Data associated with various programs is often required to be filed for a calendar year. It is unclear how to report tax abatement information when calendar years do not coincide.
- We are concerned by the potential cost, in terms of time and resources, of accumulating information from the reporting government and the other governments affecting the reporting government and measuring some of the required information versus the benefits derived by reporting tax abatement information on such a narrow scope.
- Furthermore, from an audit perspective, we are concerned that these disclosures may be difficult to verify. For example, it may be difficult for auditors to evaluate and validate the completeness of tax abatement information received from governments.
- In some states, the proposed disclosure may violate taxpayer confidentiality laws and regulations. Moreover, when tax abatement agreements are confidential, the details of those agreements would not be readily available to other governments affected by the agreements or to auditors.

We appreciate the opportunity to provide our comments. Should you have any questions or need additional information regarding our response, please contact Kim O'Ryan of NASACT at (859) 276-1147 or me at (217) 782-3536.

Sincerely,

William G. Holland
President, NASACT
Auditor General, Illinois