

January 29, 2015

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

Re: Exposure Draft on Tax Abatement Disclosures

Project No. Project No. 19-20E

Dear Mr. Bean:

These comments are in response to the Exposure Draft on Tax Abatement Disclosure released by the Governmental Accounting Standards Board (“GASB”) on October 20, 2014.

The undersigned organizations believe that in a civil society, taxpayers and public officials need reliable and timely spending and revenue data in order to ensure that public services are adequately funded, supporting financially viable and prosperous communities.

About us:

Massachusetts Public Interest Research Group (MASSPIRG) is a statewide non-profit, non-partisan member-supported public interest organization that has since 1972 been a voice for consumers, countering the influence of big banks, insurers, chemical manufacturers and other powerful special interests. MASSPIRG has long advocated for greater transparency and other safeguards in state economic development tax expenditures. Deirdre Cummings, MASSPIRG’s legislative director, has worked at MASSPIRG since 1986 on issues of consumer rights, health care reforms and government accountability.

Using an evidence-based approach, New Mexico Voices for Children works with local, state, and national officials to shape and implement public policies that are supportive of children and working families. Its Executive Director, Veronica Garcia, Ed.D., was the state’s first Cabinet Secretary of Education where her work earned the National Governor’s Association Award for Excellence in State Government.

In New York, the Fiscal Policy Institute (FPI) for over 20 years has utilized government tax and budget data and advocated for policies that improve the lives of working New Yorkers. FPI works to increase public and governmental

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understanding of issues related to the fairness of New York's tax system and the stability and adequacy of state and local public services. FPI publishes an annual analysis of the state's fiscal situation and tax system, a biennial report on the state of working New York, and special reports and articles on a variety of related subjects. In addition, FPI maintains an active program of briefings and other public education activities.

The Georgia Budget and Policy Institute (GBPI) is a nonpartisan, 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 educate Georgia lawmakers and citizens about how the state's financial choices affect policies ranging from education to health care to public safety. Since our founding in 2004 we have written extensively about Georgia's use of tax abatements for economic development purposes; for example, see our 2014 report "Overview: 2015 Fiscal Year Budget for Business Subsidies."

Based upon our experience, we are confident that the standards for tax abatement disclosure put forth by the GASB will better reveal the billions of dollars in economic development tax abatements spent each year in our states and in others. We applaud the board's effort to bring about sound accounting of tax abatements.

However, we write to address a passage of the Exposure Draft, at Paragraph B8, in which GASB apparently would exclude what are called in economic development "performance-based incentives."¹ These tax abatement-based economic development expenditures usually involve a company applying and being certified eligible to claim a tax credit after performing a specified activity (such as hiring or investing). It is our observation that they have become more common because they reduce government risk. Indeed, some of our states have had decades of deals failing completely or falling short, but the political reality is that public officials often find it difficult to recapture funds even if a clawback is in force.

Among these performance-based incentive programs are state tax credits to benefit film and media production, apparently a concern for the GASB board as they were cited in the Exposure Draft.²

We believe that performance-based tax expenditures meet your definitional intentions: they are company-specific agreements in which a government agrees to receive less revenue in exchange for an economic development benefit performed by the taxpayer. The fact that the receipt of the tax abatement is delayed until after the eligible activity is performed is to us immaterial. Indeed, your Exposure Draft acknowledges that sales and income tax-based abatements are delayed, since profits and sales occur after projects are qualified.

We are concerned that because of the exclusionary language in section B8, approximately \$1.5 billion in tax credits allocated in about 40 states each year to the film and media industries alone would not be covered in your final recommendations.³

Many other major state economic development tax abatement programs are similarly structured and would fall outside the standard's coverage. We urge you to ensure that all "performance-based" tax abatement programs are included in the final statement.

We hasten to add: the comments some of us make here are neither a criticism of nor an endorsement of film and media production tax credits. We are simply citing them as examples within a category of tax abatements that all deserve to be disclosed.

In the past dozen years officials and budget watchdogs across the United States have exposed the significant increase in tax expenditures for the film, television, and post-production industry making them a prime target for additional disclosure.⁴

For example:

In Massachusetts the Film and Digital Media Production Tax Credit cost taxpayers \$72.5 million in Fiscal Year 2012 and has become a prime example of an out-of-control program, eating up nearly half of all the targeted economic development state tax credits distributed that year. An audit determined the program was costing \$108,000 per job it created in Massachusetts.

Dwarfing other states' spending on film and media, New York State allocates approximately \$420 million in film production tax credits annually. New York's film credits are 30 percent of qualifying production costs, with an additional 10 percent for production in certain parts of the state. Since the credits are refundable, they are essentially a \$420 million annual appropriation to the industry, but which now doesn't appear in the budget as such. This is a large single-purpose state budget item even in the context of New York's \$94 billion operating budget. A recent study by two highly-regard economists found that in 2008, when the credit was much less than at present, 31 film production credit recipients received credits that exceeded the combined tax liability of the more than 1,600 firms in the industry for nine out of the 10 previous years.⁵

In fact, last year the New York State Tax Reform and Fairness Commission recommended that "the credit should be scaled back because it does not appear to pay for itself in its current form".⁶ Unfortunately, as the program has grown,

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transparency has not. Despite efforts in Albany, the public knows little about this expensive tax credit.⁷

Georgia's income tax credit for film production dates to 2008, when state lawmakers enacted one of the most generous film programs in the country. The tax credit reimburses in-state projects for up to 30 percent of total costs, while also allowing recipients to sell the credit to other Georgia taxpayers and/or carry forward the credits to future years. Provided to companies after a thorough application process involving two different state agencies, the credit has grown to an estimated yearly cost of \$163 million as of FY 2015 – more than double the size of Georgia's next largest business tax credit. Failing to adequately account for the film tax credit and similar performance-based programs would significantly undercount the costs of Georgia tax abatements.

As an example of other kinds of performance-based abatements, in New Mexico, the Investment Tax Credit has shown remarkable volatility ranging from about \$1 million in fiscal year 2008 to more than \$10 million in fiscal year 2013. While these are not “budget busting” amounts, they make revenue estimating more difficult. The job creation requirements in state law are admirable but the lack of clear reporting requirements limit the ability of the public and their elected representatives to make a reasoned judgment on whether this tax abatement is worth the opportunity cost.

With the financial future of our and other states in mind, we applaud the Board's commitment to more transparent tax abatement accounting. However, for our officials and colleagues in public policy to develop effective programs that benefit our states, an honest and thorough accounting of performance-based incentives is imperative and we urge you amend the scope of the final standard on Tax Abatement Disclosures to clearly include performance-based incentive programs.

Sincerely,



Deirdre Cummings
Legislative Director
Massachusetts Public Interest Research Group, MASSPIRG



Ron Deutsch
Executive Director
Fiscal Policy Institute

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Executive Director
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Alan Essig
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¹ “.... nevertheless, excluded from the scope of this Statement because the government does not commit to abate taxes until *after* the taxpayer has already performed the activity for which the government is providing the tax abatement.”

² Page 2, section 5 letter C.

³ <http://www.goodjobsfirst.org/corporate-subsidy-watch/film-production>

⁴ See the National Conference of State Legislators review of state programs released March 28, 2014: www.ncsl.org/research/fiscal-policy/state-film-production-incentives-and-programs.aspx

⁵ Marilyn M. Rubin and Donald J. Boyd, *New York State Business Tax Credits: Analysis and Evaluation*, A Report Prepared for the New York State Tax Reform and Fairness Commission, November 2013, p. 81.

⁶ New York State Tax Reform and Fairness Commission, November 2013, Peter J. Soloman and Carl McCall, co-chairs, <http://www.governor.ny.gov/sites/governor.ny.gov/files/archive/assets/documents/greenislandandreportanddependencies.pdf>

⁷ Josh Spector. “Tax Breaks for Movies in New York Remain A Mystery.” *Poughkeepsie Journal*, July 12, 2014
<http://www.poughkeepsiejournal.com/story/news/local/new-york/2014/07/12/tax-breaks-movies-ny-remain-mysterious/12579701/>