

Comments to GASB Project No. 19-20E Tax Abatement Disclosures due 1.30.2015

YOU STATE:

For financial reporting purposes, this proposed Statement defines a tax abatement as resulting from an agreement between a government and a taxpayer in which the government promises to forgo tax revenues and the taxpayer promises to subsequently take a specific action that contributes to economic development or otherwise benefits the government or its citizens.

COMMENTS:

There needs to be an expansion of this definition as the contractual agreements may extend to non-profit corporations as COMMUNITY BENEFITS on behalf of the targeted population or geographic area, not specifically economic development. RIGHTS OF ENTRY (to government property-a contract) may be involved and payments to non-profit corporations in lieu of payments to the municipality.

YOU STATE:

This proposed Statement would require disclosures of tax abatement information to distinguish between a reporting government's own tax abatement agreements and those entered into by other governments that reduce the reporting government's tax revenues.

COMMENTS:

Other governments need to include Joint Powers Authority JPA and Memorandums of Understanding MOU. In the State of California, Joint Powers Authority are legislated, but Memorandums of Understanding are not, though they encompass governing (body) perimeters.

YOU STATE:

As a result, users would be better equipped to understand
(1) how tax abatements affect the government's future ability to raise resources and meet its financial obligations and
(2) the impact those abatements have on the government's financial position and economic condition.

COMMENTS:

To understand the financial condition, the fiscal impacts may affect the General Fund or Special Funds. The financial obligations need to be identified as to the types of funding

diverted. The exposure to unfunded liabilities could be one-time (Special Funds) or continuing (General Funds). TOT Transient Occupancy Tax, a hotel tax, is abated under various Developers Agreements, but that is a Special Fund with spending restrictions.

YOU STATE:

General Disclosure Principles

5. c. Disclosure information for tax abatements resulting from agreements entered into by the reporting government should be organized by each major tax abatement program, such as an economic development program or a television and film production incentive program.

d. Disclosure information for tax abatements resulting from agreements entered into by other governments may be aggregated as if for a single program

COMMENTS:

Though the disclosure may be organized by major tax abatement, each taxpayer affected should be disclosed, not the aggregate.

Aggregate works only when the terms are consistent over all transactions. We find that circumstance to be rare.

YOU STATE:

Notes to the Financial Statements

6. a. General descriptive information, including

(5) Provisions for recapturing abated taxes, if any, including the conditions under which abated taxes become eligible for recapture

COMMENTS:

Since abatements may run with the land title, recapture might be extended to more accurate disclose when the abatement ceases. Recapture may never occur, but that abatement may extend with the property title, as in TFAR Transfer Floor Area Ratio for increased height.

YOU STATE:

Revenues Reduced by Tax Abatements

B5. Tax abatements are primarily viewed in the context of reducing tax revenues. The Board is aware of programs similar in many respects to tax abatements that reduce revenues other than taxes.

COMMENTS:

Tax revenues should be extended to include fee revenues. In agreements, fees are diverted to non-profit corporations in lieu of direct payment to the municipality. This reduces any operational revenue, though it is not a direct tax, yet may use tax revenue to compensate for the loss of fee revenue.

YOU STATE:

Existence of an Agreement

B6 Tax abatement agreements consist of at least two components—a promise by the government to reduce the taxpayer's taxes and a promise from the taxpayer to subsequently perform a certain beneficial action.

COMMENTS:

Promise from the taxpayer may be in the form of a payment to a non-profit corporation. This may not necessarily be a beneficial action as the terms are not voluntary but contractual.

YOU STATE:

Other Features Considered

B9. A variety of labels are used to identify tax reduction programs—exemptions, deductions, credits, rebates, and abatements foremost among them. These labels are used interchangeably to describe similar transactions; very different transactions also may be described using the same label.

COMMENTS:

You may wish to consider TAX INCREMENT FINANCING or a capture of tax revenue specifically assigned to a district. SB 628 was passed in California to replace the Redevelopment Agencies with ENHANCED FINANCING INFRASTRUCTURE DISTRICTS EIFDs which capture TIF.

YOU STATE:

Definition of a Tax Abatement

B12. Based on the aforementioned considerations, the Board defines a tax abatement (for financial reporting purposes) as resulting from an agreement between one or more governmental entities and a taxpayer in which
(a) one or more governmental entities promise to forgo revenues from taxes for which the taxpayer otherwise would have been obligated and
(b) the taxpayer promises to take a specific action after the agreement has been entered into that contributes to economic development or otherwise benefits the governments or the citizens of those governments.

The scope of this Statement is limited to transactions that meet this definition.

COMMENTS:

The agreement definition should extend that the taxpayer promises to take a specific action as directed by the government entity. There may not necessarily be benefit to the governments or the citizens of those governments.

YOU STATE:

Level of Disclosure Detail

B15. Notes to the financial statements should provide a sufficient amount of essential information to the users of financial statements without presenting so much detail that the understandability of the information (and, thereby, its usefulness) is diminished.

Whereas a government could individually disclose information about, for example, 5 or 10 tax abatement agreements, individual disclosure of 100 agreements might be overwhelming

COMMENTS:

All tax abatement agreements should be disclosed as to the recipient. One size does not fill all, no matter what the volume, when the terms differ from tax abatement recipient to make the aggregate immaterial, not overwhelming.

YOU STATE:

Name of the Recipient

B24. However, the Board does not believe that disclosure of a tax abatement recipient's name fulfills any of the objectives of financial reporting.

Furthermore, disclosure of the name of the recipient would necessitate individual disclosure of all tax abatement agreements, which may not be practical and may adversely affect the usefulness of the disclosure.

Therefore, the Board concluded that the name of the recipient should not be required as a disclosure.

COMMENTS:

We disagree. Disclosure may reveal a favorable granting of tax abatements to corporations, developers and interests that do not vote for the elected officials yet have influence.

YOU STATE:

Amount of Taxes Abated

B26. The Board also considered requiring disclosure of the amount remaining to be abated in future years under existing tax abatement agreements.

This information would be particularly relevant to assessments of economic condition, which is concerned in part with a government's ability to meet its financial obligations as they come due. However, the Board is concerned that developing this information would require specific measurement guidance, which is outside the scope of this project.

Therefore, the Board decided not to require disclosure of future amounts to be abated under existing agreements.

COMMENTS:

We disagree. The point is to show decline in revenue. This is important in decisions at the ballot box, like bonds and tax increases.

YOU STATE:

Other Commitments Made by a Government

B32. As previously explained, this Statement requires that tax abatement disclosures continue until a tax abatement agreement has ended. However, the Board does not believe that disclosures of a government's other commitments continue to be useful after a government has fulfilled its commitment.

Therefore, this Statement makes an exception to the general disclosure principle and specifies that disclosure of other commitments made by a government in a tax abatement agreement should cease after the terms of the commitment have been met.

COMMENTS:

Terms of the commitment could extend to property rights in perpetuity. Once that is recorded, it should be not determined to be fulfilled. In the case of Air Rights, two properties are affected-the donor and the receiver. Future property tax revenues are affected in perpetuity.

YOU STATE:

Commitments Made by a Tax Abatement Recipient

B35. A natural extension of the disclosure of recipient commitments is disclosure of recipient compliance with those commitments.

The Board observes that whether a tax abatement recipient fulfills the promise it made in a tax abatement agreement is a matter of compliance by the recipient, not by the reporting government.

As a result, this Statement does not require disclosure of information about recipient compliance.

COMMENTS:

We disagree. Commitments may not be satisfied which makes the contractual agreement bogus and action should be taken. That should be disclosed and fraud avoided. Municipalities issue non-taxable bonds that could be affected when commitments are not met.

There are limitations on borrowing based on revenue per State law.

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