



January 30, 2015

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

SUBMITTED ELECTRONICALLY [director@gasb.org]

RE: Proposed Statement on Tax Abatement Disclosures, Project No. 19-20E

Dear Mr. Bean:

On behalf of Common Cause's 35 state organizations and our 400,000 members and supporters, thank you for the opportunity to comment on GASB's Exposure Draft of a proposed Statement of Tax Abatement Disclosures. Common Cause is a national nonpartisan advocacy organization, founded in 1970 to enable ordinary citizens to make their voices heard in the political process. Dedicated to open, honest and accountable government at all levels, Common Cause works to improve transparency, strengthen governmental ethics laws, and reduce the undue influence of money in our politics and policy priorities.

Common Cause congratulates the GASB on taking the initiative to strengthen state and municipal accounting systems in order to accurately reflect taxpayer costs associated with public-private economic development partnerships, and urges the Board to resist the inevitable push-back to abandon or weaken your proposed standards. We are pleased that you have solicited public input on your Exposure Draft and strongly support its adoption, with some important strengthening amendments outlined below. To be truly effective, it is imperative that the standards promulgated be robust, far-sighted and inclusive of the ever-growing variety and creativity of tax expenditure schemes.

We cannot stress enough how important full transparency is to protecting the integrity of our democratic institutions, and to enabling private investors, policymakers and voters alike to make informed and wise decisions. The value of disclosure is widely recognized and embraced in the realm of official meetings, lobbying and campaign finance, yet is notably lacking when it comes to the costs and benefits of taxpayer economic development abatements. In many states, a legislator must report the value of being treated to dinner by a lobbyist, while the costs of decisions and deals directing millions of tax dollars over multiple years remain shrouded from public view.

State and federal courts have also long recognized the critical importance of transparency in American democracy. Justice Louis Brandeis perhaps said it best – “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” More recently, the U.S. Supreme Court reaffirmed that value in *Citizens United v. FEC*, stating that “prompt disclosure of [political] expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable,” and that “transparency enables the electorate to make informed decisions.”¹

Despite the integrity of the vast majority of our public servants, money, power and secrecy are a volatile mix. More than 100 elected officials have been caught up in political scandals just since 2010, the vast majority of which involved improper financial transactions of one kind or another.² That explains why the FBI has made investigating public corruption a priority, noting that

Public corruption poses a fundamental threat to our national security and way of life. It impacts everything from how well our borders are secured and our neighborhoods protected...to verdicts handed down in courts...to the quality of our roads, schools, and other government services. And it takes a significant toll on our pocketbooks, wasting billions in tax dollars every year.³

The higher the financial stakes in public decisions, the greater the need for complete information and transparency. Economic and community development decisions shift an estimated \$70 billion annually in state and local tax revenues.⁴ With so much money in play, conflicts of interest, corruption and the appearance of corruption – and plain old inefficiency – are bound to thrive so long as critical information is kept in the hands of a privileged few.

Making information about the costs and benefits of economic development available and easily accessible will go a long way to curbing corruption and promoting sound public decisions that promote the public interest over private gain. As Chief Justice John Roberts recently explained in *McCutcheon v. FEC*, “Today, given the Internet, disclosure offers much more robust protections against corruption. . . . Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not [previously] possible”⁵ The GASB’s proposed new standards for disclosure of information about tax abatements can provide an important tool for promoting fiscal soundness and public integrity, especially if strengthened to be more comprehensive and make the information more accessible in the ways outlined below.

¹ See *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

² See http://en.wikipedia.org/wiki/List_of_state_and_local_political_scandals_in_the_United_States.

³ See <http://www.fbi.gov/about-us/investigate/corruption>.

⁴ Kenneth Thomas, *Investment Incentives and the Global Competition for Capital* (Palgrave Macmillan, 2010).

⁵ *McCutcheon v. FEC*, 134 S.Ct. 1434, 1460 (2014).

Recommendations

In light of pervasive and creative changes in how tax incentives are engineered, GASB's draft definition of "tax abatement" is under-inclusive and, as written, will enable the concealment of critical information such as revenue streams, recipient identity, and future-year projections under a variety of circumstances. GASB defines a tax abatement as "a reduction of or exemption from taxes, offered by a government to a specific taxpayer, typically for the purpose of spurring economic development [or other public benefits]." Additionally, the agreement between the recipient and the government "precedes the reduction of taxes and the fulfillment of the taxpayer's promise to act."

Common Cause is concerned that the current definition will do an inadequate job of capturing costly incentive programs, including:

- 1. Tax Increment Financing (TIF):** TIF is a mechanism in which a development project is financed by the capture of net new or incremental taxes that are projected as a result of the initial public and private investment. Since TIF's focus is on increased projected value and tax revenue, rather than an outright reduction, it apparently escapes GASB coverage. This is especially problematic based on the scope and prevalence of TIF projects.
- 2. Personal Income Tax Diversions (PIT):** PITs allow a company to receive a share of its employees' state personal income tax. However, because this money stream originates from an employee's tax obligations and not directly from the employer, the revenue is not covered by the proposed definition and will escape disclosure.
- 3. Sales Tax Diversions:** Sales tax diversions allow retail companies to hold on to a share of sales taxes paid by consumers in order to subsidize private construction or equip their facility. This diversion escapes GASB's proposed reach because the consumer is the taxpayer, rather than the retailer.
- 4. Performance-Based Incentives:** This is a credit claimed upon the completion of an eligible activity. Such a tax reduction or diversion surely satisfies the scope of a "tax abatement," an agreement between the government and a taxpayer tied to economic development. However, any ambiguity regarding whether such diversions are covered may encourage an incentive to hide revenue streams.
- 5. Future-Year Disclosures:** The tax-abatement standard should include future-year disclosures, since tax expenditures have long-term fiscal implications on local and state budgets. Without proper disclosure of long-term costs, elected officials may make politically expedient decisions that pass on blind costs to future officials and taxpayers.
- 6. Recipient-Specific Disclosure:** Last but not least, recipient-specific disclosure is critical to informing citizens and investors of the true costs, benefits and risks involved in tax abatements.

In order to address these problematic areas, Common Cause supports the revised definition of a tax abatement proposed by Good Jobs First in its [comments](#), as well as their suggestion that the new standard specifically (but not exclusively) list programs that will be covered.

Effective disclosure of these tax diversions requires the development of standardized, publicly accessible, user-friendly and functional databases in an electronic format. Toward that end, data quality must be comprehensible, manageable, and provide a comparative functionality across jurisdictions. As set forth above, the data set should inform the user of company-specific information; future-year costs; and the category or type of reduction or diversion stream. The data set should allow for a general functionality to sort and extract pertinent information.

Heightened Risks Posed by Deregulation of Political Spending

The Supreme Court's deregulation of political spending – in a series of controversial decisions that began in 2007 – has unleashed an unprecedented, and increasingly undisclosed, stream of cash aimed at influencing local, state and federal elections. Aside from the well-documented problems this creates for the integrity of our elections, it also poses a heightened risk of pay-to-play transactions and conflicts of interest that, left unaddressed, threatens the integrity of economic development policy decisions and the fiscal stability of state and local governments.

With longstanding bans on corporate and union political spending lifted, those seeking to gain from tax breaks and subsidies have become increasingly significant political spenders. Of the top ten states providing economic development tax abatements, nearly half (40 percent) have no or minimal campaign finance contribution limits. And, with the recent changes wrought by the Supreme Court, economic interests seeking favorable tax treatment are now able to spend unlimited and undisclosed amounts for independent expenditures and electioneering, either directly or by channeling funds through a proliferation of dark-money nonprofits, such as the U.S. Chamber of Commerce or Americans for Prosperity.

Conclusion

The GASB's proposed standard for disclosure of tax abatements, if strengthened in the ways we have outlined, would go a long way toward shining a light on high-stakes tax policy decisions, thereby reducing the risk of inefficient use of public resources, unfair tax shifts, undermining of vital public services, and artificial fiscal crises driven by short-term private gain.

Comprehensive and timely disclosure of information is as crucial for tax abatements as it is for campaign finance, lobbying and other transactions involving public servants and resources. We hope the GASB will take our comments into consideration as you take the laudable step of adopting your important new transparency standards. Providing ready access to information about tax expenditures will enable policy makers to make better choices, give investors reliable information about fiscal stability, and increase public scrutiny over decisions that will affect our communities for many years to come.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Miles Rapoport". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Miles Rapoport
President