GASB 77: Tax Abatement Disclosure and Required Governmental Considerations

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Agenda

- Overview of GASB 77
- Disclosure requirements
- Reporting considerations
- Q&A

Overview of GASB 77

Tax abatement disclosures

- **What?** The Governmental Accounting Standards Board (GASB) issued Statement 77, which requires disclosures about a government's tax abatement agreements
- **Why?** Information about revenues that governments forgo is essential to understanding financial position and economic condition, interperiod equity, sources and uses of financial resources, and compliance with finance related legal or contractual requirements
- **When?** Effective for periods beginning after December 15, 2015*

* Applies to notes to the financial statements for all periods presented

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Statement No. 1, *Objectives of Financial Reporting*

- **Four objectives that are relevant to tax abatements:**

a) Determining whether current-year revenues were sufficient to pay for current-year services (interperiod equity)

b) Compliance with finance-related legal and contractual obligations

c) Providing information about sources and uses of financial resources, and

d) Providing information about the financial position and economic condition of a governmental entity

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What is a "tax abatement?"

A reduction in tax revenues that results from an **agreement** between one or more governments and an individual or entity in which (a) one or more governments **promise to forgo tax revenues** to which they are otherwise entitled ***and*** (b) the individual or entity **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 [emphasis added]

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Statement 77 scope

Applicable to transactions that include three key characteristics:

1. **Purpose**
   - Utilized as part of economic development programs OR
   - Programs that benefit a government or its citizens
2. **Revenues are reduced**
   - Non-exchange transaction: lacks an equal exchange of value between willing parties
3. **Existence of an agreement**
   - A promise by the government to reduce the individual's or entity's taxes and a promise from the individual or entity to subsequently perform a certain beneficial action

Attributes of a tax abatement

- Tax abatement vs. general tax expenditure programs
  - Tax expenditure programs may include exemptions, deductions, credits, rebates, loans, transfers of capital assets
  - Less emphasis on overall tax policy
  - More emphasis on individual decisions to accept less revenue for something of value from an individual or entity
- Substance over form determination
- May or may not include tax increment financings, payments in lieu of taxes, or as-of-right agreements

The primary focus is on the amount of revenue not collected as a result of the tax abatement agreements

Disclosure requirements

Agreements by governments

In the notes to financial statements, governments should disclose the following information related to tax abatement agreements they enter into:

- Brief descriptive information, including:
  - Names and purposes of the tax abatement programs
  - Specific taxes being abated
  - Authority under which tax abatement agreements are entered into
  - Criteria that make a recipient eligible to receive a tax abatement
  - Mechanism by which the taxes are abated
  - Provisions for recapturing abated taxes
  - Types of commitments made by the recipients of the tax abatements

Agreements by governments (continued)

- The gross dollar amount, on an accrual basis, by which the government's tax revenues were reduced during the reporting period as a result of tax abatement agreements
- If amounts are received or receivable from other governments in association with the foregone tax revenue:
  - The names of the governments
  - The authority under which the amounts were or will be paid
  - The dollar amount received or receivable from other governments

Agreements by governments (continued)

- If the government made commitments other than to reduce taxes as part of a tax abatement agreement, a description of:
  - The types of commitments made
  - The most significant individual commitments made
  - Information about a commitment other than to reduce taxes should be disclosed until the government has fulfilled the commitment
- For abatement agreements disclosed individually, a brief description of the quantitative threshold the government used to determine which agreements to disclose individually

Agreements by other governments

The disclosure requirements for tax abatement agreements **entered into by other governments** and that reduce the reporting government's tax revenue:

- Essentially the same requirements as Agreements by Governments
- However, the brief descriptive information regarding the incentive abatement programs is limited to:
  - The names of the governments entering into the tax abatement agreement
  - The specific taxes being abated

General disclosure principles

- Disclosures should distinguish between tax abatements resulting from:
  a) Agreements that are entered into by the reporting government, and
  b) Agreements that are entered into by other governments and that reduce the reporting government's tax revenues
- Tax abatement disclosure information may be provided individually or in the aggregate
- Should be organized by each major tax abatement program
- Disclosure should begin in the period in which a tax abatement agreement is entered into and continue until the tax abatement agreement expires
  - If a government made commitments other than to reduce taxes, disclosure should continue until the government has fulfilled the commitment

What is not required for disclosure?

- Information that is legally prohibited from disclosure
  - However, must describe the general nature of information omitted and the source of the legal prohibition
- Names of tax abatement recipients
- The number of tax abatement agreements entered into and in effect at the end of the reporting period
- Future amounts to be abated under existing agreements
- Duration of tax abatements
- Recipient compliance with commitments
- Amount of abated taxes recaptured during the reporting period or eligible for recapture as of the end of the reporting period

Reporting considerations

Implementation and compliance challenges

- Computation of the tax revenue forgone
- Differing level of record keeping and/or incomplete records due to disparate locations
- Coordination of required information
- Level of detail in disclosure and initial presentation
- Computation of tax revenue forgone for other government units
- Subjective computations

Questions from the audience

Q & A

Biography – Joe Huddleston

Joe Huddleston is an Executive Director for EY Indirect Tax in the National Tax office in Washington, where he regularly consults with some of the largest national and multi-national corporations. Prior to joining EY Joe served for ten years as Executive Director of the Multistate Tax Commission. In 2011 he was named by Tax Analysts as one of the top 10 individuals who influence state tax policy and practice, and in 2012 received the 11th annual award for Outstanding Achievement in State and Local Taxation from New York University. In 2015 he received from Bloomberg BNA the Franklin C. Latcham award for Distinguished Service in State and Local Taxation.

He also worked as vice president of tax solutions for Liquid Engines Inc., a tax software firm focused on advanced state income tax planning models and methodologies for multi-state and multi-national companies. Huddleston joined Liquid Engines from a national accounting and management consulting firm, where he was a partner and nation director for state and local tax.

He served as Commissioner of the Tennessee Department of Revenue from 1987 to 1995. Huddleston was responsible for development of a multi- million dollar integrated tax system (RITS) for the state of Tennessee. Additionally he served on the State Board of Equalization for six years and presiding officer for three years. During his tenure as Commissioner, he was president of both the Federation of Tax Administrators and the Southeast Association of Tax Administrators.

Immediately after leaving the Tennessee Department of Revenue, Huddleston became chief financial officer for the Metropolitan Government of Nashville and Davidson County. In that position, he was responsible all of the city's financial affairs, including more than $1 billion in annual expenditures.

Huddleston launched his legal career after stints as an Internal Revenue Service revenue officer in Chattanooga, TN., and Columbia, S.C. He entered private practice in Nashville before working from 1984-1987 as an Asst. District Attorney General in Cookeville, TN. He is a founding trustee of both the Paul Hartman Tax Forum at Vanderbilt University Law School in Nashville, Tennessee and the New England State and Local Tax Forum in Boston.

A graduate of the University of South Carolina, he received his J.D. from the Nashville School of Law and was awarded his Doctor of Laws by the University of South Carolina in 2009. Huddleston is a member of both the Tennessee and American Bar Associations and their respective tax sections.

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