



Seyfarth Shaw LLP

THE ABATEMENT STATEMENT

NEW RULES FOR ABATEMENT INCENTIVES

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August 2015

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WHAT HAPPENED?



- AS OF AUGUST 14, 2015, 7 NON-ELECTED MEMBERS OF A COMPONENT OF A PRIVATE SECTOR, NONPROFIT ORGANIZATION, THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD (“**GASB**”), UNILATERALLY TOOK A CONTROVERSIAL ACTION THAT WILL FORCE CHANGES IN ECONOMIC DEVELOPMENT ACROSS THE NATION.
- GASB ON THAT DATE ADOPTED ITS STATEMENT NO. 77- TAX ABATEMENT DISCLOSURES (THE “**ABATEMENT STATEMENT**”).
- THE ABATEMENT STATEMENT IS EFFECTIVE FOR REPORTING PERIODS BEGINNING AFTER DECEMBER 15, 2015, BUT GASB ENCOURAGES EARLIER APPLICATION OF IT.

THE BASIC RULES



ACTION REQUIRED

- THE ABATEMENT STATEMENT REQUIRES DISCLOSURE IN THE NOTES TO THEIR FINANCIAL STATEMENTS OF TAX ABATEMENT INFORMATION ABOUT-
- A REPORTING GOVERNMENT'S OWN TAX ABATEMENT AGREEMENTS, AND
- THOSE THAT ARE ENTERED INTO BY OTHER GOVERNMENTS AND THAT REDUCE THE REPORTING GOVERNMENT'S TAX REVENUES.
- IT APPLIES NOT JUST TO PROPERTY TAX ABATEMENTS, BUT ALSO TO ABATEMENTS OF OTHER TAXES.



WHAT HAS TO BE DISCLOSED

IN ADDITION TO 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, AMONG THE INFORMATION THAT HAS TO BE DISCLOSED IS THE FOLLOWING-

- NAMES, IF APPLICABLE, AND PURPOSES OF THE TAX ABATEMENT PROGRAMS
- THE SPECIFIC TAXES BEING ABATED
- THE AUTHORITY UNDER WHICH TAX ABATEMENT AGREEMENTS ARE ENTERED INTO
- THE CRITERIA THAT MAKE A RECIPIENT ELIGIBLE TO RECEIVE A TAX ABATEMENT



WHAT HAS TO BE DISCLOSED

- THE MECHANISM BY WHICH THE TAXES ARE ABATED, INCLUDING: (A) HOW THE TAX ABATEMENT RECIPIENT'S TAXES ARE REDUCED, SUCH AS THROUGH A REDUCTION OF ASSESSED VALUE, (B) HOW THE AMOUNT OF THE TAX ABATEMENT IS DETERMINED, SUCH AS A SPECIFIC DOLLAR AMOUNT OR A SPECIFIC PERCENTAGE OF TAXES OWED
- PROVISIONS FOR RECAPTURING ABATED TAXES, IF ANY, INCLUDING THE CONDITIONS UNDER WHICH ABATED TAXES BECOME ELIGIBLE FOR RECAPTURE
- THE TYPES OF COMMITMENTS MADE BY THE RECIPIENTS OF THE TAX ABATEMENTS

NOTE- THE ABOVE DRAWS FROM THE HIGHER LEVEL OF DISCLOSURE POTENTIALLY APPLICABLE UNDER THE ABATEMENT STATEMENT.



DEVELOPMENT AUTHORITIES, COMPONENTS, AND OTHER ISSUES

- IS A LOCAL AUTHORITY LIKE A DEVELOPMENT AUTHORITY SUBJECT TO THE NEW ABATEMENT DISCLOSURE REQUIREMENT?
- GASB SAYS THAT ITS RULES APPLY “TO FINANCIAL REPORTS OF ALL STATE AND LOCAL GOVERNMENTAL ENTITIES, INCLUDING GENERAL PURPOSE GOVERNMENTS; PUBLIC BENEFIT CORPORATIONS AND AUTHORITIES; PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AND PUBLIC UTILITIES, HOSPITALS AND OTHER HEALTHCARE PROVIDERS, AND COLLEGES AND UNIVERSITIES.”



DEVELOPMENT AUTHORITIES, COMPONENTS, AND OTHER ISSUES

- A DEVELOPMENT AUTHORITY IS POTENTIALLY A COMPONENT UNIT OF ITS PARENT GOVERNMENT.
- "If your authority's financial activities are included in the audited financial statements of a local government jurisdiction, the implication is that your authority is a component unit of that government, and that this local government jurisdiction is the primary government" From DCA's definitions for reports of registered authorities finances.
- IT ALSO LOOKS LIKE A DEVELOPMENT AUTHORITY IS A "GOVERNMENT" FOR GASB PURPOSES.
 - FROM THE FASB/GASB DEFINITION OF GOVERNMENT- "Public corporations and bodies corporate and politic are governmental organizations...." July 1996 statement.



THE GEORGIA WAY

- THE ABATEMENT STATEMENT IS POTENTIALLY VERY BURDENSOME IN A STATE LIKE GEORGIA, IN WHICH A BOND-FINANCED SALE-LEASEBACK TRANSACTION INVOLVING A DEVELOPMENT AUTHORITY (BONDS FOR TITLE) IS THE PROPERTY TAX INCENTIVE MECHANISM.
- HOWEVER, MOST GEORGIA ECONOMIC DEVELOPMENT TRANSACTIONS HAVE A MEMORANDUM OF UNDERSTANDING, OR MOU.



THE GEORGIA WAY

- THE MOU IS BETWEEN THE DEVELOPMENT AUTHORITY AND THE COMPANY.
- BUT THE LOCAL GOVERNMENT IS OFTEN A PARTY TO (OR AT LEAST ACKNOWLEDGES) THE MOU.
- THUS, THE MOU MIGHT BE CONSIDERED THE "ABATEMENT AGREEMENT" THAT TRIGGERS THE ABATEMENT STATEMENT.



THE GEORGIA WAY

- WITHOUT THE MOU, THE LOCAL GOVERNMENT WOULD HAVE A HARD TIME OBTAINING THE INFORMATION IT NEEDED TO COMPLY WITH THE ABATEMENT STATEMENT.
- ANOTHER GOVERNMENT WHOSE REVENUES WERE REDUCED BY THE ABATEMENT AND THAT THEREFORE HAD TO MAKE DISCLOSURE ITSELF, WOULD FIND IT EVEN HARDER TO MAKE DISCLOSURE.
- EXCEPTION- THE NECESSARY INFORMATION WOULD BE MORE AVAILABLE IF IT WERE INCLUDED IN THE DEVELOPMENT AUTHORITY'S OWN FINANCIAL STATEMENTS. SEE FOLLOWING SLIDES.



THE GEORGIA WAY

- IN APPROPRIATE CASES, THE LOCAL GOVERNMENT WOULD MAKE THE DISCLOSURES REQUIRED BY THE ABATEMENT STATEMENT.
- BUT ITS DEVELOPMENT AUTHORITY MIGHT ALSO BE REQUIRED TO DO SO.
- "Component unit entities often have separate audits and publish their own audited component unit financial statements; however, component units are still included in the financial statements of a local government jurisdiction. See Governmental Accounting Standards Board (GASB), Statement 14 for a comprehensive discussion of this subject." From DCA's definitions for reports of registered authorities finances.
- THERE IS A POLICY ISSUE- IF THE LOCAL GOVERNMENT IS MAKING THE DISCLOSURE AND THE DEVELOPMENT AUTHORITY IS A COMPONENT UNIT, SHOULD DISCLOSURE BY THE DEVELOPMENT AUTHORITY IN ITS FINANCIALS ALSO BE REQUIRED?



THE GEORGIA WAY

- IN A STATE LIKE GEORGIA WHERE THE PROPERTY TAX INCENTIVE RESULTS FROM A TRANSACTION BY A DEVELOPMENT AUTHORITY, THE ABATEMENT STATEMENT DOES NOT PROVIDE ENOUGH GUIDANCE AS TO WHAT IS REQUIRED.
- FOR NOW, A HEAVY BURDEN OF INTERPRETATION RESTS ON GEORGIA'S PUBLIC BODIES.
- EXPECT A GREAT DEAL OF ACTIVITY ON THE PART OF GEORGIA'S PUBLIC BODIES AS THEY WORK TO FIND OUT WHAT IS REQUIRED.
- THERE COULD BE SURPRISES IN STORE!

DO YOU HAVE TO DISCLOSE?



NO DISCLOSURE "BUT FOR" THESE ELEMENTS

- FOR THE ABATEMENT STATEMENT TO APPLY, EACH AND EVERY ONE OF THESE ELEMENTS MUST BE PRESENT-
 - TAX REVENUES MUST BE REDUCED.
 - THE REDUCTION MUST RESULT FROM AN AGREEMENT BETWEEN ONE OR MORE GOVERNMENTS AND AN INDIVIDUAL OR ENTITY.
 - IN THE AGREEMENT, ONE OR MORE GOVERNMENTS MUST PROMISE TO FORGO TAX REVENUES TO WHICH THEY ARE OTHERWISE ENTITLED.
 - IN THE AGREEMENT, THE INDIVIDUAL OR ENTITY MUST PROMISE TO TAKE A SPECIFIC ACTION.
 - THE SPECIFIC ACTION IS TO TAKE PLACE AFTER THE AGREEMENT HAS BEEN ENTERED INTO.
 - THE SPECIFIC ACTION MUST CONTRIBUTE TO ECONOMIC DEVELOPMENT OR OTHERWISE BENEFIT THE GOVERNMENTS OR THE CITIZENS OF THOSE GOVERNMENTS.
 - THESE ELEMENTS COMPRISE AN "ABATEMENT AGREEMENT", WHICH HAS TO EXIST IN ORDER FOR THE ABATEMENT STATEMENT TO APPLY.



DO IT ANYWAY

- GASB WAS QUICK TO SAY THAT “A TRANSACTION’S SUBSTANCE, NOT ITS FORM OR TITLE, IS A KEY FACTOR IN DETERMINING WHETHER THE TRANSACTION MEETS THE DEFINITION OF A TAX ABATEMENT FOR THE PURPOSES OF THIS [ABATEMENT] STATEMENT.”
- REGARDING THE SPECIFIC ACTION ELEMENT, ASIDE FROM ECONOMIC DEVELOPMENT, GASB RECOGNIZES THAT TAX ABATEMENTS ALSO ARE USED FOR OTHER PURPOSES THAT “OTHERWISE BENEFIT A GOVERNMENT OR ITS CITIZENS, SUCH AS HISTORICAL PRESERVATION, ENVIRONMENTAL INCENTIVES, BROWNFIELD CLEANUP, AND HOUSING CONSTRUCTION.”



DO IT ANYWAY

- EXEMPTIONS, DEDUCTIONS, CREDITS, REBATES, AND ABATEMENTS- ALL ARE POTENTIALLY SUBJECT TO THE ABATEMENT STATEMENT.
- FURTHER, LEGAL ENFORCEABILITY OF THE AGREEMENT IS NOT AN ESSENTIAL ELEMENT.



THE GEORGIA WAY- REVISITED

- IN A REAL WORLD EXAMPLE OF RECENT (PRIOR TO THE ABATEMENT STATEMENT) FINANCIAL STATEMENTS FOR A GEORGIA STATUTORY COUNTY DEVELOPMENT AUTHORITY-
 - GASB WAS FOLLOWED
 - THE AUTHORITY WAS NOT CONSIDERED A COMPONENT UNIT OF THE COUNTY
 - THE AUTHORITY WAS SAID TO HAVE NO COMPONENT UNITS OF ITS OWN.



THE GEORGIA WAY- REVISITED

- A DEVELOPMENT AUTHORITY IN THE REAL WORLD SITUATION IN THE PRECEDING SLIDE (AND PERHAPS OTHERS) MIGHT NEED TO COMPLY WITH THE ABATEMENT STATEMENT.
- OR IT MIGHT NOT, DEPENDING ON INTERPRETATION OF THE ABATEMENT STATEMENT.



THE GEORGIA WAY- REVISITED

- REMEMBER THAT ONE OF THE "BUT FOR"s THAT ARE CONDITIONS PRECEDENT TO THE ABATEMENT STATEMENT APPLYING, IS THIS- IN THE AGREEMENT, ONE OR MORE GOVERNMENTS MUST PROMISE TO FORGO TAX REVENUES TO WHICH THEY ARE OTHERWISE ENTITLED. OTHERWISE, THE AGREEMENT IS NOT AN "ABATEMENT AGREEMENT."
 - EVEN IF THE DEVELOPMENT AUTHORITY IS SAID TO BE A "GOVERNMENT", HOW COULD IT BE SAID THAT A DEVELOPMENT AUTHORITY, THAT DOES NOT TAX, IS ENTITLED TO TAX REVENUES THAT IT IS FORGOING?
- WITHOUT AN ABATEMENT AGREEMENT WITH ALL OF ITS ELEMENTS, THE ABATEMENT STATEMENT DOESN'T APPLY.
 - EVEN IF THE ABATEMENT STATEMENT DOESN'T APPLY TO A DEVELOPMENT AUTHORITY IF IT IS THE ONLY GOVERNMENT INVOLVED, THE RESULT COULD, AS TO THE DEVELOPMENT AUTHORITY, BE DIFFERENT IF A TAXING AUTHORITY JOINS IN A DEVELOPMENT AUTHORITY'S MOU, DEPENDING ON HOW THE ABATEMENT STATEMENT IS INTERPRETED.



THE GEORGIA WAY- REVISITED

- ALSO REMEMBER THAT TAX ABATEMENT AGREEMENTS THAT ARE ENTERED INTO BY A GOVERNMENT'S COMPONENT UNITS AND THAT REDUCE THE GOVERNMENT'S TAX REVENUES SHOULD BE DISCLOSED BY THE PRIMARY GOVERNMENT.
- THERE IS NO REQUIREMENT THAT THE PRIMARY GOVERNMENT BE A PARTY TO ITS COMPONENT'S TAX ABATEMENT AGREEMENT.
- SO, A COUNTY MIGHT HAVE TO DISCLOSE AN ABATEMENT AGREEMENT BETWEEN ITS DEVELOPMENT AUTHORITY AND A COMPANY, EVEN IF THE COUNTY IS NOT A PARTY TO THE ABATEMENT AGREEMENT.
 - BUT ONLY IF THE AGREEMENT THAT THE DEVELOPMENT AUTHORITY ENTERS INTO QUALIFIES AS AN "ABATEMENT AGREEMENT."

QUESTIONS ANSWERED QUESTIONS DUCKED



SPECIFIC LEARNING

- THERE ARE MANY ISSUES WITH THE ABATEMENT STATEMENT.
- AS REGARDS ITS EXPOSURE DRAFT- "A COLLECTION OF FIVE NATIONAL ASSOCIATIONS -- THE GOVERNMENT FINANCE OFFICERS ASSOCIATION, THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, THE NATIONAL LEAGUE OF CITIES, THE NATIONAL ASSOCIATION OF COUNTIES, AND THE U.S. CONFERENCE OF MAYORS -- TOLD GASB THEY SUPPORTED THE PROPOSAL'S GOALS BUT OBJECTED TO HOW GASB HAD APPROACHED THE ISSUE, ARGUING THAT FOCUSING ON TAX BREAKS WITHOUT WEIGHING THE ECONOMIC BENEFITS WOULD BE MISLEADING." WHO DIED AND MADE GASB KING OF TAX BREAKS? BILLY HAMILTON, IN STATE TAX

NOTES.



- IN THE ABATEMENT STATEMENT AS ADOPTED, GASB CONTINUED TO IGNORE THE IMPORTANCE OF RECOGNIZING BENEFITS, AS WELL AS COST.
- GASB DEALT WITH SOME OTHER CONTROVERSIAL ISSUES AS FOLLOWS-
 - TIF/TAD- WHETHER THE ABATEMENT STATEMENT APPLIES WAS LEFT TO A “FORM OVER SUBSTANCE” ANALYSIS.



PERFORMANCE BASED INCENTIVES

- PERFORMANCE BASED ABATEMENT- NOT COVERED BY THE ABATEMENT STATEMENT.
 - “CERTAIN TAX EXPENDITURE PROGRAMS THAT EXHIBIT THE FEATURES OF A TAX ABATEMENT—THEY REDUCE TAXES, ENCOURAGE BENEFICIAL ACTIONS BY INDIVIDUALS OR ENTITIES, AND MAY BE BASED ON AN AGREEMENT—ARE, NEVERTHELESS, EXCLUDED FROM THE SCOPE OF THIS [ABATEMENT] STATEMENT BECAUSE THE GOVERNMENT DOES NOT COMMIT TO ABATE TAXES UNTIL AFTER THE INDIVIDUAL OR ENTITY HAS ALREADY PERFORMED THE ACTIVITY FOR WHICH THE GOVERNMENT IS PROVIDING THE TAX ABATEMENT.”



TO DISCLOSE, OR NOT TO DISCLOSE? THAT IS THE QUESTION

- MECHANISMS EMPLOYED BY TAX ABATEMENT PROGRAMS- APPLICABILITY OF THE ABATEMENT STATEMENT NOT BASED ON THE PARTICULAR MECHANISM THAT IS USED.
- FUTURE REVENUE IMPACTS- DISCLOSURE NOT REQUIRED, ONLY DISCLOSURE FOR THE CURRENT REPORTING PERIOD.
- INTERGOVERNMENTAL PAYMENTS- FOR EXAMPLE, IF THE ABATING GOVERNMENT AGREES TO MAKE “MAKE WHOLE” PAYMENTS TO ANOTHER GOVERNMENT IMPACTED BY THE ABATEMENT, THE ABATEMENT HAS TO BE DISCLOSED AND THE PAYMENT RECIPIENT HAS TO DISCLOSE THE PAYMENT.



ECONOMIC DEVELOPMENT PROSPECTS

- ECONOMIC DEVELOPMENT PROSPECTS- PER THE ABATEMENT STATEMENT:
 - “(A) THE RECIPIENT [OF THE ABATEMENT] CAN BE A BUSINESS OR OTHER TYPE OF ENTITY, NOT ONLY A PERSON;
 - (B) THE RECIPIENT MAY NOT BE [i.e., CAN BE SOMEONE WHO IS NOT] A CURRENT TAXPAYER AT THE TIME THE AGREEMENT IS ENTERED INTO, SUCH AS IN A BUSINESS RELOCATION AGREEMENT; AND
 - (C) THE RECIPIENT MAY BE A REMITTER OF TAXES, RATHER THAN THE OBLIGOR OF THE TAX, SUCH AS A RETAIL BUSINESS IN A SALES TAX DIVERSION AGREEMENT.”
- HOWEVER, THE NAME OF THE RECIPIENT DOES NOT HAVE TO BE DISCLOSED, NOR DOES WHETHER OR NOT THE RECIPIENT COMPLIES WITH ITS OWN COMMITMENTS TO THE GOVERNMENT.
 - “CLAWBACK” PROVISIONS DO HAVE TO BE DISCLOSED, BUT NOT THE AMOUNT OF ANY CLAWBACKS THAT ARE IMPOSED AND PAID.



OTHER INCENTIVES

- OTHER INCENTIVES- ARE SUBJECT TO DISCLOSURE UNDER THE ABATEMENT STATEMENT.
- “SOME TAX ABATEMENT AGREEMENTS CONTAIN COMMITMENTS FOR THE GOVERNMENT TO PERFORM ACTIVITIES OTHER THAN TO REDUCE TAXES, SUCH AS CONSTRUCTING STREETS AND OTHER INFRASTRUCTURE AROUND A NEW OFFICE COMPLEX FOR WHICH A PROPERTY TAX ABATEMENT HAS BEEN PROVIDED. [GASB] BELIEVES THAT DEMONSTRATING COMPLIANCE WITH FINANCE-RELATED LEGAL OR CONTRACTUAL REQUIREMENTS INCLUDES PROVIDING INFORMATION ABOUT WHETHER A GOVERNMENT HAS MET ITS OTHER COMMITMENTS UNDER TAX ABATEMENT AGREEMENTS.”



CONFIDENTIAL INFORMATION

- CONFIDENTIAL INFORMATION- A GOVERNMENT CAN OMIT SPECIFIC INFORMATION THAT IT IS LEGALLY PROHIBITED FROM DISCLOSING, BUT HAS TO DESCRIBE THE GENERAL NATURE OF THE TAX ABATEMENT INFORMATION OMITTED AND THE SOURCE OF THE LEGAL PROHIBITION.

CONCLUSION



WHAT'S YOUR POLICY?

- ONE CONCLUSION THAT CAN BE DRAWN WITH CERTAINTY FROM THE ABATEMENT STATEMENT IS THAT IT WILL CHANGE HOW LOCAL GOVERNMENTS AND LOCAL AUTHORITIES DEAL WITH PROPERTY TAX INCENTIVES.
- IN FACT, ONE ELEMENT OF THE REQUIRED DISCLOSURE DIDN'T RECEIVE MUCH ATTENTION IN THE ABATEMENT STATEMENT, BUT WILL PROBABLY CAUSE THE MOST SOUL SEARCHING AMONG POLICY MAKERS- THE GOVERNMENT MUST DESCRIBE THE CRITERIA THAT MAKE A RECIPIENT ELIGIBLE TO RECEIVE A TAX ABATEMENT!
- STAY TUNED! THERE IS MORE TO COME ON THIS.

MORE INFORMATION



QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- FAS 77 and FAS 14-
http://www.gasb.org/cs/ContentServer?c=Document_C&pagename=GASB%2FDocument_C%2FGASBDocumentPage&cid=1176166283745&utm_source=Media&utm_campaign=94b828dfa9-2015_08_14GASB_PressRelease_TaxAbatements&utm_medium=email&utm_term=0_d21da5f9e0-94b828dfa9-98611745&mc_cid=94b828dfa9&mc_eid=c21e3346c3

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SCOPE

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