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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

Via email to: [director@gasb.org](mailto:director@gasb.org)

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

Dear Mr. Bean,

We appreciate the opportunity to respond to GASB's Exposure Draft of a proposed Statement of Tax Abatement Disclosures. Recognizing the historic opportunity this represents to standardize reporting of the cost of economic development programs for state and local budgets, we are supportive of the proposed standard and believe it will have huge and positive ramifications on the ability to assess New York's fiscal condition. We do, however, believe the standard could be improved, through the following recommendations:

## SPECIFIC RECOMMENDATIONS

### **1. Disclose all forms of tax subsidies or "tax abatements."**

**The Governmental Accounting Standards Board should specifically require greater transparency of all tax-based economic development subsidies including as-of-right incentives, and Payments in Lieu of Taxes.**

Using the umbrella phrase "tax abatements" for economic development tax breaks involving income, property, sales and other taxes, GASB's proposed standard will for the first time require state and local governments to report how much revenue they lose to economic development programs. However, it is important to ensure that the definition of "tax abatement" includes all forms of tax-based economic development subsidies including performance-based incentives, as-of-right incentives, and Payments in Lieu of Taxes.

### *Performance-based incentives*

The Board's current definition of "tax abatement" which relies on the existence of an agreement, and "that the agreement precedes the reduction of taxes and the fulfillment of the taxpayer's promise to act" may potentially omit costly incentive programs. For example, the draft states in Appendix B8, "certain tax expenditure programs that exhibit the features of a tax abatement...are, 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."

Several large economic development tax abatement programs in New York State are structured so as to reduce government risk of failed deals through so-called "performance-based" awards. Indeed, New York State's largest economic development programs, the Brownfield Redevelopment Tax Credit and the Empire Film Production tax credit<sup>1</sup> are both structured to award credits after a grantee has accomplished the necessary eligible activity. According to the GASB Exposure Draft, these programs which cost the state nearly \$1 billion annually – and have been widely criticized for inefficiencies and opaque reporting – would not be required to be disclosed by the state.

By excluding such "performance-based" programs from the new accounting standard, current transparency for these large economic development tax expenditures may vanish. Additionally, programs could be altered or designed in the future in such a way to hide spending through a "performance-based" structure. For example, currently New York State law requires the Tax Department to produce a Brownfield Credit Report listing the names of program beneficiaries and amount of credit earned. Yet with recommendations that the Brownfield Redevelopment Credit as currently structured be allowed to sunset in 2015, any new revisions to the program should require similar reporting on the costs of the tax expenditure.

### *As-of-right subsidies*

Likewise, under the definition of tax abatement proposed by the GASB standard, as-of-right economic development programs may be omitted. In

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<sup>1</sup> Rubin, M 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, H. Carl McCall and Peter J. Solomon, Co-Chairpersons. This report states that in 2013, the cost of the Brownfield Redevelopment Tax Credit was \$503 million; the cost of the Empire State Film Production tax credit was \$374 million.

New York City, as-of-right subsidies accounted for nearly \$700 million<sup>2</sup> in tax expenditures in fiscal year 2014. These costly programs – mainly the Industrial Commercial Incentive Program – may not require an agreement, but eligibility is determined by location alone. The aggregate cost of these programs is already reported in the New York City annual Tax Expenditure Report. But without a more precise accounting of the individual beneficiaries, and how much each receives, it is difficult to truly assess the city’s fiscal condition and to understand whether these programs are adequately fulfilling their intended purpose – to provide incentives to allow industrial business to expand in New York City.

### *PILOTS*

The proposed Statement on Tax Abatement Disclosures should include more explicit guidance on disclosure of the value of PILOT payments. The New York City Economic Development Corporation reports<sup>3</sup> how much a company has paid in PILOT payments, but does not disclose the value of the benefit to the company (i.e., the difference between the company’s normal statutory tax obligation and the discounted PILOT).

While PILOTs are contractual agreements between a city agency and an individual property owner, reduce revenues for the purpose of economic development, and therefore should be captured in the proposed standard, PILOTs are not specifically mentioned in the proposed standard. PILOTs are clearly worthy of greater disclosure, and the board should include language to ensure the inclusion of this program in its standard.

## **2. Require disclosure of the name of subsidy recipients**

**The Governmental Accounting Standards Board should reverse its conclusion that the name of the recipient not be required.**

[Appendix B24]

New York City is a local-government leader in transparency for providing publicly available tabular data of recipients of economic development subsidies, including company name and address. Making subsidy recipient information publicly available has increased accountability of subsidy programs. It is understood that recipients must be able to stand up to

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<sup>2</sup> The City of New York Department of Finance Office of Tax Policy, Annual Report on Tax Expenditures Fiscal Year 2014

<sup>3</sup> New York City Economic Development Corporation, Annual Investment Projects Report, pursuant to Local Law 62 – FY13, Volume II

greater public scrutiny, and be able to disclose their progress in job creation in exchange for incentives they have benefitted from.

### **3. Disclosure of Future-Year Liability**

**The Governmental Accounting Standards Board should reverse its decision not to require disclosure of future amounts remaining to be abated under existing agreements.**

[Appendix B26]

In its required Annual Investment Projects Report, the New York City Economic Development Corporation must report the assistance provided in the current fiscal year, the amount provided to date including the current fiscal year, the projected amount remaining, and the total value of the subsidy. This information is crucial in understanding the fiscal impact on future budgets. In many cases, New York City subsidy agreements can last 25 years or longer.

In the case of some companies eligible for Payments in Lieu of Taxes (PILOTs) in the Hudson Yards Uniform Tax Exemption Policy area, the benefit can extend as long as 99 years. In the basis for conclusions, the Exposure Draft states its concern that requiring future cost-estimates would require a “specific measurement guidance, which is outside the scope of this project.” Whatever the cost of issuing such a guidance should be weighed against the very real benefit of knowing future obligations, which could have an enormous impact on the city’s future revenues and fiscal condition.

Thank you for the opportunity to submit comments.

Sincerely,

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