GASB STATEMENT NO. 77

TAX ABATEMENT DISCLOSURES IMPLEMENTATION GUIDANCE

Audrey M. Odermann, CPA
Mize Houser & Company P.A.
Certified Public Accountants
211 East 8th Street
Lawrence, Kansas 66044
785-842-8844
www.mizehouser.com
aodermann@mizehouser.com

TABLE OF CONTENTS

OVERVIEW

On August 14, 2015, the Government Accounting Standards Board (GASB) issued GASB Statement No. 77 - Tax Abatement Disclosures. This statement establishes financial reporting standards for tax abatement agreements entered into by state and local government. GASB No. 77 requires disclosure of tax abatement information resulting from both (1) agreements that are entered into by the reporting governments and (2) agreements that are entered into by other governments and that reduce the reporting government's tax revenues.

GASB No. 77 defines a tax abatement as:

> ***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.***

The scope of this GASB Statement is limited to transactions that meet this definition. The statement does not apply to other kinds of tax expenditures made by state and localities (i.e. – property tax exemptions for churches, or sales tax exemptions on business inputs).

Tax abatement agreements are often used by a government to encourage new development, redevelopment of blighted areas, and job creation and retention. These agreements result in foregone revenue for a period of time. The disclosure requirements of GASB No. 77 will allow financial statement users to access information pertaining to tax abatements and incentives, and to gain an understanding of the impact that these agreements have on a government's revenue.

The requirements of this Statement are effective for financial statements for periods beginning after December 15, 2015.

REPORTING GOVERNMENT'S AGREEMENTS – REQUIRED DISCLOSURES

GASB No. 77 requires that, at a minimum, governments organize the required disclosures by major tax abatement programs (in the aggregate). Governments may voluntarily choose to provide the names of specific taxpayers that received abatements, pursuant to a specified quantitative threshold. An ***example*** of such a threshold would be any specific taxpayers that are given a 10% or more tax reduction OR specific taxpayers whose tax reduction is 5% or more of the tax abatement program's total tax reduction.

GASB No. 77 requires that reporting governments disclose the following information in the notes to the financial statements for the tax abatement agreements entered into by the reporting government:

1. Descriptive information to include
    a. Names and purposes of tax abatement programs
    b. Specific taxes being abated
    c. Authority under which tax abatement agreements are entered into
    d. Criteria that make a recipient eligible to receive a tax abatement
    e. Mechanism through which taxes are being abated
        i. How the tax abatement recipient's taxes are reduced, such as through a reduction of assessed value
        ii. How the amount of the tax abatement is determined, such as a specific dollar amount or a specific percentage of taxes owed
    f. Provisions for recapturing abated taxes, if any, including conditions under which abated taxes become eligible for recapture
    g. Types of commitments made by the recipients of the tax abatements

2. The gross dollar amount, on the accrual basis, by which the reporting government's tax revenues were reduced during the reporting period as a result of the tax abatement agreements entered into by the reporting government

3. Amounts received or receivable from other governments in association with forgone tax revenue:
    a. Names of the governments
    b. Authority under which taxes were or will be paid
    c. Dollar amount received or receivable from other governments

4. Commitments made as part of the tax abatement, that do not involve reducing taxes, must be disclosed until the government fulfills the commitment. **The most common commitment made by a government in this situation is infrastructure commitments (roads, sewer and water lines, utility connections) associated with large new facilities.**

5. If tax abatement agreements are disclosed individually, a brief description of the quantitative threshold used to determine tax abatements disclosed individually

6. Description of tax abatement information omitted for legal purposes including the legal citation that authorizes the omission. **If a government is legally prohibited from disclosing a tax expenditure, it may omit the data, but when doing so, it must cite the legal authority for not reporting.**

Disclosures for a tax abatement agreement should begin in the period in which the agreement is entered into and continue until the agreement expires.

OUTSIDE GOVERNMENT'S AGREEMENTS – REQUIRED DISCLOSURES

Disclosures are also required for tax abatements authorized by other (outside) governments that affect the reporting government's tax revenues. **The most common way this happens is when cities or counties grant property tax exemptions, or create TIF districts. In these cases the actions of the city or county also potentially affect the tax revenue of a school district. School districts are required under GASB No. 77 to disclose information regarding city/county tax abatement agreements that affect the tax revenue of the school district.**

GASB No. 77 requires that reporting governments disclose the following information in the notes to the financial statements for the tax abatement agreements entered into by outside governments:

1. Descriptive information to include
   a. Name of the outside government that entered into the agreement
   b. Specific taxes being abated
   c. The gross dollar amount, on the accrual basis, by which the reporting government's tax revenues were reduced during the reporting period as a result of the outside government's tax abatement agreements.
2. Amounts received or receivable from other governments in association with forgone tax revenue:
   a. Names of the governments
   b. Authority under which taxes were or will be paid
   c. Dollar amount received or receivable from other governments
3. If tax abatement agreements are disclosed individually, a brief description of the quantitative threshold used to determine tax abatements disclosed individually
4. Description of tax abatement information omitted for legal purposes including the legal citation that authorizes the omission. **If a government is legally prohibited from disclosing a tax expenditure, it may omit the data, but when doing so, it must cite the legal authority for not reporting.**

Governments with discretely presented component units, which have entered into tax abatement agreements, should disclose the associated foregone revenue under these provisions if the information is essential to fair presentation of the reporting government's financial statements.

GETTING STARTED ON INFORMATION GATHERING

We recommend that a reporting government start the process by identifying all the agreements that may require reporting under GASB No. 77 as soon as possible. Begin the process by making inquiries of the city or county clerk, the government's manager, administrator, superintendent, county appraiser, county treasurer, development authority attorney, and the reporting entity attorney. Assistance from these individuals is vital to the process, however, the reporting government is ultimately responsible for ensuring that the list of agreements is complete.

Best practices for identifying existing tax abatement agreements are as follows:

1. Obtain any attorney opinion letters indicating the legal authority under which the city/county entered into the tax abatement arrangements

2. Obtain a listing of properties in the name of the development authority through which the abatement is given from the county treasurer's office. Request that the list identify properties and their respective valuations

3. Obtain copies of tax abatement agreements

4. Determine if the amount of property tax billed, to the private entities with a current tax abatement agreement, is correct per the agreement

5. Review properties on the list at the end of the prior year to determine if any of the abatement agreements have expired

6. Calculate the dollar amount of property taxes not billed (abatement amount) for the current year as a result of valid abatement agreements

ANTICIPATED BENEFITS DISCLOSURE OMISSION

Many jurisdictions are concerned that GASB Statement No. 77 disclosures are unbalanced because they fail to take into account the anticipated benefits which are derived from the tax abatement agreements.

A government that prepares a comprehensive annual financial report (CAFR) may wish to “balance” the disclosures by including information about the favorable financial outcomes resulting from the agreements, in the CAFR Letter of Transmittal. Examples of favorable financial outcomes that could be included would be additional generation of sales tax or added jobs within the city/county.

For those government’s that do not issue a CAFR, information may be include on a ***limited*** basis in Management’s Discussion and Analysis, under the “Economic Factors and Next Year’s Budget” section. However, dialogue in Management’s Discussion and Analysis must only include ***factual*** information. This means that the information has to be known as of the date of the independent auditor’s report, and must be expected to have a significant effect on financial position or results of operations. For example, it would be appropriate to include a new industry that signed an agreement to locate a new plant within the jurisdiction as well as the number of new jobs created.