December 2, 2014

Sent via email to: director@gasb.org

RE: Project No. 19-20E

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

Dear Mr. Bean:

Please accept our comment on GASB's Exposure Draft on Tax Abatements.

As background on our credentials as tax abatement disclosure data users:

The Kentucky Center for Economic Policy is a non-profit, non-partisan research organization that works to improve the quality of life for all Kentuckians by addressing important economic and fiscal issues facing the Commonwealth. KCEP is a project of the 501(c)(3) Mountain Association for Community Economic Development. We have explored the issue of tax expenditures for economic development in great depth, once publishing a "Unified Economic Development Budget" that compiled and described every form of tax- and appropriations-based state spending we could identify, one of the most complete UEDBs known to have been published in U.S. history.

The Small Business Advocacy Council (of Illinois) is a non-partisan, member driven organization that promotes the success of small business through political advocacy, support services and educational programs. Established in 2010 and currently representing almost 1,000 businesses in the Chicagoland area, the SBAC is a 501(c)(6) not-for-profit organization. In addition to our concerns detailed here about the Economic Development in a Growing Economy (EDGE) Program, we have testified critically about the state's role in awarding excessive tax breaks to large companies while Illinois faces significant economic challenges and personal income tax rate increases. Our members are troubled with state employees picking winners and losers when it comes to paying state income taxes without badly needed transparency. We look forward to benefiting from GASB's tax abatement disclosure standard.

New Jersey Policy Perspective is a 501(c)(3) non-profit that provides research and analysis on important issues facing New Jersey. Fiscal transparency and tighter accountability for corporate subsidies have been central issues for us since our 1997 founding. In the past several years, we have issued multiple iterations of a study entitled "A Surge in Subsidies," detailing our current administration's all-time U.S. record spending spree: eight nine-figure deals, six of them above $200 million. We have repeatedly criticized the Business Employment Incentive Program (BEIP) for its enormous costs (by far the costliest personal income tax diversion program in the country) and for funding interstate "shell game" deals instead of true economic growth.

Policy Matters Ohio is a 501(c)(3) nonprofit, nonpartisan state policy research institute with the mission of creating a more vibrant, equitable, sustainable and inclusive Ohio. We have issued numerous studies and opinion articles on, and testified about, the state's economic development programs and expenditures. Our state has two personal income tax diversion programs (first enacted in defensive response to Kentucky, which birthed the model). Over the last three administrations, we have sought to make Ohio's economic development spending more accountable and transparent. Unfortunately, in significant ways, it has become less so, a tragedy given that Ohio pioneered online incentive disclosure—in 1999.

We write jointly because we share a specific concern about a kind of economic development tax expenditure that we believe could inadvertently escape GASB's "tax abatement" definition because of its arcane structure. Specifically, we are writing about programs in each of our four states, and which also exist in at least a dozen more, that involve the diversion of employees' state personal income taxes away from state treasuries and instead to their private employers.

By every measure we read of your definitional intentions, these programs are tax abatements: they are awarded pursuant to an agreement between our respective state governments and specific companies; the states agree to receive reduced tax revenues; and the companies agree to create or retain jobs as a quid pro quo.

However, there is one technical aspect of these programs that could cause some of them to fail to meet the exact wording of your Exposure Draft's definition. Specifically, the passage where it states: "one or more governmental entities forgo revenues from taxes for which the taxpayer otherwise would have been obligated." The crux issue: for the programs we are alerting you to here, the taxes are not the companies' to have paid: they are the employees' state personal income taxes.

Our personal income tax diversion tax abatement programs, and those in 12 other states, were first revealed as a national phenomenon by Good Jobs First in its 2012 study *Paying Taxes to the Boss*. We refer you to that study for historical and statutory analyses of 22 such programs in 16 states, benefiting 2,700 named companies at a public expense of almost $700 million annually: http://www.goodjobsfirst.org/taxestotheboss.

In many of the 16 states, the affected state personal income taxes are either never remitted to the state (as is now the case in Illinois for Sears Holdings and several other companies) or are refunded to the company as a grant. In a third model that might trigger the current wording of your definition, some states allow companies to claim the abatement as a credit against the corporate income tax or another tax or taxes. We see no effective difference among the three scenarios and hope you will amend your definition, perhaps to state: "one or more governmental entities forgo revenues from taxes which the taxpayer otherwise would have been obligated to pay, *or which the taxpayer otherwise would have been obligated to remit to the government on behalf of others, including employees*" [new words italicized].

In Kentucky, the Business Investment (KBI) Program is a consolidation of four programs, one dating to 1988, that provide for “wage assessments” pegged to state personal income tax liabilities. Its cost grew from $49 million in 2010 to $64.2 million in 2012, and in that same year the potential long-term liability to the state because of credits awarded grew by $297 million. The Kentucky Industrial Revitalization Act has the same “wage assessment” structure but is less costly.

In New Jersey, while BEIP was phased out in 2013 and the state is no longer approving *new* BEIP awards, the program will continue to put pressure on the state budget through at least 2023 due to its design. To date, BEIP has diverted over $1.5 billion in personal income tax from the state to employers, and hundreds of millions, if not billions, more in pledged dollars remain. While the cost of BEIP —included in the annual appropriations act—has increased to $175 million per year, the state is not adequately paying out its BEIP commitments, which has led to a backlog of over $800 million in outstanding BEIP obligations, which will have to be paid out even as no new projects enter the pipeline. Each deal’s value was negotiated case-by-case at between 10 and 80 percent of “new” employees’ state withholding taxes for up to 10 years. We say “new” employees because some of the costliest BEIP deals have been awarded to Wall Street firms moving parts of their operations short distances (e.g., to Jersey City) and not necessarily creating any new jobs (just jobs with a new address)—and perhaps not even any new New Jersey-resident paychecks.

In Illinois, the afore-mentioned EDGE program, enacted in 1999, provides a corporate income tax credit calculated as, in some cases, up to 100 percent of the incremental new-employee personal income tax liability for up to 10 years. The percent, durations, and source of abatement are negotiated on a case-by-case basis. In recent years, the program structure has been modified so that in some cases employees’ personal income taxes are simply never remitted to the state. These “Special Edge Tax Credits” require legislative approval and have been the subject of much debate in Illinois.

In Ohio, the Job Creation Tax Credit (JCTC) and the Job Retention Tax Credit (JRTC) are both based on personal income tax diversions and together cost a total of $91.94 million in FY13. Both are approved on a case-by-case basis by the Ohio Tax Credit Authority. The more costly JCTC can be worth up to 75 percent of employees’ withholding taxes for up to 15 years. The resulting credit against the commercial activity tax and certain other state taxes is also refundable. The JRTC has mostly similar features, though it comes in both refundable and nonrefundable forms.

As detailed in the Good Jobs First study, additional personal income tax diversion tax abatement programs exist in Colorado, Connecticut, Georgia, Indiana, Kansas, Maine, Mississippi, Missouri, New Mexico, North Carolina, South Carolina, and Utah. Since that study was published, Pennsylvania has also enacted a personal income tax-based diversion program.

We hope you will agree with us that all of these costly tax-based economic development incentive programs clearly belong within your definition of "tax abatement" and that you will amend that definition to clearly capture them (we hope our suggested new wording is helpful). We reiterate that by every measure we read in the Exposure Draft of your definitional intentions, these programs are tax abatements: they are awarded pursuant to an agreement between our respective state governments and specific companies; the states agree to receive reduced tax revenues; and the companies agree to create or retain jobs as a quid pro quo (or as we've explained, at least to relocate existing jobs into a new jurisdiction which is awarding the tax abatement; this "shell game" issue is also prominent in Kansas, Missouri, Mississippi, and North Carolina).

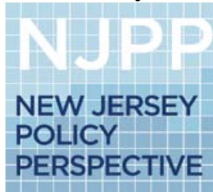
We applaud GASB's efforts to improve government accounting practices in this area. We look forward to continue using even more and better data that will result from your final standard and hope that financial data users in 17 states will benefit from the inclusion of personal income tax diversions.

Sincerely,

Jason Bailey, Director
Kentucky Center for Economic Policy

Elliot Richardson, Founder and CEO
Small Business Advocacy Council

Gordon MacInnes, President
New Jersey Policy Perspective



Zach Schiller, Research Director
Policy Matters Ohio