Reporting Requirements for Local Governments Under GASB 77

Edward Kluiters
Haynsworth Sinkler Boyd, P.A.

Columbia, SC
December 8, 2016

GASB-77 Disclosure Requirements

1. Existence of an agreement
   - Must be identifiable
   - Contains promises by government and specific individual/entity
   - Precedes reduction of taxes and fulfillment of promise by individual (a prior application, not after the fact)
     Note: does not have to be legally enforceable

2. Purpose of the agreement is economic development or another governmental purpose (historic preservation, LMI housing, environmental remediation)

3. The agreement reduces tax revenues
   - Customer charges and other exchange transactions are excluded
   Note: Other commitments as part of the tax agreement must be disclosed also
GASB 77 and Economic Development Incentives

Property Taxes

Property Taxes Generally: Three Factors

- Fair Market Values
- Assessment Ratios
- Millage Rates

GASB 77 and Economic Development Incentives

Key Property Tax Abatements

These 5 year abatement incentives impact the millage rate part of the equation:

- Manufacturing
- Research and Development
- Corporate Headquarters, Corporate Office Facilities, and Distribution Facilities
- Environmental Cleanup

Disclosure Required?
Generally Automatic – no disclosure required
Examples of Other Automatically Applicable Property Tax Exemptions in South Carolina:
• Inventory
• Pollution Control Equipment
• Fire Sprinkler System
• Personal Property of Banks and Savings and Loan Associations

Miscellaneous Property Tax Matters

Manufacturer’s, R&D, Corporate Headquarters, Corporate Office and Distribution abatement for unrelated purchasers:
12-37-220(C): Governing body of county may approve five-year exemption being extended to unrelated purchaser who acquires facilities in arms-length transaction and preserves facilities/jobs

Distinguish from someone buying an empty facility – that is possibly a new 5 year abatement

Disclosure required?

Abatement for Brownfields sites:
12-37-220(B)(44): County governing body may by resolution approve five-year exemption for property subject to a VCC upon issuance of a certificate of completion

Disclosure required?
FILOT Transactions

- **FILOT Incentive** (Code Sections 12-44-10; 4-29-67; and 4-12-10)
  - Impacts all three aspects of Property Tax Calculation
    - Fair Market Value
    - Assessment Ratio
    - Millage Rate

- **Super and Enhanced Investment Fees** (Code Sections 4-12-10; 4-29-67; and 12-44-10)
  - Longer investment period
  - Lower assessment ratio

Implemented through an agreement with individual taxpayer which reduces property taxes in return for investment/jobs; disclosure required.

GASB 77 and Economic Development Incentives

### Project X – South Carolina County

<table>
<thead>
<tr>
<th>Year</th>
<th>2013 Inv.</th>
<th>2014 Inv.</th>
<th>Gross Ad</th>
<th>Abate-</th>
<th>Net Ad</th>
<th>FILOT</th>
<th>FILOT</th>
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Total: 5,623,956 1,149,837 4,474,118 3,046,064 1,428,054 3,774,079

NPV (5%) 4,222,404 994,504 3,227,900 2,314,340 913,560 2,314,340

Assumptions:

1. No real property included.
2. Machinery and equipment = $45,000,000, depreciation @ 11% to maximum total depreciation of 90%.
3. Assessment Ratio = 6% for FILOT, 10.5% for ad valorem taxation.
4. Millage Rate for FILOT = 0.2153, fixed for 20 years.
5. Initial Millage Rate for Ad Val = 0.2153, attributable portion for five-year abatement = 0.0712; 1% annual millage growth thereafter.
6. Special source revenue credits (SSRCs) reduce the FILOT payments by 10% and 25% per year in alternative scenarios.
7. An annualized FILOT stream includes a level payment for 20 years with respect to each year's investment.
**SPECIAL SOURCE REVENUE FINANCING**

- Credits provide further reduction in property tax burden
  - May be needed for investment under statutory minimum that cannot qualify for FILOT
  - Useful to provide more value to non-manufacturing businesses like distribution centers (whose assessment ratio on real property is already 6%)
  - Can be targeted for specific needs of a site or a project (i.e., road, water, sewer)

Implemented through an agreement with individual taxpayer which reduces taxes in return for investment/jobs; disclosure required

- Multi-County Industrial Parks ("MCIPs")
  - Statutory formality, but property should be in an MCIP in order to use special source financing

Implemented through an agreement between counties; not individual taxpayer

What about the MOU or Fee Agreement which mentions the MCIP?

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**GASB 77 and Economic Development Incentives**

**Project X – South Carolina County**

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<thead>
<tr>
<th>Year</th>
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<th>FILOT</th>
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Total: 5,623,956

NPV (5%) 4,222,404

Assumptions:
1. No real property included.
2. Machinery and equipment = $45,000,000, depreciation @ 11% or to maximum total depreciation of 90%.
3. Assessment Ratio = 6% for FILOT, 10.5% for ad valorem taxation.
4. Millage Rate for FILOT = 0.2153, fixed for 20 years.
5. Initial Millage Rate for Ad Val = 0.2153, abatable portion for five-year abatement = 0.0712; 1% annual millage growth thereafter.
6. Special source revenue credit (SSRC) reduce the FILOT payments by 10% and 25% per year in alternative scenarios.
7. An annualized FILOT stream includes a level payment for 20 years with respect to each year's investment.

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# Required Disclosures About Tax Abatement Programs

<table>
<thead>
<tr>
<th>Disclosure Item</th>
<th>FILOT</th>
<th>SSRC</th>
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<tbody>
<tr>
<td>Name and Purpose</td>
<td>Fee in Lieu of Taxes to Encourage Investment</td>
<td>Special Source Revenue Credits or Infrastructure Credits to Encourage Investment</td>
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<tr>
<td>Specific Taxes Being Abated</td>
<td>Property Taxes</td>
<td>Property Taxes</td>
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<tr>
<td>Authority</td>
<td>SC Code Title 12, Chapter 44, Title 4, Chapter 29, or Title 4, Chapter 12</td>
<td>SC Code Sections 4-29-68, 4-1-170, and 12-44-70</td>
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<tr>
<td>Eligibility</td>
<td>Generally must invest $2,500,000 within a 5-6 year investment period (beginning with date property is placed in service, ending five years after the last day of the property tax year in which the property is initially placed in service)</td>
<td>Must incur costs of designing, acquiring, constructing, improving, or expanding improved or unimproved real estate or personal property used in the operation of a manufacturing or commercial enterprise, infrastructure servicing the project, or certain aircraft</td>
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</tbody>
</table>

# Required Disclosures About Tax Abatement Programs

<table>
<thead>
<tr>
<th>Disclosure Item</th>
<th>FILOT</th>
<th>SSRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mechanism of Abatement</td>
<td>Reduction of Assessed Value, reduction in millage rate and elimination of (or reduction in) number of times millage rates are changed. Also, possible use of net present value method over term of FILOT to equalize payments. (Taxpayer files PT-300, Schedule S, SC DOR calculates FILOT, issues PT-310 notice to county, county sends FILOT bill)</td>
<td>Credit against property taxes in the form of a percentage reduction or a dollar amount reduction. County manually applies SSRC to reduce applicable property tax bill</td>
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Required Disclosures About Tax Abatement Programs

<table>
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<th></th>
<th>FILOT</th>
<th>SSRC</th>
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<tbody>
<tr>
<td>Recapture Provisions</td>
<td>Repayment of savings required by state law if taxpayer fails to meet statutory minimum investment requirement; other recapture provisions may be negotiated (i.e., pro rata clawback for failure to meet and/or maintain jobs/investment)</td>
<td>If SSRCs are used for personal property which is removed from the project, state law requires payment of two additional years of property tax; other recapture provisions may be negotiated (i.e., pro rata clawback for failure to meet and/or maintain jobs/investment)</td>
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<td>Commitments by Recipients</td>
<td>Generally, taxpayer agrees to invest statutory minimum; higher amount may be negotiated; job commitments may be included as well</td>
<td>Recipient commitments would be negotiated for each project</td>
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<tr>
<td>Commitments by Government other than tax abatement</td>
<td>Generally none</td>
<td>Generally none</td>
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GASB 77 – Calculating Gross Amount of Tax Abated

Key points for calculating gross amount of taxes abated during period:
1. Values may be different (i.e., real estate outside of a FILOT is generally valued at fair market value and subject to periodic appraisal/reassessment, while real estate within a FILOT is generally valued at cost, with no depreciation, although law now allows FMV within a FILOT as well).
2. If property was agricultural use, rollback taxes would apply outside of the context of a FILOT.
3. Five-year abatement may apply outside of the context of a FILOT.
4. Assessment ratio would normally be 10.5% for all property for manufacturers, millage rate would be current year’s rate.
5. If property is in a MCBP, a portion of FILOT payments goes to the other county.
Rehabilitation Incentives

- Historic Property Rehabilitation (Bailey Bill)
- Big Box Credits
- Textile Revitalization Credits
- Abandoned Buildings

**Historic Property Rehabilitation – Bailey Bill**

- **Purpose:** Amended in May 2013, the “Bailey Bill” enhances incentives to restore historic structures by making renovation projects more economically feasible for home and business owners.
- **How it Works:** Property taxes are assessed on the pre-rehabilitation fair market value. This means that a property owner will continue to pay property taxes on the pre-rehabilitation value of the property, and not the increased value due to the renovations, for up to 20 years. The county must establish minimum expenditures (20% - 100% of the FMV of the building) and designate the reviewing authority.
- **What Properties Qualify:**
  - Properties listed in the National Register of Historic Places
  - The property is designated as an historic property by the governing county body and is at least 50 years old; OR
  - The property is at least 50 years old and resides in a historic district so designated by the county governing body.
- **SC Code 4-9-195** (counties)
- **SC Code 5-21-140** (cities)
Big Box Retail Credits

- **SC Code § 6-34-40**
- **Purpose:** To create meaningful incentives for the renovations, improvement, and redevelopment of abandoned retail facility sites in South Carolina.
- **How it Works:** A taxpayer who renovates, improves, or redevelops an eligible site may choose between one of the two available tax credits:
  1. Property tax credit equal to 25% of the rehabilitation expenses times the local tax entity ratio of each local taxing entity (taken against up to 75% of property taxes due for up to eight years); OR
  2. An income tax credit equal to 10% of the rehabilitation expenses.
- **What Properties Qualify:**
  - Eligible Sites include: a shopping center, mall, or free standing site, at least 40,000 sq. ft. in size, that was used primarily as a retail sales facility. For the site to qualify, it must have been “abandoned.”
    - Abandoned – 80% of the retail site has been continuously closed for business and otherwise inoperable for at least 1 year

Textile Revitalization Credit

- **SC Code § 12-65-30**
- **Purpose:** Primary purpose is to incentivize rehabilitation, renovation, and redevelopment of abandoned textile mill sites located in South Carolina.
- **How it Works:** A taxpayer who rehabilitates a textile mill is eligible for either:
  - Property tax credit levied by local taxing entities equal to 25% of rehabilitation expenses (taken against up to 75% of property taxes due each year for up to eight years); OR
  - A credit against income tax, license fees, or insurance premium taxes, or any of them equal to 25% of eligible rehabilitation expenses.
- **What Properties Qualify:**
  - Textile Mill – means a facility used for textile manufacturing, dyeing, finishing operations.
  - Textile Mill Site – includes the textile mill, the land, and any improvements on it which were used directly for textile manufacturing operations or ancillary purposes.
  - Must be abandoned – 80% or more of the textile mill has been continuously closed for business and operation for at least one year preceding the date in which the taxpayer files the “Notice of Intent to Rehabilitate.”
Abandoned Buildings Credit

- **SC Code § 12-67-100**
- **Purpose:** This Act provides a tax incentive for the restoration, rehabilitation, and redevelopment of abandoned buildings because of the economic, social, and public welfare detriment caused by the presence of abandoned buildings in our communities.
- **How it Works:** A taxpayer who rehabilitates a textile mill is eligible for either:
  - Property tax credit levied by local taxing entities equal to 25% of rehabilitation expenses (taken against up to 75% of property taxes due each year for up to eight years); OR
  - A credit against income tax, license fees, or insurance premium taxes, or any of them equal to 25% of eligible rehabilitation expenses.
  - 80%-125% limitation
- **What Properties Qualify:**
  - A building is considered “abandoned” if 66% of the space in the building has been vacant and nonoperational for five years.
  - Taxpayer must have incurred the following expenses:
    - (a) $250,000+ in the unincorporated areas of a county or municipalities of a county where the population exceeds 25,000 people,
    - (b) $150,000+ in the unincorporated areas of a county or municipalities of a county where the population is at least 1,000 persons,
    - (c) $75,000+ located in an municipality with less than 1,000 persons.

Disclosure of Rehabilitation Incentives

If income tax credit, no GASB disclosure. If property tax . . .

**KEY QUESTION FOR GASB 77:**
- Is there an “agreement”?
- Usually not, although there could be an Incentive and Inducement Agreement, Site Development Agreement, or MOU.
### GASB 77 Information on Rehabilitation Incentives

#### Required disclosures

<table>
<thead>
<tr>
<th></th>
<th>Bailey Bill</th>
<th>Big Box</th>
<th>Abandoned Textile</th>
<th>Abandoned Buildings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name and Purpose</strong></td>
<td>LMI and encourage historic rehab</td>
<td>Retail facilities, Revitalization Act; redevelopment of abandoned “big box” stores</td>
<td>Textile Communities Revitalization Act; redevelopment of abandoned textile mills</td>
<td>Abandoned Buildings Revitalization Act; redevelopment of abandoned buildings</td>
</tr>
<tr>
<td><strong>Authority</strong></td>
<td>SC Code 4-9-155 (5-21-140/cities)</td>
<td>SC Code Title 6, Chapter 34</td>
<td>SC Code Title 12, Chapter 65</td>
<td>SC Code Title 12, Chapter 67</td>
</tr>
<tr>
<td><strong>Eligibility</strong></td>
<td>Preliminary certification, historic designation, final certification, minimum expenditures</td>
<td>80% aband. &gt;= 1 year, 40,000 sqft (may be reduced to 25,000), resolution by city/county, notice other taxing entities, public hearing</td>
<td>80% aband. &gt;= 1 year, textile use, notice of intent, resolution by city/county, notice other taxing entities, public hearing</td>
<td>66% aband. &gt;= 5 years, minimum expenditures ($250k if county with &gt; 25k ppl), otherwise same as Aband. Textile</td>
</tr>
<tr>
<td><strong>Mechanism</strong></td>
<td>Pre-rehab value locked in for up to 20 years</td>
<td>If property tax credit, 25% of rehab expenses, up to 75% of tax, up to 8 years</td>
<td>If property tax credit, 25% of rehab expenses, up to 75% of tax, up to 8 years (50-125 rule)</td>
<td>If property tax credit, 25% of rehab expenses, up to 75% of tax, up to 8 years (50-125 rule)</td>
</tr>
</tbody>
</table>

### GASB 77 and Economic Development Incentives

#### Required disclosures

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</tr>
</thead>
<tbody>
<tr>
<td><strong>Recapture Provisions</strong></td>
<td>N/A (property only qualifies after certification complete)</td>
<td>N/A (credits only received after expenses incurred)</td>
<td>N/A (credits only received after expenses incurred)</td>
<td>N/A (credits only received after expenses incurred)</td>
</tr>
<tr>
<td><strong>Commitments by Recipients</strong></td>
<td>Commitments must be satisfied on the front end, but any unauth. alternations/renovations can trigger loss of incentive</td>
<td>Commitments must be satisfied on the front end</td>
<td>Commitments must be satisfied on the front end</td>
<td>Commitments must be satisfied on the front end</td>
</tr>
<tr>
<td><strong>Commitments by Government other than tax abatement</strong></td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
DOR Draft Guidance – Supplemental schedule to PT-300 package would be sent by the company to county but not to DOR; schedule asks company to include some basic information; county would apply total millage rate to determine taxes that otherwise would be due. County should disclose it is relying on company supplied information.

DOR Guidance

STATE OF SOUTH CAROLINA
SCHEDULE G
FEE IN LIEU OF TAX SUPPLEMENTAL

To be completed by County Official

1. Multiply by current millage rate
2. Property tax amount that would be due if property were not
   subject to fee

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Haynsworth Sinkler Boyd, P.A.
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• Financial Services
• Government
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GASB 77 and Economic Development Incentives

QUESTIONS?

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