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**To the Financial Accounting Standards Board (FASB):**

On behalf of the Council On State Taxation (COST), I respectfully submit these comments on the FASB Exposure Draft of the Proposed Accounting Standards Update regarding Government Assistance (Topic 832).

We at COST understand that the topic of credits and incentives provided through economic development agreements is the subject of much debate. However, we believe that adoption by FASB of a new accounting standard requiring credit and incentive disclosure by individual businesses would do nothing to either advance the debate or provide additional decision-useful information; rather, the proposed standard would complicate users' understanding. If additional accounting standards are needed to ensure transparency, COST believes the Government Accounting Standards Board (GASB) is the proper forum to address those standards, and any required disclosures should be on an aggregate and not company-specific basis. Our concerns with the Exposure Draft are broad, and include:

- the potential for disclosure of confidential taxpayer information;
- uncertainty and unpredictability of the scope of required disclosures;
- the retroactive nature of the standard;
- inconsistency with IFRS;
- lack of user need for information;
- FASB involvement; and
- the need to extend the comment period.

Our comments address generally Questions for Respondents 1, 3, 5, 6, 7, 8, and 10.

**About COST**

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multistate business entities.

## **COST Opposes Disclosure of Confidential Taxpayer Information**

The COST Board of Directors has adopted the following policy position on the Confidentiality of Taxpayer Information:

*Taxpayers have a justifiable expectation of privacy. State departments of revenue audit business taxpayers on a regular basis to ensure that all relevant tax laws are appropriately enforced; releasing specific business tax returns or information from those returns to the public would serve no policy purpose.*

COST's policy was not adopted in response to or in anticipation of a proposed financial statement disclosure of confidential taxpayer credit and incentive information. Rather, the policy was adopted to address potential disclosure of confidential taxpayer information by government agencies. However, the principles underlying the policy apply equally to the disclosure contemplated by the Exposure Draft.

COST recognizes that compliance with tax laws depends on a system that taxpayers perceive to be balanced, fair and effective. In fact, in 2000, the United States Congress Joint Committee on Taxation completed an exhaustive review of taxpayer confidentiality. The Committee concluded:

Taxpayers have a justifiable expectation of privacy in the extensive information they furnish under penalty of fine or imprisonment....Our tax system is based on voluntary compliance. Many observers believe that the degree of voluntary compliance is directly affected by the degree of confidentiality given the information that is provided to the IRS.

If returns and return information were publicly available, it would invite a variety of intrusions into a taxpayer's privacy. Business competitors could use the information to gain economic advantage....A lack of confidentiality could also facilitate the use of return information for political gain.

The general rule of § 6103 of the Internal Revenue Code (IRC) is that tax returns and tax return information are confidential and not subject to public disclosure. Furthermore, the IRC contains a provision prohibiting the sharing of federal tax return information with a state or local government unless the state or local government is likewise required to protect the information.

The proposed accounting standard set forth in the Exposure Draft would require financial statement disclosure of any agreement regarding government assistance, including the significant terms and conditions of any such agreement, and its impact on a taxpayer's tax return calculations. Such disclosures directly conflict with the principle that tax return information is confidential and should not be subject to public disclosure. We believe it is bad public policy to mandate, via an accounting standard imposed on businesses, the disclosure of information prohibited from disclosure by a government agency.

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Disclosures of otherwise confidential information may make trade secrets and other sensitive information public and available for use by competitors. Information such as profit margins, competition strategies, investment strategies, policy directions, and geographic strategies could prove devastating to a company if such information falls into the hands of a company's competitor. The fact that the disclosure applies to all existing agreements elevates our concerns. If a company knew at the time it entered into an agreement that its competitive information would be disclosed, it would have had the opportunity to take precautionary measures regarding that information. FASB should endeavor to protect confidential business information, not require its disclosure.

In addition to the stated concerns about disclosure of confidential business information, COST is concerned that the proposed standard lacks any provision to prevent confidential personal information (e.g., employee names, social security numbers, addresses, salary information, etc.) from being disclosed. Companies routinely provide such information to governmental entities pursuant to economic development or other "government assistance" agreements, and that information should be protected. The risks of disclosing confidential information call into question the need for a new accounting standard.

**The Proposed Accounting Standard is Unclear and Overbroad**

The proposed standard would require, unless impracticable, disclosure of the amount of government assistance received but not recognized, including a benefit from tax that has been abated. This calls into question what "impracticable" means and how to identify the scope of "government assistance."

Virtually all taxing authorities have the power to negotiate settlements when the tax laws are unclear. Taxing authorities audit taxpayers and issue assessments regularly throughout the year, and taxpayers frequently appeal those assessments. The entire process involves a significant amount of give and take, and most of those audits end with a negotiated settlement in the form of a closing agreement, either at the audit or appeal level. These settlements are legally enforceable agreements under which both sides receive value, and the government exercises discretion in negotiating the settlement. Will the proposed accounting standard require disclosure of all tax settlements? For purposes of compliance, what should taxpayers consider the amount of the "assistance," and at what level is the assistance measured? The difference between initial audit schedules and what is ultimately paid? The difference between any assessment and what is paid? The difference between amounts due after an administrative law decision? The difference after all court appeals are exhausted? When do such burdens become "impracticable?"

Many closing agreements also contain a provision regarding prospective treatment of particular issues. The proposed standard requires disclosure of benefits received under an agreement that exists at the effective date of the standard. Will a business be required to examine all of its prior audit closing agreements to determine if the agreements' provisions are still in effect? How should taxpayers treat nondisclosure provisions in such agreements?

Most states require taxpayers to petition the tax commissioner for an alternate corporate income tax apportionment method if the statutory method does not fairly reflect income in that state. The tax commissioner can also require an alternative apportionment methodology. These

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situations often result in agreements between the parties, and the tax commissioner clearly uses his or her discretion to accept or reject the alternative apportionment methodology. Will businesses need to disclose all of these agreements?

State law often allows taxpayers to make certain elections, which are often allowed at the tax commissioner's discretion (e.g., waters-edge reporting). These elections are binding on both parties. Will taxpayers be required to disclose all such elections?

The proposed standard would require the disclosure of information about the significant terms and conditions of the agreement. However, the proposed standard does not include a definition of what may or may not be significant. Although the proposed standard does set forth terms and conditions that might be appropriate to disclose, the proposed standard clearly indicates that the list is not exhaustive. COST is concerned that a company's proprietary information might be construed as significant and therefore require disclosure.

**The Retroactive Nature of the Proposed Standard is Onerous**

As indicated above, the proposed standard would apply to all agreements existing at the effective date of the proposed standard. This amounts to a retroactive application of the proposed standard to all existing agreements. Especially given the unclear and overbroad scope of the proposed standard, the amount of time needed by businesses and practitioners to scour through the plethora of potential agreements to determine if they should be disclosed could be staggering.

**The Proposed Standards are Inconsistent with IFRS**

The disclosure provisions of IAS 20 are correctly cited in the Exposure Draft. However, as recognized in the exposure draft, those provisions relate only to government grants, not to other forms of government assistance, and not to amounts received but not recognized. Also, as recognized by FASB in the Exposure Draft:

The scope of IAS 20 does not include government assistance that is provided for an entity in the form of benefits that are available in determining taxable profit or loss or that is determined on the basis of income tax liability.

The language in the Exposure Draft implies that the disclosures required by the proposed standard are consistent with IFRS. However, the scope of the Exposure Draft appears to be far broader than the scope of IFRS IAS 20, thereby highlighting the question of whether the Exposure Draft is even needed.

**Very Little Need for New Accounting Standard on Government Assistance**

We note that the mission of FASB is to establish and improve standards of accounting and reporting that foster financial reporting by nongovernmental entities that provides decision-useful information to investors and other users of financial reports. We are struggling to discern what decision-useful information would be provided by the proposed standard that is not already provided by current accounting standards.

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For example, we agree that an investor may want to know whether a credit or incentive is in jeopardy, thereby potentially affecting a company's financial position. However, the accounting for such a contingency can currently be addressed using the procedures and disclosure required by ASC 450 and ASC 740-10.

The stated reasons for issuing the proposed accounting standard are increased transparency and that “[r]equiring disclosures about government assistance in the notes to the financial statements *could* improve the information that is provided to users when analyzing an entity’s financial results and prospects for future cash flows.” [Emphasis added.] COST is concerned that this new standard is being pursued in response to the larger debate over the efficacy of credits and incentives generally, rather than to provide decision-useful information to investors.

Because tax laws are inherently complex, COST is also concerned that the disclosures made in name of transparency will be counter-productive due to the lack of public understanding of the complexities of corporate taxes, especially as they apply to multistate businesses. The proposed disclosures, if adopted, would also fuel the misperception that businesses do not pay substantial state and local taxes, when in fact businesses paid more than \$688 billion in state and local taxes in FY2014 (based on the COST study, Total State and Local Business Taxes, October 2015).

The only plausible reason we can discern in support of the new accounting standard that cannot be addressed within the current accounting standards is to assist those who wish to harass a company regarding credits or incentives received pursuant to an economic development agreement.

**Any Need for Disclosure is Better Addressed by the Government Accounting Standards Board (GASB) on an Aggregate, Not Company-Specific Basis**

The disclosures required by the proposed accounting standard will accomplish little in helping a user determine whether any particular credit or incentive is beneficial to the governmental entity. The credit or incentive may relate to only a portion of the business or a particular subsidiary in a controlled group of corporations, but when viewed in the context of consolidated financial reports the context could be quite skewed. Even if the disclosures relate to the only entity required to publish financial statements, the disclosures would only relate to that entity, giving the user very little information about the impact of the credit or incentive as a whole.

It is our view that this issue has been adequately addressed by GASB in Statement No. 77 regarding Tax Abatement Disclosures. That statement provides that information for tax abatements may be disclosed individually or may be aggregated. It also provides that if the government is legally prohibited from disclosing information, the government may instead disclose a description of the general nature of the omitted information and the specific source of the legal prohibition. While we agree that GASB is the appropriate body to address disclosure of economic incentives, we emphasize that, for the reasons outlined above, if data is not aggregated by the government, the risks of disclosure of proprietary information remain.

**COST Respectfully Requests That FASB Extend Time for Comments**

FASB issued the Exposure Draft on November 12, 2015, and comments are due February 10, 2016. Based on the limited number of conversations between and among COST staff, COST

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members, and accounting practitioners, we are concerned that the number of companies and practitioners impacted by the Exposure Draft far exceeds the number that have had the opportunity to review the new standard. The three months between the Exposure Draft's issuance and comment due date are usually the busiest time of the year for corporate accounting personnel, especially those with calendar year end financial reporting responsibilities.

As set forth above, the new accounting standard provided in the Exposure Draft represents a huge step toward the erosion of the confidentiality of taxpayer information. Adopting the new standard could also have a chilling effect on economic development. We therefore believe that FASB, state economic development agencies, practitioners, and businesses affected by the new accounting standard will all be better served if the Exposure Draft is fully vetted. Accordingly, COST respectfully requests that FASB, at a minimum, consider extending the time period for accepting comments.

**Summary**

We at COST believe that FASB should allow the business community and practitioners more time to adequately review and analyze the proposed accounting standard. But regardless of whether more time is allowed, we believe that the disclosure of confidential taxpayer information pursuant to the proposed standard is bad public policy, and that the potential for such disclosure could dampen economic development efforts.

Adopting the proposed standard does little to further the FASB's mission of providing decision-useful information. Users of financial statements, other than those seeking to harass specific companies, have very little need for the information provided by the proposed standard that is not already provided by current accounting standards. To the extent there is a need to analyze the effectiveness of a particular credit or incentive, that need is better addressed by GASB through the grantors of such incentives on an aggregate basis with no company-specific information.

Sincerely,



Patrick J. Reynolds  
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