



# ECONOMIC INCENTIVES AND ABATEMENTS

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# **GLOSSARY**

**"Abatement"**

**"Transaction State"**



# THE GEORGIA WAY

- GEORGIA HAS 159 COUNTIES
- SO, THERE ARE 159 WAYS THAT PROPERTY TAX "ABATEMENT" IS DONE IN GEORGIA
- TAKE-AWAY
  - IT'S NOT REALLY "ABATEMENT"
    - THAT'S A MISNOMER



# THE GEORGIA WAY

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- IT'S REALLY PROPERTY TAX SAVINGS
- BUT IN THIS PRESENTATION, WE'LL CALL IT "ABATEMENT", TOO
- JUST DON'T GET CONFUSED



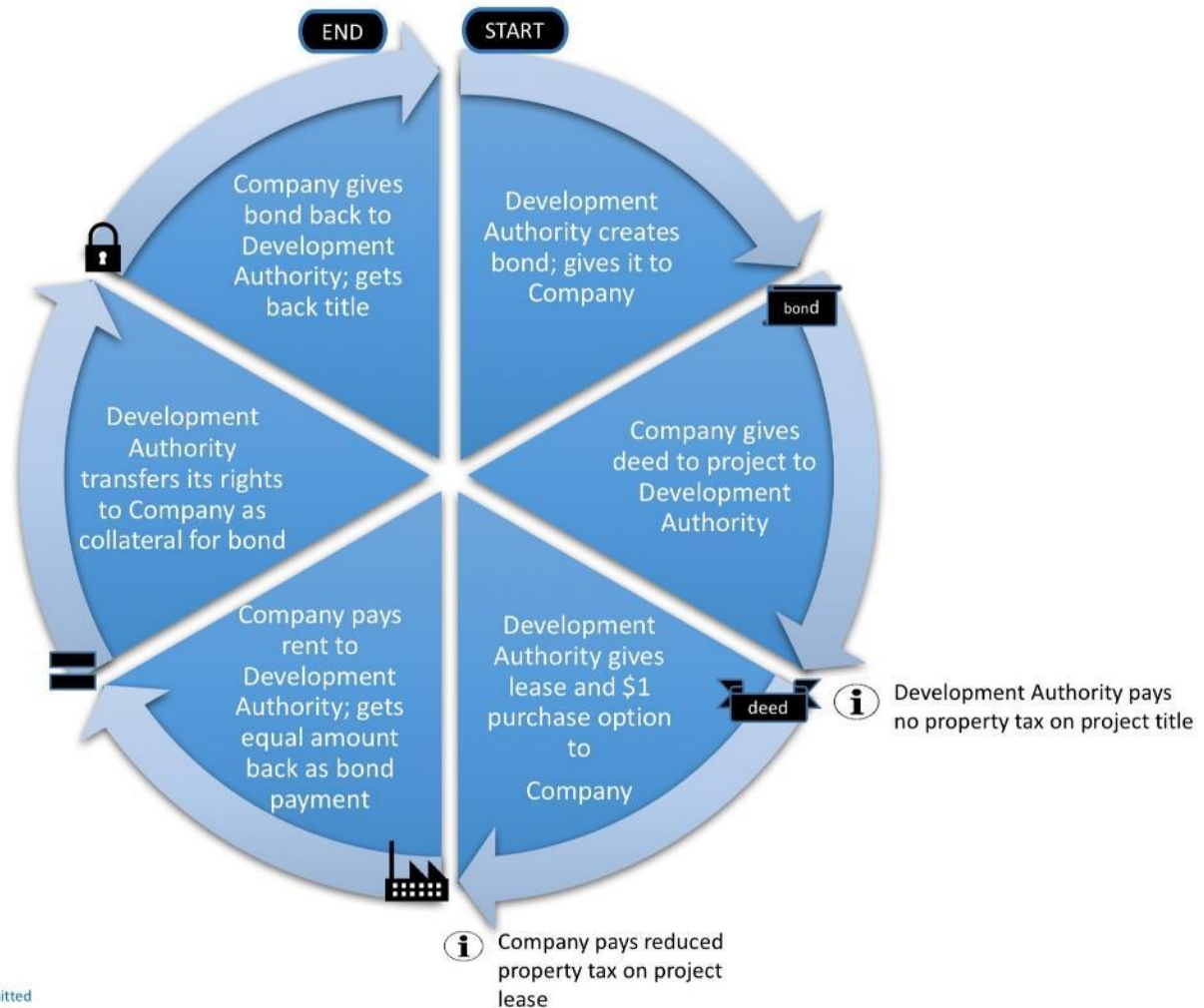
# THE GEORGIA WAY

## ANOTHER TAKE-AWAY

- GEORGIA IS A "TRANSACTION STATE"
  - NO PROPERTY TAX ABATEMENT WITHOUT A TRANSACTION
  - Exception- limited zones under Georgia Constitution, for example: state enterprise zone, urban enterprise zone
  - Another exception- "freeport" inventory exemption

# HOW IT WORKS

# “BONDS FOR TITLE”





# TELL ME WHY

- A TRANSACTION IS REQUIRED BECAUSE OF THE STATE CONSTITUTION
  - "UNIFORMITY OF TAXATION"
  - NO "GIFTS OR GRATUITIES" FROM PUBLIC SECTOR TO PRIVATE SECTOR
- ALSO WANT TO AVOID TAXPAYER SUITS OVER "SHAMS"
- THE GEORGIA SUPREME COURT RECENTLY LEFT STANDING FULTON COUNTY'S "RAMP UP" FORMULA FOR PROPERTY TAX INCENTIVES. SJN  
Properties LLC v. Fulton County Board of Assessors, 296 Ga. 793 (2015)



# MAKE IT LEGAL

- **UNDERPINNINGS OF THE TRANSACTION**
  - TITLEHOLDER (PUBLIC BODY) NEEDS TO BE EXEMPT FROM PAYING PROPERTY TAX OR PROPERTY NEEDS TO BE EXEMPTED
  - STILL NEED LEASE TO COMPANY
  - LEASE POTENTIALLY TAXABLE
- **THE UNDERPINNINGS BASICALLY AMOUNT TO HAVING THE RIGHT STRUCTURE IN PLACE THAT SUPPORTS THE PROPERTY TAX INCENTIVE LEGALLY**

# WHY BONDS ARE REQUIRED

Extract from a Fulton County bond validation order following the Supreme Court's decision:

7. Because the Bond transaction results in a leasehold interest being held by the Company in the assets comprising the Project, the Memorandum of Agreement established a formula utilized by the FCBTA for valuing the leasehold interest based upon the present value of the assets using the income approach. In that regard, the Issuer provided evidence at the validation hearing as to the use of such formula to establish the value of the leasehold interest of the Company. The Issuer's expert witness, ... testified that the Bond repayment is amortized over a ten year period rather than a more typical 20 or 30 year period found in common financing transactions. Lease payments are required to be sufficient to pay the required Bond payments. Hence, the rent payments under the terms of the Lease exceed the rent the Company would otherwise have to pay in a competitive market. Hence, there is no market rent advantage (i.e., value derived from a bargain on rent paid) associated with the Lease.

8. As there is no market advantage to the rent paid, according to [the expert], virtually all of the value in the taxable leasehold is associated with the reversion. [The expert's] testimony on these, and other, points was not rebutted.

BONDS ARE  
INTEGRAL  
TO HOW  
LEASEHOLD  
VALUATION  
WORKS



# WHY BONDS ARE REQUIRED

Extract from a Fulton County bond validation order following the Supreme Court's decision:

14. Accordingly, the evidence submitted in this proceeding and summarized above, including, but not limited to, the testimony regarding the annual use of an accepted appraisal methodology to establish the fair market value of the fee simple interest of the Project and the application of a present value analysis of the reversionary interest demonstrates that the valuation methodology employed by the FCBTA and reflected in the Memorandum of Agreement sets forth a reasonable and non-arbitrary method of arriving at the fair market value of the property that is the subject of the bond transaction for purposes of *ad valorem* tax purposes and complies with the standard set forth in both *Sherman v. Fulton County Board of Assessors*, 288 Ga. 88 (2010), and *DeKalb County Board of Tax Assessors v. W.C. Harris & Company*, 248 Ga. 277 (1981).

# IT'S NOT JUST GEORGIA!

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## *Industrial Revenue Bond/ Tax-Exempt Entity Ownership*

- Typically an arrangement structured where a tax-exempt entity holds title to a new facility
- Could allow the tax-exempt entity to construct the facility free of property tax and sales tax
- Actual project owner would enter into a lease with the tax-exempt entity for a certain number of years, may be up to 30
- Property taxes are not assessed; however, PILOTs would typically be made as lease payments
- Everything is negotiated in advance
- This arrangement is typically found states that allow local tax exempt entities the abilities to enter into such arrangements, including Arkansas, Georgia, Louisiana, Tennessee, and Texas

NO SALES TAX  
EXEMPTION  
OCCURS IN  
GEORGIA

ACTUAL  
TAXES  
APPLY IF  
LEASEHOLD  
VALUATION  
USED

ALSO  
KANSAS  
and  
others

# WHAT CAN VARY?



# Credit? Refund? Exemption? Abatement?

- The structure is constant
- But in Georgia, this incentive is-
- "abatement"
- discretionary
- "local option"
  - not granted by a specific statute
  - results from financial engineering
- The incentive is negotiable



# WHAT'S POSSIBLE

- THE BONDS FOR TITLE STRUCTURE IS A COMMON THREAD IN ANY COUNTY
- BUT HERE'S WHAT CAN VARY FROM COUNTY TO COUNTY-
- THE METHODOLOGY
  - LEASEHOLD VALUATION
  - NONTAXABLE LEASE (USUFRUCT)



# WHAT'S POSSIBLE

- ANOTHER METHODOLOGY
  - EXEMPT PROPERTY
  - IF "CONSTITUTIONAL" DEVELOPMENT AUTHORITY WITH CERTAIN LANGUAGE IN ITS LOCAL CONSTITUTIONAL AMENDMENT
    - STILL NEED TRANSACTION BECAUSE OF "GIFTS AND GRATUITIES" ISSUE, LIMITATION ON POWERS OF DEVELOPMENT AUTHORITIES, ETC.



# WHAT WORKS

- A SYSTEM THAT WORKS WELL WILL HAVE BUY IN FROM ALL THE STAKEHOLDERS IN THE COMMUNITY, EVEN IF THAT IS NOT A LEGAL REQUIREMENT
- DEPENDING ON THE COMMUNITY, THE PARAMETERS OF WHAT'S POSSIBLE WITH THE INCENTIVE CAN BE CONSTRAINED AS A MATTER OF PRACTICE BY-
  - CONSENSUS AMONG THE STAKEHOLDERS
    - OFTEN REFLECTED IN A WRITTEN POLICY
    - POLICY SHOULD ADHERE TO CURRENT STATE OF THE LAW
  - POSITIONS PREVIOUSLY TAKEN IF THERE HAS BEEN A HISTORY OF LITIGATION



# WHAT'S NEGOTIABLE

- Depending on the incentives structure, some or all of the following issues will be negotiable-
  - The percentage and duration of the abatement
  - What property is eligible
  - Whether existing investment and/or investment already on the tax digest (not always the same) can be included
  - The start date and treatment of any CIP (Construction in Progress)

# WHAT'S NEGOTIABLE

- But be careful- from an interview with the Development Authority's counsel after the 2015 Supreme Court decision: "They might try to go after discrete projects arguing as to whether or not the ramp-up fits the specific transaction in future bond deals..." Source: Fulton Daily Report
- If bonds are issued a challenge later: "will only constitute a prohibited collateral attack on a concluded bond validation proceeding if the memoranda were specifically adjudicated in the proceedings and held valid by the bond judgment." Sherman v. Fulton County Board of Assessors, 288 Ga. 88, 95 (2010).

PUBLIC OFFICIALS,  
AND THE PUBLIC,  
ALWAYS SHOULD  
EXPECT TO SEE A  
VALIDATED  
MOU/MOA, WHEN  
THERE IS  
PROPERTY TAX  
ABATEMENT



# PILOTs

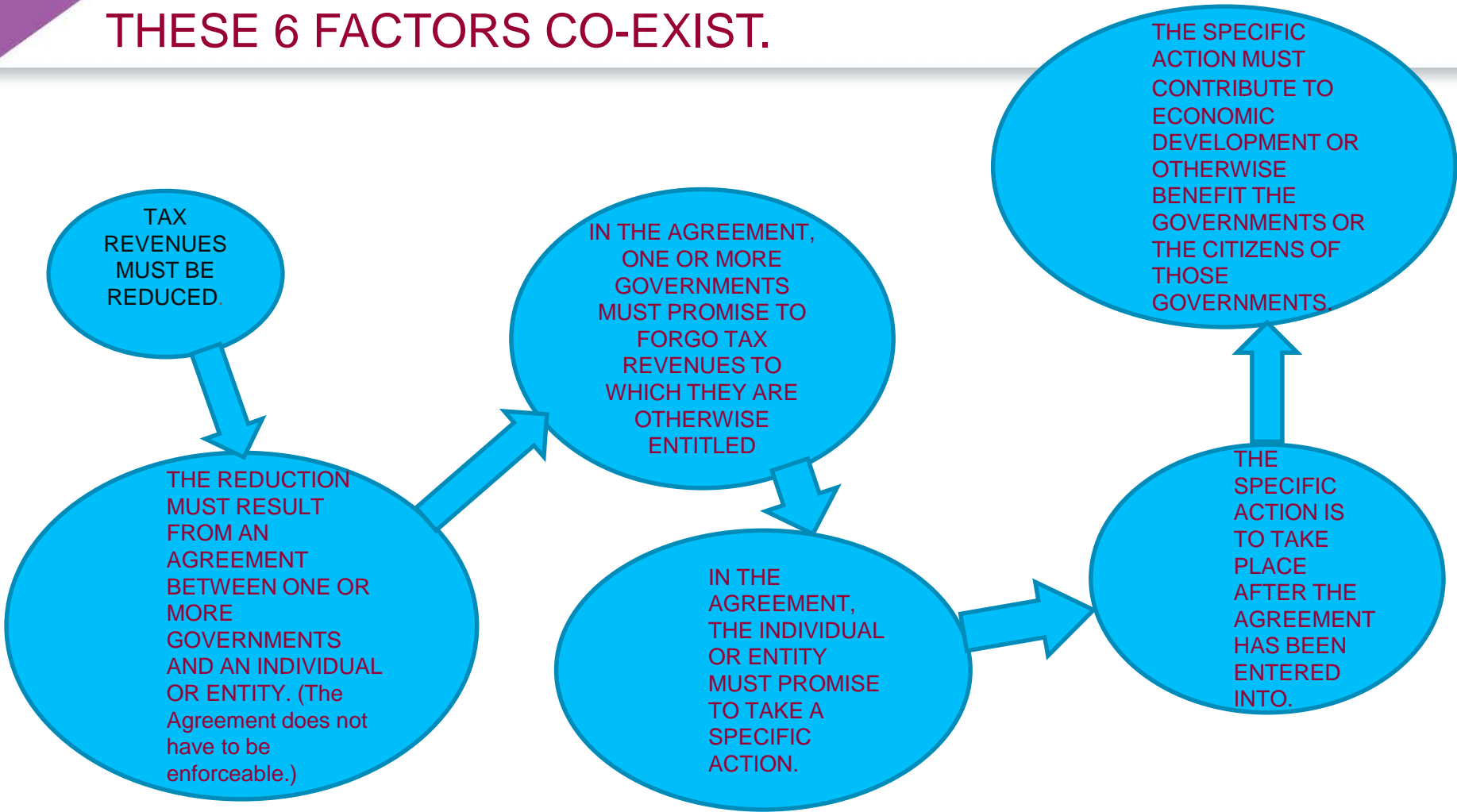
- DEPENDING ON ABATEMENT STRUCTURE USED, LEASE MIGHT ACTUALLY NOT BE SUBJECT TO PROPERTY TAX.  
See Diversified Golf, LLC v. Hart County Board of Tax Assessors, 267 Ga. App., 598 (2004).
- IF LEASE ISN'T TAXABLE, THEN SOME DOORS OPEN
  - 100% ABATEMENT, OR
  - PAYMENTS IN LIEU OF TAXES (PILOT PAYMENTS)
- CONTRACTUAL PILOT PAYMENTS ARE OUTSIDE NORMAL PROPERTY TAX RULES
- SO, THEY ARE GOVERNED BY CONTRACT (PILOT AGREEMENT)
- BONDS ARE REQUIRED
  - "PILOT RESTRICTION ACT" MIGHT ALSO APPLY
    - DOES NOT APPLY TO NORMAL "BONDS FOR TITLE"

# **HEAD WINDS**

## **GASB'S "ABATEMENT STATEMENT"**

- AS OF AUGUST 14, 2015, 7 NON-ELECTED MEMBERS OF A COMPONENT OF A PRIVATE SECTOR, NONPROFIT ORGANIZATION, THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD (“**GASB**”), UNILATERALLY TOOK A CONTROVERSIAL ACTION THAT WILL FORCE CHANGES IN ECONOMIC DEVELOPMENT ACROSS THE NATION.
- GASB ON THAT DATE ADOPTED ITS STATEMENT NO. 77- TAX ABATEMENT DISCLOSURES (THE “**ABATEMENT STATEMENT**”).
- THE ABATEMENT STATEMENT IS EFFECTIVE FOR REPORTING PERIODS BEGINNING AFTER DECEMBER 15, 2015, BUT GASB ENCOURAGES EARLIER APPLICATION OF IT.

# THERE IS NOTHING TO DISCLOSE UNLESS THERE IS AN “ABATEMENT AGREEMENT”. AND THERE IS NO ABATEMENT AGREEMENT, UNLESS EVERY ONE OF THESE 6 FACTORS CO-EXIST.





# SOME SELECTED ISSUES WITH APPLYING THE GASB RULES IN GEORGIA

## STRUCTURE

- Georgia's property tax incentives based on Leasehold Valuation or Usufruct
- Result of Classification or Assessment, not agreement
- Policy issue: PILOTs paid to taxing authorities/Tax Commissioner should be treated as though they are taxes paid, for purposes of GASB

## AGREEMENT

- No public body can legally agree to abate property taxes in Georgia
- A development authority is not a taxing jurisdiction, so has no taxes that it can reduce
  - Counter-argument: if a local government acknowledges a development authority's MOU
  - Counter-argument: if development authority supported by millage from local government

## GAG

- "Gifts and Gratuities" prohibited by Georgia's Constitution
- GASB rule doesn't apply to performance based incentives
  - But risk of violating this Constitutional prohibition if an abatement agreement is made after an economic development prospect has performed

# CONCLUSION



# THINGS TO COME

WE SHOULD PREPARE FOR ABATEMENT DISCLOSURES TO BECOME AN ACCEPTED PRACTICE.

FINANCIAL STATEMENTS OF MANY GOVERNMENTS ALREADY MENTION GASB 77 AND ANTICIPATE DISCLOSING.

“BEST PRACTICES” FOR COMPLIANCE, LIKE DATA GATHERING, SHOULD BE DEVELOPED AND PUT IN PLACE NOW.

THE ECONOMIC DEVELOPMENT COMMUNITY SHOULD EMBRACE COMPLIANCE AND LEAD THE DISCUSSION.

# MORE INFORMATION



# QUESTIONS?

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# DOWNLOADS

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# SCOPE

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