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March 1, 2016

Commissioner Lynette T. Riley
Georgia Department of Revenue
1800 Century Blvd., NE, Suite 15300
Atlanta, GA 30345-3205

Via Email: regcomments@dor.ga.gov

RE: Comments on Notice SUT 2016-001

Dear Commissioner Riley:

As president of Tax Executives Institute ("TEI"), I write to comment on the Department of Revenue's proposed amendments to Rule 560-12-1-.16, Georgia's "Direct Pay Reporting" regulation ("Proposed Amendments"). Specifically, TEI urges the Department to remove the provisions in the Proposed Amendments denying direct pay permit holders their statutory right to interest on refunds.

About Tax Executives Institute

TEI was founded in 1944 to serve the professional needs of in-house tax professionals. Today, the organization has 56 chapters in North and South America, Europe, and Asia, including Georgia. Our approximately 7,000 members represent 2,800 of the largest companies in the world, many of which either are resident or conduct business in your state.

As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in encouraging the uniform and equitable enforcement of tax laws, and reducing the cost and burden of tax administration and compliance to the benefit of taxpayers and government. TEI is committed to maintaining a system that works — one building upon the principle of voluntary compliance, consistent with sound tax policy, easy to administer, and efficient.

Comments on the Proposed Amendments

Direct pay permits allow holders to accrue and pay sales and use taxes directly to the Department. Direct pay permits also relieve vendors from the responsibility for collecting tax on sales made to permit holders on qualifying transactions. Direct pay permits thus create efficiency for Georgia

taxpayers, particularly manufacturers for whom it may not be clear at the time of purchase whether a specific item is taxable, and the Department, which only need audit permit holders.

The Proposed Amendments provide that all direct pay permits issued prior to October 1, 2016, will expire on December 31, 2016; taxpayers must apply for new direct pay permits; and permit holders must “agree” to waive interest on refunds of taxes remitted on purchases made with the new permit to obtain a replacement permit. Conditioning the issuance of a direct pay permit on an “agreement” to waive interest is directly contrary to Georgia Code Section 48-2-35(a), which currently provides “[a] taxpayer shall be refunded any and all taxes or fees which are determined to have been erroneously or illegally assessed and collected from such taxpayer...whether paid voluntarily or involuntarily, and shall be refunded interest...on the amount of the taxes or fees....”¹

It is well established under Georgia law that a regulation is invalid and unenforceable when it contradicts its governing statutes. See, e.g., *Brandon v. State Revenue Comm.*, 54 Ga.App. 62 (1936); *Georgia Real Estate Commission v. Warren*, 152 Ga.App. 283 (1979). The Proposed Amendments contradict the Legislature’s express statutory mandate that interest will be refunded on all voluntary and involuntary overpayments of tax unless otherwise provided for in the Georgia Code and will undoubtedly be challenged in litigation if enacted. Such litigation will consume substantial government resources to defend and will almost certainly result in the courts striking down the Proposed Amendments.

Moreover, the Department’s attempt to introduce an administrative exception to the statutory mandate in Section 48-2-35(a) is inconsistent with principles of sound tax policy. Direct pay permits create obvious efficiencies for Georgia taxpayers. Indeed, the Proposed Amendments condition the issuance of a direct pay permit upon the taxpayer’s attestation that direct payment will benefit their tax compliance by either: (1) reducing administrative work in determining liability or collecting, verifying, calculating, or remitting the tax; (2) improving compliance with the tax laws of the state; (3) improving compliance when the determination of taxability is difficult or impractical at the time of purchase; (4) more accurately calculating the tax where new or electronic business processes are utilized; or (5) more accurately determining or calculating the tax where significant automation and/or the centralization of purchasing and/or accounting processes have occurred and the applicant must comply with the laws and regulations of multiple state and local jurisdictions.

The Proposed Amendments also contain provisions providing the Department with broad authority to revoke direct pay permits when a taxpayer has not complied with the Rule or the revocation would be in the best interest of the state. These provisions enable the Department to

¹ Section 48-2-35 is the subject of HB 960. Notably, the Legislature has not included a statutory exception in HB 960 denying direct pay permit holders their right to interest on refunds. The proposed reduction of the interest rate will, however, significantly mitigate the amount of interest paid on all refund claims.

address circumstances where permit holders fail to remit tax on a timely basis or consistently under pay the tax. The Proposed Amendments thus already ensure direct pay permits will be used for proper purposes and cannot be abused by taxpayers.

Interest should compensate parties for the time value of money. Tax administration should be even-handed (both between similarly-situated taxpayers and between taxpayers and the taxing authority) to vindicate basic principles of fairness and to maintain the integrity of the self-assessment tax system.

As an association of tax professionals, TEI is proud of its record of supporting even-handed improvements to tax administration. Indeed, TEI has issued a policy statement maintaining interest rates on underpayments and overpayments of tax should be equal, and jurisdictions should set interest rates on underpayments and overpayments at a market rate (attached). TEI urges the Department to withdraw the provisions in the Proposed Amendments denying interest to direct pay permit holders because those provisions not only contradict this basic tenet of tax policy but also Georgia law.

* * *

TEI's comments were prepared under the aegis of TEI's State and Local Tax Committee, whose chair is Jamie Fenwick. Pilar Mata, Tax Counsel for TEI, coordinated the preparation of TEI's comments. Please contact Pilar Mata at +1 202 464 8346 or pmata@tei.org if you have questions about TEI's comments.

Respectfully submitted,
Tax Executives Institute, Inc.



C. N. (Sandy) Macfarlane
International President



TAX EXECUTIVES INSTITUTE, INC.

State and Local Tax Policy Statement Interest Rates

Many state and local tax jurisdictions charge taxpayers a higher rate of interest on tax deficiencies than they pay on refunds. In some instances, jurisdictions pay no interest on refund claims. Moreover, many jurisdictions charge interest on deficiencies at a rate well above market interest rates.

Tax Executives Institute, Inc. ("TEI") maintains interest rates on underpayments and overpayments should be equal. Jurisdictions should set interests rate on underpayments and overpayments at a market rate.

Interest should compensate parties for the time value of money. Interest rates should not be established to generate additional revenue or to punish specific behaviors. Moreover, interest rates should not influence a taxpayer's decision to contest or litigate an issue.

Requiring taxpayers to pay a higher interest rate on deficiencies than taxing jurisdictions pay on refunds undermines the public's confidence in the fairness of the tax system. Moreover, when jurisdictions set interest at rates well over market rates, they impose a penalty on taxpayers that misunderstand or have good faith disputes regarding their tax liability. Above-market interest rates also may cause jurisdictions to delay the processing of refund claims or create the perception that such delays are intentional.

Approved: November 17, 2015