



State of Georgia

Lynnette T. Riley  
Commissioner

**Department of Revenue**  
Legal Affairs & Tax Policy  
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## **NOTICE SUT 2016-006**

RE: Amendment of Rule 560-12-1-.25 Refunds

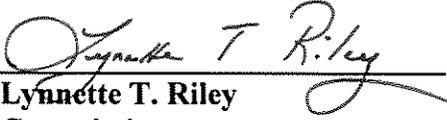
### **TO ALL INTERESTED PERSONS AND PARTIES:**

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rule 560-12-1-.25 Refunds.

The Department of Revenue will consider the amendment of Rule 560-12-1-.25 at 10:00 a.m. on January 5, 2017 in Suite 15210 of the Department's headquarters at the address below.

The Department must receive all comments regarding the amendment of the above-referenced rule from interested persons and parties no later than 10:00 a.m. on January 5, 2017. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to [regcomments@dor.ga.gov](mailto:regcomments@dor.ga.gov). Facsimile comments must be sent to (404) 417-2293. Please reference "Notice Number SUT 2016-006" on all comments.

Dated: December 5, 2016.

  
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Lynnette T. Riley  
Commissioner  
Georgia Department of Revenue

## SYNOPSIS

### GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

#### CHAPTER 560-12-1 ADMINISTRATIVE RULES AND REGULATIONS

##### 560-12-1-.25. Refunds

The Georgia Department of Revenue proposes to amend Rule 560-12-1-.25 "Refunds" by making changes as indicated by underline and strikethrough on the attached copy of the Rule.

The purpose of the amended Rule is to clarify rules for sales and use tax refund claims. The main features of the Rule are as follows:

- Paragraph 1, Definitions.
- Paragraph 2, Recovery of tax by dealers that refunded tax to a customer.
- Paragraph 3, Requirements for a claim for refund.
- Paragraph 4, Refund claims of local significance.
- Paragraph 5, Statute of limitations.
- Paragraph 6, Interest.
- Paragraph 7, Refund offsets.
- Paragraph 8, Frivolous refund claims.



31 ~~(d) Where the dealer has discontinued business or it is impractica-~~  
32 ~~ble to take credit against subsequent taxes due within a reasonable~~  
33 ~~time, such dealer may request a check in lieu of a credit memoran-~~  
34 ~~dum.~~

35 ~~(2) In the case of taxes illegally or erroneously collected, the dealer~~  
36 ~~may secure a refund as provided in O.C.G.A. Section 48-2-35, pro-~~  
37 ~~vided, however, the dealer must affirmatively show that the tax so~~  
38 ~~illegally or erroneously collected was paid by him and not paid by~~  
39 ~~the consumer, or that such tax was collected from the consumer as~~  
40 ~~tax and has since been refunded to the consumer.~~

41 **(1) Definitions. For purposes of this Rule,**

42 **(a) “Political subdivision designee” means the chief officer or of-**  
43 **icers designated by the political subdivision to receive information**  
44 **about a “refund claim of local significance.”**

45 **(b) “Refund claim of local significance” means a claim for re-**  
46 **fund of sales and use taxes erroneously or illegally assessed and**  
47 **collected or the Department’s discovery of any overpayment of**  
48 **such taxes, if such claim for refund or overpayment is for an**  
49 **amount equal to or greater than 10 percent of the total yearly aver-**  
50 **age of aggregate sales and use tax distributions to any single politi-**  
51 **cal subdivision based on the average of the three most recent cal-**  
52 **endar years. A “refund claim of local significance” may consist of**  
53 **more than one pending refund claim filed by one claimant in over-**  
54 **lapping or contiguous periods or more than one pending refund**  
55 **claim with substantially similar issues filed by one claimant.**

56 **(c) “Return allowance” means the amount of the sales price or**  
57 **purchase price refunded by the dealer to the purchaser in cash or**  
58 **credit or, if the dealer refunded only tax to the purchaser, the**  
59 **amount of the tax refunded to the customer divided by the applica-**  
60 **ble sales tax rate.**

61 **(2) Recovery of tax by dealers that refunded tax to a cus-**  
62 **tomers.** After a dealer remits sales tax to the Department and subse-  
63 **quently refunds the tax to the customer, the dealer is permitted to**  
64 **recover the tax in the following manner:**

65 **(a) If possible, the dealer must deduct the return allowance from**  
66 **total taxable sales reported on the sales and use tax return for the**  
67 **tax period in which the property is returned to the dealer. However,**  
68 **because a deduction cannot result in the reporting of negative taxa-**  
69 **ble sales, the dealer must report only that portion of a deduction**  
70 **that will not result in a negative number for taxable sales and then**  
71 **take any remaining deduction on a subsequent return (or on multi-**  
72 **ple returns, if necessary). Any deductions taken on subsequent re-**  
73 **turns must be taken within 3 years from the date that the tax was**  
74 **remitted to the Department.**

75 **(b) The deduction must be taken in the same local jurisdiction in**  
76 **which the customer paid the tax to the dealer.**

77 **(c) If the dealer will have insufficient taxable sales from which to**  
78 **take a deduction, the dealer, in accordance with the requirements in**  
79 **paragraph (3) below, may recover the tax by submitting a refund**  
80 **claim to the Department within 3 years of when the tax was remit-**  
81 **ted.**

82 **(d) No refund or return allowance deduction will be allowed to a**  
83 **dealer for taxes collected by such dealer from the purchaser unless**  
84 **the taxes collected have been returned by the dealer to the pur-**  
85 **chaser.**

86 **(e) A dealer is prohibited from recovering the tax by amending**  
87 **past returns unless**

88 **1. due to insufficient sales, the dealer is unable to recover the tax**  
89 **by deducting the return allowance from reported taxable sales, and**

90 **2. after filing a refund claim in accordance with the requirements**  
91 **in paragraph (3) below, the Department requests an amended re-**  
92 **turn.**

93 **(f) Examples:**

94 **1. Dealer sells a shirt to Customer in XYZ County, and Customer**  
95 **pays the Dealer \$100.00 for the shirt plus \$7.00 in sales tax. Dealer**  
96 **remits to the Department \$4.00 in state sales tax and \$3.00 in**  
97 **county sales tax. Customer then returns the shirt, and Dealer re-**  
98 **funds to Customer the \$100.00 paid for the shirt plus \$7.00 in sales**  
99 **tax. On Dealer's next sales tax return, Dealer is permitted to deduct**  
100 **\$100.00 from its reported state taxable sales and \$100.00 from its**  
101 **reported XYZ County taxable sales.**

102 **2. Dealer sells a shirt to Customer in XYZ County. The sales tax**  
103 **rate in XYZ County is 7% (4% state tax plus 3% county tax).**  
104 **Dealer charges \$100.00 for the shirt plus \$9.00 (9%) in sales tax,**  
105 **instead of \$7.00 (7%) in sales tax. Dealer files a return, reporting**  
106 **\$100.00 in taxable state sales and \$100.00 in taxable county sales.**  
107 **Dealer remits to the Department \$4.00 (4%) in state sales tax and**  
108 **\$5.00 (5%) in county sales tax. Realizing Dealer has overcharged**  
109 **tax, Customer requests and receives a refund from Dealer of \$2.00.**  
110 **On Dealer's next sales tax return, Dealer is permitted to deduct**  
111 **\$66.67 (\$2.00 divided by 3%) from its reported XYZ County taxa-**  
112 **ble sales.**

113 **(3) Requirements for a claim for refund.**

114 **(a) In accordance with Rule 560-3-2-.26, certain claims for re-**  
115 **fund of Georgia sales and use taxes must be filed electronically.**

116 **(b) A claim for refund of Georgia sales and use taxes is properly**  
117 **filed when the claimant has submitted within the applicable statute**  
118 **of limitations a fully completed sales and use tax refund claim**  
119 **form filed through Georgia Tax Center (hereinafter "GTC") or, for**  
120 **claimants not required to file electronically, a fully completed**  
121 **Form ST-12. A refund claim form is fully completed only if the**  
122 **claimant has provided all information requested on the form, in-**  
123 **cluding a breakdown of portions of the refund claimed from each**  
124 **county and the City of Atlanta.**

125 (c) A claimant must also submit documents to support each  
126 claim, including but not limited to invoices, proof of payment, and  
127 sales journals. Refund claims lacking supporting documentation  
128 may be delayed or denied.

129 (d) A person that has erroneously or illegally paid sales taxes to a  
130 selling dealer that remitted such taxes to the Department may re-  
131 quest a refund from the dealer or file a claim for refund with the  
132 Department. In addition to the requirements set forth in subsections  
133 (b) and (c) of this paragraph, any claim for refund submitted by  
134 such person to the Department must be accompanied by one of the  
135 following:

136 1. A Waiver of Vendor's Rights, Form ST-12A, properly exe-  
137 cuted by each selling dealer from which a refund is being claimed.

138 (i) In the event the number of transactions from a selling dealer  
139 requires additional Form ST-12As, the Department will accept ad-  
140 ditional schedules in the same informational format as the Form  
141 ST-12A with the signature of an authorized representative of the  
142 selling dealer on each additional schedule. The attached schedules  
143 must be numbered and each schedule must be subtotaled. The  
144 schedules must be attached to the original Waiver of Vendor's  
145 Rights, Form ST-12A.

146 2. A letter, other information as may be requested by the Depart-  
147 ment, or a properly executed Form ST-12B, showing that either

148 (i) the dealer refused or was unable to refund the erroneously or  
149 illegally collected taxes; or

150 (ii) the dealer did not act upon the person's written request for re-  
151 fund of the erroneously or illegally collected taxes within 90 days  
152 from the date of such request for refund.

153 (e) In addition to the requirements set forth in subsection (b) and  
154 (c) of this paragraph, a claim for refund submitted by a dealer that  
155 erroneously or illegally collected sales or use tax and repaid the tax  
156 to a customer must contain the following information:

157 1. The date and nature of the original transaction for which the  
158 refund was given to the customer and amount of tax originally paid  
159 by the customer.

160 2. The amount of tax refunded or credited to each customer and  
161 the date of the refund or credit.

162 3. The reason for refund or credit of the tax to each customer,  
163 such as the return of the tangible personal property by the cus-  
164 tommer.

165 4. Proof of refund or credit of the tax to each customer.

166 **(4) Refund claims of local significance.**

167 **(a) Notification.**

168 1. When a refund claim of local significance is for an amount  
169 equal to or greater than 10 percent of the total yearly average of  
170 aggregate sales and use tax distributions to any single county, the  
171 Department, subject to paragraph (4)(a)6 below, will notify the re-  
172 spective political subdivision designees of the county, all affected  
173 municipalities within the county, and all other affected political  
174 subdivisions. When a refund claim of local significance is for an  
175 amount equal to or greater than 10 percent of the total yearly aver-  
176 age of aggregate distributions of the Water and Sewer Projects and  
177 Costs Tax, the Metropolitan Municipal Special Districts Mass  
178 Transportation Sales and Use Tax, and the City of Atlanta Mass  
179 Transportation Tax, the Department will notify the political subdivi-  
180 vision designee of the City of Atlanta.

181 2. The notification will be in writing and will include the date the  
182 refund claim of local significance was filed, the applicable local  
183 amount of the claim, and a copy of the confidentiality provisions in  
184 O.C.G.A. §§ 48-2-15 and 48-2-35.

185 3. The Department will send the notification within 30 business  
186 days following the Department's receipt of a refund claim of local  
187 significance.

188 4. The Department will furnish the claimant with a copy of the  
189 notification.

190 5. After the Department has completed a review of the claim for  
191 refund and determined a final refund amount, the Department will  
192 supplement the above notice by transmitting to the political subdivi-  
193 sion designee the final refund amount for which the political sub-  
194 division is responsible.

195 6. As a prerequisite to receiving notifications of refund claims of  
196 local significance, each political subdivision must certify to the  
197 Department the name, address, telephone number, and email  
198 address of the political subdivision designee authorized to receive  
199 information about a refund claim of local significance. The  
200 certification must be mailed on the letterhead of the political  
201 subdivision to Department of Revenue, Legal Affairs & Tax Policy,  
202 1800 Century Boulevard, Suite 15107, Atlanta, GA 30345, or  
203 emailed to tax.policy@dor.ga.gov. It is the responsibility of the  
204 political subdivision to notify the Department if the political  
205 subdivision changes its designee.

206 (b) Confidentiality.

207 1. Any information supplied to a political subdivision designee  
208 pursuant to this Rule must retain, in the hands of the designee, its  
209 privileged and confidential nature to the same extent and under the  
210 same conditions as such information is privileged and confidential  
211 in the hands of the Department and Department employees pursu-  
212 ant to O.C.G.A. § 48-2-15.

213 2. It is the responsibility of the political subdivision designee,  
214 and not the Department, to protect privileged and confidential in-  
215 formation received under this Rule. Any person who divulges any  
216 tax information obtained under this Rule is subject to the same  
217 civil and criminal penalties as provided for divulgence of tax infor-  
218 mation by employees of the Department. The Department is not  
219 subject to any criminal or civil liability for the unauthorized divul-  
220 gence of privileged and confidential information by a political sub-  
221 division designee.

222 3. Though the political subdivision designee is prohibited from  
223 disclosing privileged and confidential information, the designee  
224 may make reasonable budgetary recommendations to elected offi-  
225 cial, city managers, and tax officials in political subdivisions  
226 based on the confidential information furnished.

227 (c) Automatic transfer. Any refund claims of local significance  
228 pending with the Department for two years after the claim for re-  
229 fund was filed will be automatically transferred to the Georgia Tax  
230 Tribunal pursuant to O.C.G.A. § 50-13A-19.1.

231 **(5) Statute of limitations.**

232 (a) A claim for refund of a tax erroneously or illegally assessed  
233 and collected must be filed by the claimant within three years after  
234 the date of payment of the tax to the Department.

235 (b) In the event that the claimant and the Department extend the  
236 three-year period in writing prior to the expiration of the applicable  
237 statute of limitations, the three-year period will be extended until  
238 such waiver expires or is mutually withdrawn by the claimant and  
239 the Department.

240 (c) Filing date. The filing date for a refund claim properly filed  
241 in accordance with paragraph (3)(b) is

242 1. the date the claim is submitted through GTC; or

243 2. for a claim submitted on Form ST-12 and mailed to the De-  
244 partment via the United States Postal Service, the date the claim  
245 form is postmarked; or

246 3. for a claim submitted on Form ST-12 and delivered by a pack-  
247 age delivery service, the date the claim form is mailed, as indicated  
248 by the delivery vendor's proof of mailing, or, in the absence of  
249 proof of mailing, the date the claim form is delivered, as indicated  
250 by the delivery vendor's proof of delivery; or

251 4. for a claim submitted on Form ST-12 and delivered by hand or  
252 by courier, the date the claim form is received by the Department.

253 **(6) Interest.**

254 **(a) Interest applicable to overpayments of tax that are determined**  
255 **to have been erroneously or illegally assessed and collected will**  
256 **accrue at the rate established under O.C.G.A. § 48-2-35, except as**  
257 **provided in subparagraphs (b) and (c) of this paragraph.**

258 **(b) If a certificate or exemption determination letter issued by the**  
259 **Department certifying that the purchaser is entitled to purchase**  
260 **tangible personal property or taxable services without the payment**  
261 **of sales and use tax has not been obtained and used prior to pur-**  
262 **chasing such tangible personal property or taxable services, a re-**  
263 **fund of sales and use taxes will be made without interest.**

264 **(c) In accordance with Rule 560-12-1-.16, interest will not ac-**  
265 **cruce on refunds of taxes remitted by direct payment permit holders**  
266 **on purchases made without the payment of tax.**

267 **(7) Refund offsets.** The Department may apply overpayments  
268 **against existing deficiencies or assessments that are owed to the**  
269 **Department by the same claimant.**

270 **(8) Frivolous refund claims.** Claimants who frivolously file  
271 **sales and use tax refund claims in violation of O.C.G.A. § 48-2-**  
272 **35.1 are subject to the penalties set forth in that code section.**

273 Authority: O.C.G.A. §§ 48-2-12, 48-2-35, 48-2-35.1, and 48-8-58.