State of Georgia

Lynnette T. Riley
Commissioner

Department of Revenue

Legal Affairs & Tax Policy
1800 Century Blvd., N.E., Suite 15107
Atlanta, Georgia 30345
(404) 417-6649

Frank M. O'Connell
Director

NOTICE SUT 2016-001

RE: Amendment of Rule 560-12-1-.16 Direct Pay Reporting. Amended.

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-.16 Direct Pay Reporting. Amended.

The Department of Revenue will consider the amendment of Rule 560-12-1-.16 at 10:00am on March 3, 2016 in Suite 4318 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 10:00am on March 3, 2016. 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. Facsimile comments must be sent to (404) 417-2293. Please reference "Notice Number SUT 2016-001" on all comments.

Dated: January 28, 2016.

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SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION

CHAPTER 560-12-1
ADMINISTRATIVE RULES AND REGULATIONS

560-12-1-.16. Direct Pay Reporting.

The Georgia Department of Revenue proposes to amend Rule 560-12-1-.16 "Direct Pay Reporting. Amended." by

- Striking "amended" from the title;
- Striking the entire body of the regulation; and
- Inserting the following paragraphs:
    - Paragraph 1, Definition.
    - Paragraph 2, Expiration of direct payment authorization issued prior to October 1, 2016.
    - Paragraph 3, Application Process.
    - Paragraph 4, Waiver of Interest.
    - Paragraph 5, Reporting of Tax.
    - Paragraph 6, Certain Transactions Not Permitted.
    - Paragraph 7, Permit Holder's Duties.
    - Paragraph 8, Vendor's Responsibilities.
    - Paragraph 9, Nontransferable.
    - Paragraph 10, Revocation of Permit.
    - Paragraph 11, Business Restructuring.

RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION

CHAPTER 560-12-1
ADMINISTRATIVE RULES AND REGULATIONS

560-12-1-.16. Direct Pay Reporting. ~~Amended.~~

~~Where, due to the operation of the taxpayer's business, the Commissioner deems it impractical or inequitable for such taxpayer to pay sales and use tax separately under the Act, such taxpayer may be given a direct pay permit and a certificate with an identifying number. No such permit shall be issued except upon written application and the taxpayer obligating itself to report and pay directly to the Commissioner sales and use taxes on all taxable purchases of property and services. Taxpayers permitted to report under this rule shall furnish each seller of tangible personal property or taxable services with a photographic copy of its permit or Certificate of Exemption (Form ST-5) bearing his registration number, after which the placement of such registration number on the taxpayer's purchase orders shall be sufficient to relieve such sellers or dealers from collecting the sales or use tax thereon. The Commissioner may require any such taxpayer to give bond in an amount which he may deem necessary to insure payment of such taxes.~~

(1) Definition. "Direct payment permit" means a permit issued by the Department of Revenue that allows the holder of such permit to accrue and pay state and local sales and use taxes directly to the Department.

32 **(2) Expiration of direct payment authorization**
33 **issued prior to October 1, 2016.**

34 **(a)** All permits, letters, and certificates issued prior to
35 October 1, 2016 authorizing taxpayers to report and pay
36 sales and use tax directly to the Department will expire
37 on December 31, 2016 and can no longer be used to make
38 purchases after that date.

39 **(b)** Direct payment permits issued on or after October 1,
40 2016 will be effective the later of January 1, 2017 or the
41 date of issuance.

42 **(3) Application Process.**

43 **(a)** Applicants for a direct payment permit must apply
44 to the Department on an application containing

45 **1.** the applicant's name, address, and sales and use tax
46 account number(s) for which direct payment will be made;
47 and

48 **2.** an attestation that

49 **(i.)** the applicant is able to comply with the sales and
50 use tax laws and reporting and payment requirements;

51 **(ii.)** the applicant is current on all tax filings and
52 payments in this state; and

53 **(iii.)** direct payment will benefit the applicant's tax
54 compliance by accomplishing one or more of the following:

55 **(I)** reduced administrative work in determining
56 taxability or collecting, verifying, calculating, or remitting
57 the tax;

58 **(II)** improved compliance with the tax laws of this state;

59 **(III)** improved compliance in circumstances where
60 determination of taxability of the item is difficult or
61 impractical at the time of purchase;

62 **(IV)** more accurate calculation of the tax where new or
63 electronic business processes such as electronic data
64 interchange, evaluated receipts settlement, or
65 procurement cards are utilized; or

66 **(V)** more accurate determination and calculation of tax
67 where significant automation and/or centralization of
68 purchasing and/or accounting processes have occurred
69 and the applicant must comply with the laws and
70 regulations of multiple state and local jurisdictions.

71 **(b)** The Department will issue one permit for each legal
72 entity that meets the requirements of this Rule. The
73 permit is valid for purchases of property delivered to any
74 of the entity's locations.

75 **(4) Waiver of Interest.** In exchange for the privilege of
76 making purchases with a direct payment permit, permit
77 holders agree to waive interest on refunds of taxes
78 remitted on purchases made with the direct payment
79 permit.

80 **(a)** Use of a direct payment permit to make purchases
81 on or after January 1, 2017 constitutes the permit
82 holder's waiver of interest with respect to any refunds of
83 tax overpaid for those purchases.

84 **(b)** For example, John Smith makes purchases on
85 January 1, 2017 without the payment of sales tax using
86 his direct payment permit. In September 2017 he remits
87 taxes due on the purchases. On February 1, 2018 he
88 requests a refund for the overpayment of the taxes.
89 Because Mr. Smith made the purchases on or after

90 January 1, 2017 using his direct payment permit, Mr.
91 Smith will not receive interest on his tax refund.

92 **(5) Reporting of Tax.** Each holder of a valid direct
93 payment permit must accrue and pay directly to the
94 Department the taxes due for all taxable property and
95 services purchased using a direct payment permit. Such
96 taxes are due and payable on the sales and use tax return
97 next due following the date on which a determination of
98 taxability is, or in the exercise of reasonable care should
99 be, made for a given transaction, unless otherwise
100 provided by written agreement between the taxpayer and
101 the Department.

102 **(6) Certain Transactions Not Permitted.** Use of a
103 direct payment permit is prohibited for

104 **(a)** purchases of meals, beverages, or tobacco;

105 **(b)** purchases of local telephone services, transportation
106 of persons, or lodging accommodations and ancillary
107 charges associated with lodging accommodations;

108 **(c)** purchases of admissions to places of amusement,
109 entertainment, or athletic events; admissions to displays
110 or exhibitions; participation in games or sports; or charges
111 for the use of amusement devices; and

112 **(d)** rental charges for periods of 31 or fewer consecutive
113 days of motor vehicles required to be titled in this state.

114 **(7) Permit Holder's Duties.** The holder of a direct
115 payment permit must

116 **(a)** furnish a copy of the direct payment permit to each
117 vendor from which the holder purchases tangible personal
118 property or services. For purchases made using a direct
119 payment permit, a permit holder is not required to
120 present an additional exemption certificate and is not,

121 except as otherwise provided, required to pay sales tax to
122 the holder's vendors as prescribed in O.C.G.A. § 48-8-35;

123 **(b)** accrue and remit state and local sales and use tax
124 directly to the Department on all taxable property and
125 services not taxed at the time of sale;

126 **(c)** maintain and make available upon Department
127 request all records that are necessary to determine the
128 correct tax liability;

129 **(d)** file sales and use tax returns and pay any sales and
130 use tax due on a monthly basis unless otherwise
131 permitted by the Department; and

132 **(e)** maintain good standing with respect to all tax laws
133 of this state.

134 **(8) Vendor's Responsibilities.** Receipt in good faith of
135 the direct payment permit, or other acceptable evidence
136 that the holder has been granted a direct payment permit,
137 relieves the vendor of the responsibility of collecting the
138 sales tax on sales made to a direct payment permit holder
139 on qualifying transactions. Vendors who make sales on
140 which the tax is not collected by reason of the provisions
141 of this Rule must maintain records in such manner that
142 the amount involved and identity of the purchaser may be
143 ascertained.

144 **(9) Nontransferable.** A direct payment permit is not
145 transferable; therefore, the use of a direct payment permit
146 may not be transferred or assigned to a third party
147 (including but not limited to a subsidiary, affiliate, or new
148 business entity created in a restructuring).

149 **(10) Revocation of Permit.** Direct payment permits
150 may be denied or revoked by the Department at any time
151 the Department determines that the person holding the
152 permit has not complied with the provisions of this Rule

153 or that the revocation would be in the best interests of the
154 state. The notice of revocation must be in writing and
155 effective as of the end of the direct payment permit
156 holder's normal reporting period. Any person whose direct
157 payment permit is either voluntarily forfeited or revoked
158 by action of the Department must return the permit to
159 the Department and immediately notify all vendors from
160 which purchases of taxable items are made that such
161 person's direct payment permit is no longer valid.

162 **(11) Business Restructuring.** In the case of a
163 business restructuring, the permit holder must apply for a
164 new permit if the Department issues a new State Tax
165 Identification Number.

166 **Authority:** O.C.G.A. §§ 48-2-7, 48-2-12.

PROPOSED