Lynnette T. Riley
Commissioner

State of Georgia
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
IT-2015-6

RE: Proposed Amendment to the Department of Revenue, Income Tax Division, Rule 560-7-8-.46, entitled "Definition of Business Enterprise."

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 Chapter 560-7-8 of the Rules and Regulations of the State of Georgia by amending Rule 560-7-8-.46, entitled "Definition of Business Enterprise."

Attached with this notice are the exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. §§ 48-2-12, 48-7-40.12, and 48-7-40.22.

The Department of Revenue shall consider the adoption of the above referenced Rule at 10:00 a.m. on Tuesday, October 13, 2015 in Suite 15200 of the Department's headquarters at 1800 Century Blvd NE Atlanta, GA 30345.

The Department must receive all comments regarding the above referenced proposed Rule from interested persons and parties no later than 10:00 a.m. on Tuesday, October 13, 2015. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-2293. **Please reference "Notice Number IT-2015-6" on all comments.**

Dated: September 3, 2015

Lynnette T. Riley
Commissioner
Georgia Department of Revenue

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SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

560-7-8-.46
Definition of Business Enterprise.

Rule 560-7-8-.46 is being amended to clarify certain provisions of the rule. This Rule is necessary for the effective administration of the Department's duties under O.C.G.A. §§ 48-7-40.12 and 48-7-40.22.

Paragraph (1) provides the purpose for the regulation.

Paragraph (2) defines the term "business enterprise."

Paragraph (3) defines the term "retail businesses."

Paragraph (4) provides for a request for determination by the Department.

RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

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560-7-8-.46 Definition of Business Enterprise.

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560-7-8-.46 Definition of Business Enterprise.

(1) **Purpose.** This regulation identifies the North American Industry Classification System (NAICS) Codes that are assigned to the industries that qualify as a business enterprise under O.C.G.A. §§ 48-7-40.12 and 48-7-40.22.

(2) **Business Enterprise Defined.** The term "business enterprise" means any corporation, partnership, limited liability company, sole proprietorship, or other business entity or the headquarters of such business entity that is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, or research and development industries. The term "business enterprise" excludes all child care businesses and retail businesses, except as referenced in O.C.G.A. § 48-7-40.22. The Department of Revenue will use the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2012 edition, to determine whether an entity is engaged in any of the qualifying industries listed in this paragraph (2). Taxpayers self-select their NAICS Codes. <u>However, upon review the Department may determine that</u>

the self-selected NAICS code does not match the taxpayer's primary activity. The NAICS website is located at the following address: http://www.census.gov/epcd/www/naics.html

(a) Manufacturing means those establishments classified by the NAICS Codes that belong to Sectors 31-33.

(b) Warehousing and distribution means a warehouse, facility, structure, or enclosed area which is used primarily for the storage, shipment, preparation for shipment, or any combination of such activities, of goods, wares, merchandise, raw materials, or other tangible personal property, and those establishments classified by the NAICS Codes that belong to Subsectors 423, 424 and 493.

(c) Processing includes manufacturing establishments classified in NAICS Sectors 31-33; and those establishments primarily engaged in providing data processing services, which shall consist of only the following:

1. Establishments that are both primarily engaged in providing data processing services, and included in NAICS U.S. Industry 518210;

2. Establishments that are both primarily engaged in providing third party administration services of insurance and pension funds, and included in NAICS U.S. Industry 524292;

3. Establishments that are both primarily engaged in providing either: (i) automated clearinghouses, check clearinghouse associations; or (ii) financial transaction or credit card processing services, and included in NAICS U.S. Industry 522320;

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4. Establishments that are both primarily engaged in furnishing physical or electronic marketplaces for the purpose of facilitating the buying and selling of stocks, stock options, bonds or commodity contracts and included in NAICS U.S. Industry 523210;

5. Establishments that are both primarily engaged in producing and distributing computer software, and included in NAICS U.S. Industry 511210;

~~5~~6. Establishments that are both primarily engaged in providing computer systems design and related services, and included in NAICS Industry Group 5415;

~~6~~7. Establishments that are both primarily engaged in providing payroll services, and included in NAICS U.S. Industry 541214; and

~~7~~8. Establishments that are both primarily engaged in providing telephone call center services, and included in NAICS Industry 56142.

(d) Telecommunications means those establishments that are primarily engaged in operating, maintaining and/or providing access to facilities for the transmission of voice, data, text, sound and video and classified within NAICS U.S. Industries 517110, 517210, 517410, 517911 and 517919.

(e) Broadcasting means those establishments that are primarily engaged in the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol, including motion picture and sound recording,

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editing, production, postproduction, and distribution, and which are included in NAICS Subsectors 512, 515, 517 and 519.

(f) Tourism means only the following establishments:

1. Establishments that are both primarily engaged in providing lodging for the public, and included in NAICS Industry Group 7211; however, establishments offering lodging for more than 30 consecutive days to the same customer are not deemed a business enterprise under this regulation;

2. Establishments that are both primarily engaged in providing overnight or short term sites for recreational vehicles, trailers, campers or tents, and included in NAICS U.S. Industry 721211; however, establishments primarily engaged in the operation of residential trailer parks or primarily engaged in providing accommodations for more than 30 consecutive days to the same customer are not deemed a business enterprise under this regulation;

3. Establishments that are both primarily engaged in the operation of recreational camps, and included in NAICS U.S. Industry 721214; however, establishments primarily engaged in the operation of summer camps are not deemed a business enterprise under this regulation;

4. Establishments that are both primarily engaged in the operation of either: (i) convention centers; (ii) sports stadiums or arenas; or (iii) sports complexes open to the general public on a contract or fee basis, and included in NAICS U.S. Industry 711310;

5. Establishments that are both primarily engaged in the op-

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eration of golf courses open to the general public on a contract or fee basis, which are associated with a resort development, and included in NAICS U.S. Industry 713910; however, establishments engaged in the operation of golf courses associated with housing developments are not deemed a business enterprise under this regulation;

6. Establishments that are both primarily engaged in the operation of professional or semi-professional sport clubs, and included in NAICS U.S. Industry 711211; however, for the purposes of this provision professional and semi-professional sport clubs include only those clubs that compensate athletes for their services as players and does not include amateur sport clubs, amateur sport leagues, or amateur sport associations;

7. Establishments that are both primarily engaged in the operation of racing facilities, including drag-strips, motorcycle race tracks, auto or stock car race tracks or speedways, and included in NAICS U.S. Industry 711212;

8. Establishments that are both primarily engaged in the operation of amusement centers, amusement parks, theme parks, or amusement piers, and included in NAICS U.S. Industry 713110;

9. Establishments that are both primarily engaged in the operation of tours within the State of Georgia, and included in NAICS U.S. Industry 561520;

10. Establishments that are both primarily engaged in the operation of airplanes, helicopters, buses, trolleys, vans, scenic railroads, aerial tramways, or boats for excursion or sightseeing purposes within the State of Georgia, and included in NAICS Subsector 487;

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11. Establishments that are both primarily engaged in the operation of hunting preserves, trapping preserves, or fishing preserves or lakes which are open to the general public on a contract or fee basis, and included in NAICS U.S. Industry 114210;

12. Establishments that are both primarily engaged in the operation of museums, planetariums, art galleries, botanical gardens, aquariums, or zoological gardens, and included in NAICS Subsector 712; however, establishments that derive 50 percent or more of their gross revenue from the sale of goods or merchandise are not deemed a business enterprise under this regulation.

(g) Research and development means only the following establishments: establishments primarily engaged in conducting research and experimental development in biotechnology and the physical, engineering and life sciences and classified in NAICS U.S. Industries 541711 or 541712; and establishments primarily engaged in conducting research and analysis in cognitive development, sociology, psychology, language, behavior, economic, and other social science and humanities research and classified in NAICS US Industry 541720.

(3) **"Retail businesses" defined.** The term "retail businesses" as used in paragraph (2) of this regulation means: any establishment that is primarily engaged in retailing merchandise and rendering services incidental to the sale of merchandise and included in NAICS Sector 44-45; any establishment that is primarily engaged in providing professional services and included in NAICS Industry Groups 5411, 5412 and 5413; and establishments that are primarily engaged in banking, savings and lending functions and included in ~~NAICS Subsector 523,~~ NAICS Industry Groups 5211,

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5221, ~~and~~ 5222, 5231, and 5239, and NAICS Industries 52231 and 52239.

(4) **Request for Determination.** In the event that a business believes that it qualifies as a business enterprise for a tax credit governed by this regulation, but is unsure if it meets the eligibility requirements outlined in the relevant Code and this regulation, a Request for Determination may be requested from the Department of Revenue. The business should provide a detailed explanation of the activity for which the tax credits are being requested, along with any documentation to support the request. The Department shall have 30 days from receipt of all necessary information to complete the review and issue a determination regarding the eligibility of the business for the tax credit.

~~(5) **Effective Date.** This regulation as amended shall be applicable to taxable years beginning on or after January 1, 2012. Taxable years beginning before January 1, 2012 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2012 in the same manner as if the amendments set forth in this regulation had not been promulgated.~~

Authority O.C.G.A. §§ 48-2-12, 48-7-40.12 and 48-7-40.22.

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