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Comments to the Special Council on Tax Reform and Fairness

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Uncollected Use Taxes

Thank you Chairman and members of the committee. I am Charles Barnwell, a CPA and multi-state tax practitioner. I want to address the issue of uncollected use taxes on remote sales, mostly internet sales, into Georgia. Many believe that as you consider possible changes to the tax system, those plans should include the collection of taxes already legally owed the state. At the second meeting of the full council, Dr. Sjoquist, mentioned this lost source of revenue that the state is not collecting. He cited a study on this matter by Dr. William Fox of the University of Tennessee. I have shared a copy of Dr. Fox's study with Lindsay and she is familiar with these uncollected taxes. I have also included an excerpt from that study in the two handouts you have been provided. I'm not faulting the Department of Revenue as this tax with current laws and systems is virtually impossible to collect. Yesterday, two of your experts addressed the difficulty of collecting this use tax. They told you that Streamline or The Mainstreet Fairness effort is good but not likely to move in congress. Amazon laws trying to establish "click through nexus" have faced legal challenges and caused sellers to withdraw from states. And finally, the effort of a couple of states to have sellers tell the state what was sold to their residents so the state can get the money is expensive and also subject to legal challenges.

Georgia has an uncollected use tax obligation of \$365 million next year and this is growing by \$50 million a year. These are taxes that are owed by Georgians that purchase goods from out of state sellers that have no physical presence or nexus in Georgia. The sellers have no obligation to collect the sales tax on their sales but the buyers owe use tax on their purchases. Collecting this tax obligation is unwieldy for the state and has proved impossible to date. This is not a new tax – just one that is not being collected.

The “bubble” diagram in your handouts graphically depicts the pool of opportunity for Georgia. It also shows how Streamline and some other efforts might fit together. You can see that the two areas covered do not overlap. Streamlined sales tax, supported by HB 1221 in the 2010 Georgia Legislature is a good beginning to collecting this tax.

Streamline is a national effort that requires states to standardize definitions of goods and reaches its full potential if Congress takes action. It is estimated that Streamlined will get \$24-30 million next year of the \$365 million with the companies that have signed on to the Streamline effort. Because Streamline is a voluntary effort, there are a number of companies that have not or will not join the Streamline effort. Many of those either have nexus in one or more Streamline member states - or may have a pending nexus issue with a state department of revenue.

Last legislative session, there was an effort to address sales from the companies that have not or will not join the Streamline project. Chairman O’Neal, while very interested in these uncollected taxes, wanted to include the matter beyond Streamline as a part of

the Tax Council's work. It is estimated that this additional approach could collect \$50-\$150 million of incremental tax/year. These two efforts are complimentary as they target different groups of the total use tax pool owed. Getting companies that are not a part of Streamline to begin to collect will require some incentive for them to give up their approximately 7% price advantage over brick and mortar sellers. I say 7% as that is the average state and local tax rate, with the amounts currently ranging from 6% to 8%. Like Streamline, this would be a voluntary effort but will require the active recruitment of firms to begin collecting from their customers.

Several envision this as a public - private partnership between the state department of revenue and a recruiting coordinator. Program details will need to be developed by the Department of Revenue in a manner that will attract remote sellers to join the program. The recruiting coordinator would proactively pursue or recruit out of state sellers into the program. The coordinator would utilize existing relationships with remote sellers as well as build an expansive network of others that have relationships with sellers.

In addition to getting this uncollected tax, there is a significant economic benefit to this approach. As an early adopter of this program, the doors of Georgia are thrown open to the e-commerce industry to build distribution centers, increase the use of Georgia's ports, establish call centers and open retail establishments. Today, many of these businesses structure operations to avoid nexus. In many cases this strategy costs the sellers efficient logistical operations. With the need to avoid a physical presence in the state eliminated, businesses will put facilities where they are needed and wanted.

In summary, Georgia needs to collect this significant amount of use tax owed the state. We need to provide the Revenue Department with the ability to quickly get much of the tax owed. With a combination of Streamline and other efforts, the state can begin to recover much of this \$365 million per year owed. Without both of these efforts, this tax will continue to go uncollected and is lost forever.

Thank you for your interest and I'll stand for questions.