

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: DELORES McCLENDON and ) OEIG Case #15-02091  
CHICAGO TRANSIT )  
AUTHORITY )

OEIG FINAL REPORT (REDACTED)

Below is an amended final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General, the Chicago Transit Authority, and to Delores McClendon at her last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

**I. INTRODUCTION AND ALLEGATIONS**

During the course of investigating OEIG Case No. 13-01358, the Office of Executive Inspector General (OEIG) discovered that Chicago Transit Authority (CTA) Security Specialist Delores McClendon [unfounded allegation redacted] and obtained a CTA tax-exempt Sam's Club business membership, which she used to make tax-free purchases of personal items. As a result, on October 20, 2015, the OEIG self-initiated this investigation to examine whether Ms. McClendon misused the CTA’s tax-exempt number. At the conclusion of this investigation, the OEIG determined that Ms. McClendon violated CTA policies by misusing the CTA’s tax-exempt number in order to avoid paying sales tax on non-CTA-related purchases. The OEIG also finds that the CTA lacked adequate controls with respect to how it tracked the distribution and use of its tax-exempt letter.

## II. BACKGROUND

### A. CTA Security Specialist Delores McClendon

Ms. McClendon was initially hired by the CTA as a part-time bus operator in June 2002 and became a full-time bus operator on February 29, 2004. Ms. McClendon also worked as a receptionist/clerk and as a customer assistant/security controller. On May 30, 2012, Ms. McClendon was transferred to the position of investigator within the CTA's Safety and Security department, and on July 17, 2012, her title was changed to security specialist. According to the security specialist position description, Ms. McClendon is responsible for conducting investigations of CTA-related criminal activity, interacting with outside law enforcement agencies, cataloguing recorded video, and supporting the monitoring and reporting of CTA crime trends.

### B. [Redacted]

[The following paragraph relates to allegations that the OEIG has determined to be unfounded and the Commission exercises its discretion to redact them pursuant to 5 ILCS 430/20-52.]<sup>1 2 3 4</sup>

### C. CTA's Tax Exempt Status

The Illinois Department of Revenue (IDOR) allows certain qualified organizations, such as not-for-profits, schools, churches, and units of state, local, and federal governments, to obtain an exemption from paying Illinois sales tax.<sup>5</sup> In addition, the Illinois Administrative Code provides that the Retailers' Occupation Tax "does not apply to receipts from sales that are made to any governmental body."<sup>6</sup>

The IDOR has determined that the CTA is exempt from paying various Illinois taxes and has provided the CTA with a tax-exempt letter containing a unique tax-exempt number. In order to make tax-free purchases on behalf of the CTA, employees must provide vendors with the CTA's tax-exempt number and under CTA policy "[a] copy of the exemption letter can be obtained from the Accounts Payable Department."<sup>7</sup>

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<sup>1</sup> [Redacted]

<sup>2</sup> [Redacted]

<sup>3</sup> [Redacted]

<sup>4</sup> [Redacted]

<sup>5</sup> See PIO-37, Sales & Property Tax Exemptions, available at <http://www.revenue.state.il.us/Publications/PIOs/PIO-37.htm>.

<sup>6</sup> 86 Ill. Admin. Code § 130.120(i).

<sup>7</sup> See Administrative Procedure # 1501, Expense Account Reimbursement, § 4.4 (2011); see also Administrative Procedure # 1502, Check Requests, § 4.5 (2011).

#### **D. Sam's Club**

Sam's Club is a national retail, membership-only chain of warehouse stores. Sam's Club is a division of Arkansas-based Walmart Stores, Inc.

### **III. INVESTIGATION**

During the course of this investigation, the OEIG obtained and reviewed various documents, including Ms. McClendon's [redacted], Sam's Club membership records, and CTA personnel file. In addition, OEIG investigators conducted various interviews, including [Employee 1], [Employee 2], and Ms. McClendon's previous supervisor, former CTA [Employee 3].<sup>8</sup> The OEIG also incorporated a report summarizing Ms. McClendon's interview and all other documents pertaining to Ms. McClendon from OEIG Case No. 13-01358 into this investigation.

#### **A. [Redacted]**

[The following three paragraphs relate to allegations that the OEIG has determined to be unfounded and the Commission exercises its discretion to redact them pursuant to 5 ILCS 430/20-52.]<sup>9</sup>

#### **B. [Redacted]**

[The following three paragraphs relate to allegations that the OEIG has determined to be unfounded and the Commission exercises its discretion to redact them pursuant to 5 ILCS 430/20-52.]<sup>10 11</sup>

#### **C. Sam's Club Membership Records**

According to records obtained from Sam's Club, Ms. McClendon's account was originally opened on May 29, 2003, and was last renewed on July 7, 2008. The records included a tax-exempt certificate signed in the name of Ms. McClendon, dated July 7, 2008. The records also included a copy of a CTA tax-exempt letter, which contains a fax stamp dated July 7, 2008 and a Chicago phone number<sup>12</sup> previously associated with the CTA. The account records identify Ms. McClendon as the primary cardholder and list two additional cardholders: [Employee 3] and [Individual 1]. OEIG investigators confirmed that [Individual 1] was never employed by the CTA.

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<sup>8</sup> At the time of her interview, [Employee 3's] name was [Redacted]. The OEIG will refer to her as [Employee 3] in this report.

<sup>9</sup> [Redacted]

<sup>10</sup> [Redacted]

<sup>11</sup> [Redacted]

<sup>12</sup> The phone number has a Chicago-based area code (312) and an internet search conducted by investigators found that the number was listed on various documents as a fax number for both the CTA and a former CTA employee.

#### D. Delores McClendon's Sam's Club Purchases

Ms. McClendon's Sam's Club purchase records show that no sales tax was paid on the majority of purchases from 2008 to 2015. During this time period, the total value of tax-free purchases was more than \$21,600. As of the date of this report, Walmart provided the OEIG with a list of purchases made by each individual cardholder for full calendar years 2010 through 2015. The majority of purchases were made using the Sam's Club card specifically assigned to Ms. McClendon, totaling more than \$18,000 between 2010 and 2015. An analysis by the OEIG found that approximately 94 percent of Ms. McClendon's purchases were made tax-free. The following chart lists the total purchases as well as the total tax-free purchases for each calendar year.

#### Purchases on Delores McClendon's Tax-Exempt CTA Account

<u>Calendar Year</u>	<u>Total Amount of Purchases<sup>13</sup></u>	<u>Total Amount of Tax-Free Purchases<sup>14</sup></u>
2008	\$1,202.17	\$580
2009	\$2,146.65	\$1,938.52
2010	\$1,857.42	\$1,582.90
2011	\$2,455.55	\$2,134.89
2012	\$3,781.48	\$2,678.67
2013	\$2,731.02	\$2,620.76
2014	\$2,879.12	\$2,688.53
<u>2015</u>	<u>\$7,640.07</u>	<u>\$7,410.09</u>
<b>Total:</b>	<b><u>\$24,693.48</u></b>	<b><u>\$21,634.36</u></b>

A review of the items purchased on Ms. McClendon's tax-exempt CTA account showed purchases of items including, among other things:

- Diapers;
- pull-ups;
- wipes;
- a child's tutu set;
- lotion;
- deodorant;
- AA batteries;
- bath tissue;
- stain remover;
- carpet cleaner;
- dishwasher detergent;

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<sup>13</sup> This column represents the total amount of purchases made via Ms. McClendon's CTA tax-exempt account by all three cardholders. Walmart assigns each cardholder on the same account a unique cardholder number. Thus, even though they are on the same CTA tax-exempt account, Ms. McClendon, [Individual 1], and [Employee 3] each have a unique cardholder number to use when making Sam's Club purchases.

<sup>14</sup> This column represents the total amount of tax-free purchases made via Ms. McClendon's CTA tax-exempt account by all three cardholders.

- laundry detergent;
- charcoal; and
- gas.

Furthermore, Ms. McClendon's Sam's Club purchase records show that the vast majority of tax-free purchases consisted of groceries. The records show that Ms. McClendon purchased groceries tax-free in April, June, July, September, and December of calendar year 2014 and in January, February, June, July, and August of calendar year 2015, on occasion making more than one Sam's Club shopping visit per month. In addition, Ms. McClendon used [redacted] to pay for grocery purchases made using her tax-exempt Sam's Club membership in June and July of 2013. The records also show that the last purchase using Ms. McClendon's CTA tax-exempt account was made on September 13, 2015, just four days before the OEIG interviewed Ms. McClendon.

#### **E. Interview Of Former CTA [Employee 3]**

[Employee 3] informed investigators that she worked for the CTA from 2002 until 2011. [Employee 3] said that she had authority from the CTA to make purchases for some employee events, such as employee recognition and department picnics. When making CTA-related purchases at Sam's Club, [Employee 3] said she used a Sam's Club card with her name on it.

[Employee 3] informed investigators that she opened her account in-person at Sam's Club, and that Ms. McClendon, who according to [Employee 3] was her "assistant," was with her when she opened the account. [Employee 3] said that she obtained a CTA tax-exempt letter from the CTA's Human Resources department and provided it to Sam's Club when opening the account. According to [Employee 3], the tax-exempt status was automatically attached to her account and she did not have to bring the tax-exempt letter each time she made Sam's Club purchases. [Employee 3] did not recall adding either Ms. McClendon or [Individual 1] to her Sam's Club account. When asked, [Employee 3] said there would be no reason for anyone at the CTA to purchase items such as diapers or formula for CTA use.

[Employee 3] said that she never shared the CTA tax-exempt letter with Ms. McClendon or anyone else and that she never faxed the letter to Sam's Club. [Employee 3] also did not remember making a Sam's Club purchase on March 18, 2015, the date when Sam's Club's records show her Sam's Club card was last used. [Employee 3] did say, however, that on occasion, she shared her Sam's Club card with her sister-in-law and her niece, who occasionally asked to use it.<sup>15</sup>

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<sup>15</sup> Because the OEIG did not uncover evidence showing that [Employee 3] shared her Sam's Club membership with her relatives or that these relatives used her tax-exempt CTA Sam's Club membership to make purchases while [Employee 3] was still a CTA employee, the OEIG is not making findings against [Employee 3] in this report.

## **F. Interview Of CTA Security Specialist Delores McClendon Regarding The CTA's Tax-Exempt Letter**

During her September 17, 2016 interview with the OEIG, Ms. McClendon said that she has never held a position at the CTA in which she was authorized to purchase goods or services on behalf of the CTA. When asked about the circumstances surrounding the opening of her Sam's Club membership account, Ms. McClendon initially said that she opened the account with her then-supervisor, [Employee 3], in response to a group discount from Sam's Club to CTA employees. In order to apply for the Sam's Club membership, Ms. McClendon said she had to present her CTA identification to the Sam's Club associate who processed her membership application. Ms. McClendon said she had no idea why her Sam's Club account was a tax-exempt membership in the name of the CTA. She added that to open a tax-exempt Sam's Club account, one would need to provide a tax-exempt letter and she never had access to the CTA's tax-exempt letter.

Ms. McClendon then said that [Employee 3] set up the Sam's Club account and that Ms. McClendon did not provide any documents to Sam's Club when establishing her membership. When presented with a copy of the signed tax-exemption certificate associated with her tax-exempt CTA Sam's Club account, Ms. McClendon admitted that she signed the certificate. However, when presented with the CTA's tax-exempt letter, which is fax stamped with the same date that appears on the tax-exemption certificate, Ms. McClendon denied submitting the tax-exempt letter to Sam's Club and said she does not know who faxed the tax-exempt letter to Sam's Club. Ms. McClendon added that she signed the sales tax-exemption certificate, in-person, when the store printed out the certificate for her to sign at the time she renewed her Sam's Club membership.

Ms. McClendon told investigators that [Employee 3] made purchases for CTA-related events and was later reimbursed through the CTA's petty cash. However, Ms. McClendon said she never purchased anything with her tax-exempt Sam's Club account that was reimbursed by the CTA. Ms. McClendon said she (Ms. McClendon) used her Sam's Club membership for personal purchases and did not pay taxes on any of those personal purchases.<sup>16</sup> When she was asked by investigators if she believed there was something wrong with not paying taxes on her personal purchases, Ms. McClendon responded by asking, "Something's wrong with that?"

When asked whether she ever reported her tax-exempt CTA Sam's Club membership to anyone at the CTA, Ms. McClendon said that while planning a CTA Christmas party, CTA [Employee 4] offered her a copy of the CTA's tax-exempt letter. Ms. McClendon said that she informed [Employee 4] that she already had a tax-exempt Sam's Club account and thus would not need the tax-exempt letter for any Sam's Club purchases. Ms. McClendon said that, other than [Employee 4], [Employee 3] was the only person at the CTA who was aware of Ms. McClendon's tax-exempt CTA Sam's Club membership.

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<sup>16</sup> Ms. McClendon did indicate that she used the tax-exempt Sam's Club account to purchase items for a going away party for a CTA intern but was not reimbursed by the CTA for these purchases because it was not a CTA-sponsored event.

During her interview, OEIG investigators also asked Ms. McClendon about her household members and she identified, among others, [Individual 1] as her [Relative].

### **G. Interview Of CTA [Employee 1]**

During her interview on January 27, 2016, [Employee 1] informed investigators that she has worked for the CTA for [identifying information redacted]. According to [Employee 1], she is responsible for providing CTA employees with the CTA's tax-exempt number when employees are authorized to make purchases on behalf of the CTA. [Employee 1] said that she provides employees the CTA's tax-exempt letter either in-person or via email.

When employees come to her in person to pick up a copy of the CTA's tax-exempt letter, [Employee 1] said that she does not keep track of those exchanges; however, [Employee 1] did say that she retains records of email exchanges with the employees to whom she provides a copy of the CTA's tax-exempt letter via email. [Employee 1] said the CTA would not be able to provide the OEIG with a list of employees making purchases or opening accounts with the CTA's tax-exempt letter. She added that the CTA would not be able to provide the OEIG with a list of purchases that have been made with the CTA's tax-exempt letter. When [Employee 1] was asked whether the CTA kept a list of employees who were authorized to use the CTA's tax-exempt letter, [Employee 1] said "not to my knowledge." [Employee 1] also said that she doubted that the CTA's tax-exempt letter is listed on any property return checklists as property that an employee leaving the CTA needs to return.

Furthermore, [Employee 1] verified that there is no memorialized CTA procedure for an employee to obtain a tax-exempt letter from the Accounts Payable department. She also said that there are no written CTA policies or procedures for keeping track of employees who use, or who are given, the CTA's tax-exempt number or letter. [Employee 1] said that she ensures that employees are authorized to make purchases on behalf of the CTA by checking that they have requisition forms signed by their department's vice-president. According to [Employee 1], CTA employees are not allowed to use the CTA's tax-exempt letter for personal purchases. [Employee 1] added that she did not have knowledge of either [Employee 3] or Ms. McClendon being authorized to open a CTA tax-exempt Sam's Club account.

### **H. Interview Of CTA [Employee 2]**

On April 26, 2016, the OEIG interviewed CTA [Employee 2]. [Identifying information redacted.]

[Employee 2] said that the CTA's Purchasing department obtains the CTA's tax-exempt letter from IDOR, but the Accounts Payable department is responsible for issuing the letter to CTA employees who request it. [Employee 2] stated, "I just learned that AP [Accounts Payable] gives out that letter, I didn't even know that" as of January 27, 2016. [Employee 2] explained that when an employee contacts the Accounts Payable department, and explains the need for the letter, [Employee 1], who reports to [Employee 2], then provides a copy of the letter to the employee.

[Employee 2] informed investigators that she does not know if there are any procedures or practices in place to ensure that employees do not misuse the CTA's tax-exempt letter, and that she did not know how the CTA ensures that employees do not misuse the tax-exempt letter. [Employee 2] explained that her department issues the tax-exempt letter but does not monitor the usage of the tax-exempt letter. She also confirmed that, according to CTA Administrative Procedure #1502, the Accounts Payable department is responsible for issuing the tax-exempt letter to CTA employees.

[Employee 2] stated that currently, there is no process or procedure to verify the justification provided by an employee regarding the need to obtain a copy of the CTA's tax-exempt letter from the Accounts Payable department, and that there is also no record of who has been issued the tax-exempt letter. [Employee 2] also explained that the CTA would not be able to provide a list of employees who, within the last year, have been provided the CTA's tax-exempt letter, a list of individuals who have used the CTA's tax-exempt letter, or a list of items purchased tax-free. When asked if the CTA collects the tax-exempt letter from an employee after it is used to make a tax-free purchase, [Employee 2] answered, "no."

[Employee 2] added that after this issue was raised in [Employee 1's] interview, she and [Employee 1] began working on updating the CTA's policies and procedures with respect to the CTA's tax-exempt letter. [Employee 2] stated that once these policies are updated, there will be an approval process that an employee will have to go through prior to requesting the CTA's tax-exempt letter from the Accounts Payable department, and the employee will have to sign for receipt of the tax-exempt letter. [Employee 2] stated that, under the new policy, a manager will have to sign a justification authorizing an employee to obtain a copy of the tax-exempt letter.

#### IV. ANALYSIS

##### A. [Redacted]

[The following two paragraphs relate to allegations that the OEIG has determined to be unfounded and the Commission exercises its discretion to redact them pursuant to 5 ILCS 430/20-52.]<sup>17</sup>

##### B. Delores McClendon Diverted A CTA Resource For Personal Use

According to the CTA General Rule Book, Section 14 (q), CTA employees are prohibited from "diverting [CTA] resources to personal use."<sup>18</sup> The IDOR provides a limited set of organizations, including units of government, a tax-exempt number so that these entities are able to make organization-related purchases tax-free.<sup>19</sup> The tax-exempt number is a resource of the organization – not that of the organization's employees.

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<sup>17</sup> [Redacted]

<sup>18</sup> Chicago Transit Authority General Rule Book, §14(q) (2014).

<sup>19</sup> See PIO-37, Sales & Property Tax Exemptions, available at <http://www.revenue.state.il.us/Publications/PIOs/PIO-37.htm>.

In her interview, [Employee 1] stated that, to her knowledge, Ms. McClendon was not authorized to open a tax-exempt CTA Sam's Club account. Similarly, Ms. McClendon confirmed that she was not authorized to, and did not, make any purchases that were reimbursed by the CTA. According to their interview statements, Ms. McClendon, [Employee 3], or both, opened the Sam's Club membership as a CTA tax-exempt account by providing Sam's Club with the CTA's tax-exempt number. Records obtained by the OEIG from Walmart show that Ms. McClendon subsequently signed a tax-exemption certificate certifying that she may make tax-free purchases on behalf of the CTA - a certificate that Ms. McClendon admitted she signed. These records show that tax-free purchases on Ms. McClendon's account started on approximately the same day that the tax-exempt number and tax-exemption certificate were submitted to Walmart.

Sam's Club account transaction records show that there were nearly \$25,000 in purchases made on Ms. McClendon's tax-exempt CTA account since 2008, and of those, over \$21,000 were made tax-free. Furthermore, since 2010, there were over \$18,000 in purchases on Ms. McClendon's tax-exempt CTA account made via a membership card directly assigned to her. Ms. McClendon admitted that these purchases were not made on behalf of the CTA when she told OEIG investigators that she used her Sam's Club membership for personal purchases and failed to pay any taxes on any of these purchases.

The OEIG's review of the list of items purchased by Ms. McClendon showed that she purchased items such as diapers, wipes, a child's tutu set, laundry detergent, AA batteries, and gas, which are all highly unlikely to have CTA uses. In addition, records show that Ms. McClendon purchased groceries tax-free in April, June, July, September, and December of calendar year 2014 and in January, February, June, July, and August of calendar year 2015 and it appears highly unlikely that in her role of security specialist Ms. McClendon would have been tasked with purchasing groceries for the CTA on all those occasions. Furthermore, under no circumstances would Ms. McClendon have paid for CTA-related purchases with [redacted], which records show Ms. McClendon used to pay for groceries at Sam's Club in June and July of 2013. Moreover, the fact that Ms. McClendon's tax-exempt CTA Sam's Club account included as a cardholder her [Relative], who never worked for the CTA, demonstrates that this account had little relation to CTA business.

Therefore, Ms. McClendon took a CTA resource, the CTA's tax exempt number, and used it for her own benefit to avoid paying sales tax on the purchase of personal items. Thus, the allegation that Ms. McClendon diverted a CTA resource to personal use is **FOUNDED**.<sup>20</sup>

### **C. Delores McClendon Engaged In Conduct Unbecoming A CTA Employee**

The CTA General Rule Book prohibits CTA employees from engaging in conduct unbecoming an employee.<sup>21</sup> As a CTA employee, Ms. McClendon maintains "a special

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<sup>20</sup> The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

<sup>21</sup> Chicago Transit Authority General Rule Book, §14(e) (2014).

relationship of trust with the public.”<sup>22</sup> As noted above, by taking a CTA resource, its tax-exempt number, and using it to avoid paying sales taxes on personal purchases for nearly eight years, Ms. McClendon violated that special trust. Ms. McClendon engaged in these actions on multiple occasions since at least 2008. Indeed, in 2008 she signed a document claiming that she was authorized to make tax-exempt purchases for the CTA, even though she was aware that she had never been authorized to purchase goods on behalf of the CTA. Rather than recognizing that she was violating the public trust and putting a stop to her actions, Ms. McClendon made purchases using the tax-exempt account at least through the week before her interview on this matter with the OEIG. Therefore, the allegation that Ms. McClendon engaged in conduct unbecoming a CTA employee is **FOUNDED**.

**D. The CTA Did Not Have Policies Or Procedures In Place To Properly Distribute And Monitor Use Of The CTA’s Tax-Exempt Letter**

The State of Illinois entrusts the CTA with the authority to purchase items for its business operations tax-free. Because the tax-exempt letter is a resource of the CTA, it falls on the CTA to put in place adequate controls to ensure that this resource is not misused. CTA policy assigns the responsibility for distributing copies of the CTA’s tax-exempt letter to the CTA’s Accounts Payable department.<sup>23</sup> Ultimately, [Employee 2] should ensure that the CTA has proper written policies and procedures relating to which employees may receive a copy of the CTA’s tax-exempt letter, how employees should go about receiving the CTA’s tax-exempt letter, and how the CTA is to keep track of the employees who have been given a copy of the CTA’s tax-exempt letter. Indeed, the CTA’s Ethics Ordinance prohibits its officers, employees, or contractors from engaging in or permitting the unauthorized use of CTA-owner property.<sup>24</sup>

Interviews with [Employee 2] and [Employee 1], show that the CTA’s system of controls with respect to the distribution and use of its tax-exempt letter is deficient in at least two ways. First, the CTA does not have a system of tracking who has access to its tax-exempt letter or how that letter is used. [Employee 2] said that the CTA, including the Accounts Payable department, does not track who has been given a copy of the tax-exempt letter, and the CTA would not be able to provide a list of employees who have been provided or used the CTA’s tax-exempt letter. [Employee 1] also said that she only maintains records of exchanges with employees who receive the tax-exempt letter via email, not in-person. This lack of tracking increases the potential of misuse of the letter.

Second, as of the date of [Employee 2’s] interview, the CTA did not have a formal process for employees to request and obtain the tax-exempt letter. The only CTA policy on the matter states that employees may obtain the tax-exempt letter from the Accounts Payable department but does not state which employees may obtain the CTA’s tax-exempt letter or what kind of approvals they need to receive to do so. To her credit, [Employee 1] said that she ensures that employees are authorized to make purchases on behalf of the CTA by checking that

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<sup>22</sup> Ethics Ordinance of the Chicago Transit Authority, §2.1 (2011).

<sup>23</sup> See Administrative Procedure # 1501, Expense Account Reimbursement, § 4.4 (2011), Administrative Procedure # 1502, Check Requests, § 4.5 (2011).

<sup>24</sup> Ethics Ordinance of the Chicago Transit Authority, §2.6 (2011).

they have requisition forms signed by their department's vice-president. But [Employee 2] said that no one at the CTA verifies the justification provided by employees for needing the CTA's tax-exempt letter. Employees are also not required to destroy or return the tax-exempt letter either after making an authorized purchase or after leaving CTA employment. The lack of a formal CTA process for employees to request and obtain the CTA's tax-exempt letter increases the potential for misuse of the CTA's tax-exempt letter.

According to [Employee 2], she has been working to make changes to CTA's use of its tax-exempt letter since this issue was brought to her attention by the OEIG investigation. While the OEIG applauds [Employee 2] for taking immediate action to put in place new CTA policies, the fact remains that the CTA, for years, lacked a system of controls with respect to the distribution and use of the CTA's tax-exempt letter. Therefore, the allegation that the CTA engaged in mismanagement by failing to maintain an adequate system of controls with respect to the distribution and use of its tax-exempt letter is **FOUNDED**.

## V. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

- **UNFOUNDED** – [Redacted]
- **FOUNDED** - Delores McClendon violated CTA General Rule Book Section 14(q) when she diverted a CTA resource (the CTA tax-exempt letter) to personal use.
- **FOUNDED** - Delores McClendon engaged in conduct unbecoming a CTA employee when, in violation of CTA General Rule Book Section 14(e), she used a CTA resource to make tax-free purchases of personal items on multiple occasions since at least 2008.
- **FOUNDED** - The CTA engaged in mismanagement by failing to ensure that the CTA maintained an adequate system of controls with respect to its distribution and use of its tax-exempt letters.

The OEIG recommends that Ms. McClendon be terminated. The OEIG recommends that [Employee 2] and the CTA continue to take timely steps to improve controls with respect to the distribution and use of the CTA's tax-exempt letter. The OEIG is also referring this matter to the Illinois Department of Revenue for the collection of all unpaid sales taxes.<sup>25</sup>

No further action is necessary and this matter is considered closed.

Date: **June 7, 2016**

Office of Executive Inspector General  
for the Agencies of the Illinois Governor

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<sup>25</sup> See 35 ILCS 120/13(b).

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By: **Daniel Ostrovsky, #105**  
Assistant Inspector General



# Office of Executive Inspector General

for the Agencies of the Illinois Governor

[www.inspectorgeneral.illinois.gov](http://www.inspectorgeneral.illinois.gov)

## AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY RESPONSE FORM

Case Number: 15-02091

Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

We will implement some or all of the OEIG recommendations but will require additional time to do so.

We will report to OEIG within 45 days from the original return date.

We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

Patrick Daly  
Signature

Patrick Daly  
Print Name

Chicago Transit Authority  
Vice President - Security Service

Chicago Transit Authority  
Print Agency and Job Title

6/30/16  
Date



**TO:** Office of Executive Inspector General

**FROM:** Patrick Daly  
Vice President, Security Service

**DATE:** August 31, 2016

**RE:** OEIG Case No. 15-2091– FINAL REPORT  
RESPONSE REQUIRED

The above-referenced final report involves allegations of misconduct by CTA Security Specialist Delores McClendon. The OEIG concluded that Ms. McClendon violated CTA policies by misusing the CTA's tax exempt letter when she applied it to purchases that were not for CTA-related business. The final report included a finding that CTA lacked adequate controls with respect to how it tracked the distribution and use of its tax exempt letter. The OEIG recommended that Ms. McClendon be terminated and that CTA improve the controls in place associated with employee access to its tax exempt letter.

#### **Ms. McClendon's Discipline**

In response to the OEIG's findings and recommendations, CTA management cited Ms. McClendon with violating CTA General Rules No. 7(a, b, c): *Obedience to Rules*, No. 14 (w) *Personal Conduct* and No. 24: *Use of Best Judgment*. On June 29, 2016, CTA suspended Ms. McClendon for 30 days without pay as a result of these rule violations. As an additional component of the discipline, CTA directed Ms. McClendon to pay to the Illinois Department of Revenue ("IDOR") all of the taxes due for the personal purchases that she inappropriately made with her Sam's Club card using CTA's tax exempt status. On August 15, 2016, Ms. McClendon made payments of over \$1,200 to IDOR as an estimated amount of the taxes due based on her understanding of the purchases made at Sam's Club during the applicable time period.

#### **CTA's Management of the Tax Exempt Letter**

The Illinois Administrative Code ("Code") does not specify (or even offer any general guidance for) what types of mechanisms a governmental body must establish in order to effectively manage the distribution and use of its tax exempt letter<sup>1</sup>. Nonetheless, in light of the final report and out of an abundance of caution, CTA has taken steps to improve its internal controls. In August 2016, CTA removed the Tax Exempt Letter provisions from Administrative Procedure #1502: *Check Requests, P-Cards, and Tax Exempt Letter* ("AP 1502") and created a separate policy devoted exclusively to the management of CTA's tax exempt letter: Administrative

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<sup>1</sup> 86 Ill. Admin. Code § 130.2080.

Procedure #1506: *Tax Exempt Letter* ("AP 1506"). AP 1506 establishes new and more stringent controls over the management of CTA's tax exempt letter.

Specifically, AP 1506 identifies the Vice President of the Purchasing Department and the Manager of the Accounts Payable Department as the two authorized possessors of the tax exempt letter. Possession of the tax exempt letter is exclusive to those designated employees. Additionally, AP 1506 requires that tax exempt purchases be made using a CTA-issued check obtained through the Check Request process.

As part of the Check Request process, AP 1506 directs employees making CTA business-related purchases that are tax exempt to contact the appropriate authorized possessor in order for that individual to supply the tax exempt letter to the retailer directly. This control effectively limits access to the tax exempt letter because the process now precludes the need for the letter's distribution to general employees by designating specific employees who, by the nature of their position, have a preexisting exposure to and direct accountability for CTA's financial control environment.

Additionally, by confining tax exempt purchases to those made through the Check Request process, an employee is precluded from using CTA's tax exempt letter to make personal purchases. This is because the employee must formally identify the legitimate business purpose in writing as part of the Check Request process. The restrictions and controls that are fundamental to the Check Request process (e.g., appropriate management approval) are now also applied to the use of the tax exempt letter for applicable purchases. However, in order to be absolutely clear, AP 1506 also expressly prohibits the application of CTA's tax exempt letter to personal purchases. AP 1506 also prohibits the tax exempt letter from being associated with an account that would otherwise allow for the tax exempt letter to be applied to repeated purchases on an ongoing basis. Finally, AP 1506 ensures that violations of any of its provisions could result in disciplinary action up to and including discharge.

### **Retailers' Responsibility Regarding Tax Exempt Purchases by Governmental Bodies**

The CTA's efforts to bolster controls with respect to its tax exempt letter dovetail with retailers' responsibilities regarding tax exempt purchases by government bodies. These responsibilities were not met by the retailer on numerous occasions in this case nor addressed by the OEIG in its final report. In contrast to the absence of specificity in the Code with regards to a governmental body's internal management of its tax exempt letter, the Code does contain detailed requirements that retailers must follow related to the method of payment for tax exempt items sold to governmental bodies. Significantly, the Code institutes a control on the use of tax exempt letters by restricting tax exempt purchases to those that are "invoiced directly to and paid by governmental bodies."<sup>2</sup> To that end, the Code stipulates that tax will be due on purchases in which a government employee provides a credit card containing the name of the employee even if the employee provides a tax exempt letter containing an active exemption identification number.<sup>3</sup>

The mere presentation of the tax exempt letter by an employee of a governmental body at the time of purchase does not absolve the retailer from its inherent obligations of scrutiny and due diligence. Instead, the Code imposes these statutorily defined requirements for the retailer to enforce at the point of sale. The Code incorporates these requirements for good reason; the

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<sup>2</sup> Id.

<sup>3</sup> Id.

retailer is not only responsible for making determinations regarding what taxes are applicable and due for any individual transaction at the point of sale, but it is also responsible for actually collecting those funds in any instance in which the requirements of the Code regarding tax exempt purchases by governmental bodies are not met. While Sam's Club did not meet those statutory requirements in this case, CTA is confident that AP 1506 will adequately control the use of the CTA's tax exempt letter for CTA-related purchases in the future, irrespective of any specific retailer's adherence to its own duties stipulated by the Code.

Other than the above specified discipline and policy revisions, no further action will be taken on this matter, and CTA considers this complaint closed.

cc: Jeremy Fine  
Karen London  
Linda Davis  
Michael McLaughlin  
Sylvia Garcia





RECEIVED

OCT 21 2016

EXECUTIVE ETHICS COMMISSION

**TO:** Executive Ethics Commission

**FROM:** Jeff Hulbert  
Senior Manager, Regulatory Compliance

**DATE:** October 21, 2016

**RE:** Retailers' Responsibilities Regarding Sales to Governmental Bodies

*Below is the CTA's response to the Executive Ethics Commission's (EEC) October 5, 2016 correspondence regarding the EEC's consideration of the publication of OEIG Report #15-2091. The CTA requests that this response be made public if the report is published. Additionally, the CTA requests that its August 31, 2016 response to the OEIG regarding Ms. McClendon's discipline and the CTA's management of its tax-exempt letter be published in conjunction with this response if the report is published.*

The CTA disputes the OEIG's finding that the CTA bears responsibility for the improper use of a tax-exempt letter because it "engaged in mismanagement by failing to ensure that the CTA maintained an adequate system of controls with respect to its distribution and use of its tax-exempt-letters." Contrary to what is implied by this finding, it is the retailer – and not the CTA – that has applicable statutory requirements regarding the control of tax-exempt purchases to governmental bodies. The retailer in this case did not comply with those statutory requirements. Problematically, the OEIG fails to acknowledge both the existence of the retailer's obligations as well as the repeated failure of the retailer in this case to meet those obligations in the Final Report.

The Illinois Administrative Code ("Code") imposes specific requirements on retailers with regards to systems of controls and the processing of tax-exempt purchases.<sup>1</sup> In particular, the Code requires that retailers process as tax-exempt only those purchases which are invoiced directly to the governmental body.<sup>2</sup> The Code's controls are instituted in this manner because it is the retailer – and not the governmental body – that is in the position to apply or withhold taxes from purchases at the time of sale. Conversely, there are no regulations or requirements for the internal control mechanisms that a governmental body should or must have in place to manage the use of tax-exempt letters.

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<sup>1</sup> 86 Ill. Admin. Code § 130.2080.

<sup>2</sup> 86 Ill. Admin. Code § 130.2080.

While acknowledging that the OEIG has certain jurisdictional constraints, it is nonetheless quite puzzling that the OEIG's Final Report makes no mention of retailers' statutorily defined obligations generally, that the retailer in this case failed to comply with those requirements, or that the retailer's failure resulted in the improper use of a tax-exempt letter by an employee. Those facts bear noting and the Final Report is remiss by failing to include them.

These omissions are particularly concerning in light of the OEIG's conclusion that the CTA lacked a variety of specific processes and procedures to control the use of its tax-exempt letter. In fact, the processes and procedures (for which the OEIG cites no source of regulation or guidance) would not have actually prevented sales tax from being inappropriately withheld in this case. In particular, the more formalized tracking system and sign out process for the tax-exempt letter that the OEIG recommends would not have prevented a retailer from improperly processing a purchase as tax-exempt. While such mechanisms may assist for recordkeeping or audit purposes, it cannot be concluded that their use would have prevented the misuse of the tax-exempt letter in this case.

This is because the Code is structured so that even if an individual wrongfully possesses an entity's tax-exempt letter, misuse of the letter is forestalled as long as a retailer complies with its statutorily obligated controls. The case at hand is instructive on this point. In violation of the Code, the retailer repeatedly and improperly processed as tax-exempt purchases that were not invoiced to the CTA. If the retailer had complied with its obligations under the Code, the misconduct that is the subject of this investigation case simply could not and would not have occurred.

In closing, the manner in which the CTA (or any governmental body) internally manages its tax-exempt letter will never unilaterally prevent its inappropriate application. That is why mere possession of an entity's tax-exempt letter alone does not, in and of itself, permit the possessor to make tax-exempt purchases. The Code outlines what the Department of Revenue believes to be the best enforcement mechanism. Those requirements are specifically placed on the retailer. It is unfortunate that the OEIG failed to rely on this law and further, failed to include relevant facts in this instance that would have led to the inexorable conclusion that the misuse of the tax-exempt letter would have been prevented with certainty had the retailer followed the law.

cc: Michael McLaughlin  
Sylvia Garcia