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August 27, 2024

Supreme Court of Texas

P.O. Box 12248

Austin, Texas 78711

RE: Cause No. 23-0149; *The GEO Group, Inc. and GEO Corrections and Detention, LLC v. Glenn Hegar, Comptroller of Public Accounts of the State of Texas, and Ken Paxton, Attorney General of the State of Texas.*

To the Honorable Members of the Supreme Court of Texas:

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amicus curiae*

Texas Taxpayers and Research Association files this letter in the above-referenced cause in support of The GEO Group, Inc. and GEO Corrections and Detention, LLC (“GEO”).

**Statement of Interest**

The Texas Taxpayers and Research Association (TTARA) has a strong interest in this proceeding before the Court and wishes to express our deepest concerns for the negative ramifications it portends for taxpayers’ rights to judicial review by trial de novo afforded by the Administrative Procedure Act and the Tax Code.

In that vein, we offer the following thoughts on the important tax policy issue

in the above-referenced cause: the appropriate burden of proof in a tax refund suit concerning an exemption.

The Texas Taxpayers and Research Association (TTARA) is a non-profit, non-partisan, membership-supported organization of businesses, trade associations, tax practitioners, and individuals that endorses and advocates for sound state and local fiscal policy. Our more than 200 member companies come from a broad range of economic sectors and are some of the largest taxpayers in Texas.

For more than seventy years, TTARA (including its predecessor organizations, the Texas Association of Taxpayers and the Texas Research League) has been recognized as the state's preeminent organization specializing in tax and fiscal policy and, as such, has long worked closely with legislators, executive officials, and state agencies in pursuit of a rational, balanced, and efficient system of taxation. In view of our longtime, intimate, and extensive participation in the formation of Texas tax policy, we believe it is appropriate for us to comment on this critical issue affecting a taxpayer's right to judicial review.

This letter brief has been prepared in the ordinary course of TTARA's operations. No fee has been paid for the preparation or filing of this letter brief.

## Argument

### **1. Texas refund suits are subject to a preponderance of the evidence burden of proof, regardless of whether an exemption applies.**

The Administrative Procedure Act (“APA”) grants judicial review rights for certain state agency disputes. Tex. Gov’t Code § 2001.171. Under the APA and the Texas Tax Code, a tax refund suit is tried the same as any other civil suit. Specifically, the Texas Tax Code provides for de novo review in a refund suit. Tex. Tax Code § 112.154; Tex. Gov’t Code § 2001.172. And, in a trial de novo, the APA requires that the reviewing court “try each issue of fact and law in the manner that applies to other civil suits in this state as though there had not been an intervening agency action or decision . . . .” Tex. Gov’t Code § 2001.173(a). As a result, the standard of proof in a trial de novo review of an agency decision is the same as any other civil suit: a preponderance of the evidence.<sup>1</sup>

The fact that a tax refund suit may concern an exemption does not warrant a heightened burden of proof, as neither the APA nor the Texas Tax Code vary the scope of judicial review or burden of proof when an exemption is disputed in a refund suit. Additionally, the clear and convincing evidence standard is imposed

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<sup>1</sup> See *Key W. Life Ins. Co. v. State Bd. of Ins.*, 350 S.W.2d 839, 845 (Tex. 1961).

only in “extraordinary circumstances” that are not relevant to a tax refund suit.<sup>2</sup> Judicial statements that tax exemptions are “narrowly construed” or that a taxpayer must “clearly show” that an exemption applies do not equate to the imposition of a clear and convincing burden of proof.<sup>3</sup> They do not raise the evidentiary hurdle that the taxpayer must clear. At most, they simply state the court’s standard of review for weighing the taxpayer’s evidence.

Therefore, this Court should reject the Comptroller’s attempt to impose a heightened burden of proof on exempt organizations through either this case or Comptroller Rule 3.322(a)(2). Allowing the Comptroller to impose a higher evidentiary standard in a trial de novo violates a taxpayer’s right to judicial review of Comptroller decisions and disrupts the balance of power of the three branches of government.

### **Conclusion and Prayer**

TTARA appreciates the opportunity to express our concerns regarding the important tax policy issues in this case and urges the Court to grant GEO’s Petition for Review and correct the court of appeals opinion imposing a heightened burden of proof in tax refund cases.

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<sup>2</sup> *Ellis County State Bank v. Keever*, 888 S.W.2d 790, 792 (Tex. 1994).

<sup>3</sup> *Southwest Royalties, Inc. v. Hegar*, 500 S.W.3d 400, 400 (Tex. 2016).

Respectfully submitted,

*/s/ Jennifer Rabb*

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## CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word for PC, this brief contains 755 words, excluding the portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

By / s / Helen Brantley

Helen Brantley

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served as indicated on all counsel of record in accordance with the Texas Rules of Civil Procedure 21a on this 27th day of August 2024 by serving the following:

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