



## MULTISTATE TAX

# Georgia enacts judicial deference law

## Tax Alert

## Overview

On April 29, 2021, Georgia enacted [Senate Bill 185](#) (S.B. 185), changing the judicial standard of deference accorded to non-regulatory actions of the Georgia Department of Revenue (“Department”). S.B. 185 requires that all questions of tax law decided by a court or the Georgia Tax Tribunal be made without any deference to any determination or interpretation made by the Georgia Department of Revenue, with the exception of the judicial standard of deference accorded to rules and regulations promulgated by the Department pursuant to the Georgia Administrative Procedure Act.

## S.B. 185

The bill amends Ga. Code Ann. §§ 48-2-18(c), 48-2-35(c)(7), 48-2-59(e), and 50-13A-14(a) and provides that:

- All questions of law decided by a court or the Georgia Tax Tribunal, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made by the Georgia Department of Revenue.
- This requirement has no effect on the judicial standard of deference accorded to rules promulgated pursuant to the Georgia Administrative Procedure Act.
- The law shall be applicable to all proceedings commenced before the Georgia Tax Tribunal or a superior court of the state of Georgia on or after its effective date of April 29, 2021.

## Taxpayer considerations

S.B. 185 is a significant development for taxpayers evaluating whether to appeal certain assessments or determinations by the Department to the Georgia Tax Tribunal or to a Georgia superior court. The removal of judicial deference for sub-regulatory matters shifts the focus away from whether the Department’s interpretation is a permissible construction of the statute;

instead, it allows the court or tribunal to construe the statute under its own authority. As noted above, S.B. 185 does not apply to rules promulgated pursuant to the Georgia Administrative Procedure Act, which provides that the courts shall take judicial notice of such rules.

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