

Georgia Senate Bill 185 Gives Wider Interpretation to State Tax Code

On April 29, 2021, Georgia Senate Bill 185 was made effective and overturned decades of judicial deference. The bill gives the Georgia Tax Tribunal wider authority to interpret the state tax code.

Historically, taxpayers arguing against ambiguous or unclear statutes, were subjected to the Chevron deference which delegated the interpretation of ambiguous statutes to the tax agency. Chevron deference was a principle established by the Supreme Court case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* in 1984¹. The case questioned how federal courts should view a federal agency's interpretation of a statute that Congress directed the agency to implement. The Court ultimately ruled that federal courts should defer to the agency's interpretation unless the interpretation was "arbitrary, capricious, or manifestly contrary to the statute."²

Chevron deference is grounded in the belief that when regulations from an administrative agency are not explicit, a court may not provide its own interpretation of the statute in lieu of a reasonable interpretation made by the administrative agency.³ However, in recent years, Chevron deference has been more widely criticized for its inconsistent application across cases. Additionally, taxpayers had a significantly lower chance of success in tax court under Chevron deference.⁴

Chevron Deference Standards of Application and Courts

There are two standards of application under Chevron deference. One application specifically addresses agencies with no administrative process for resolving disputes, while the other application is for agencies where such a process exists. The Georgia Tax Tribunal is a specialized court which was established as an independent division within the Office of State Administrative Hearings (OSAH). This specialized court is the administrative process for resolving disputes between taxpayers and the Georgia Department of Revenue (GADOR). Accordingly, the Georgia Tax Tribunal should never have applied the Chevron doctrine under the standard that addresses agencies with no administrative process for resolving disputes since the Georgia Tax Tribunal was the administrative process for resolving disputes between taxpayers and the GADOR.

SB 185's Impact

SB 185 helps balance the scales. The disparity between taxpayers and tax agencies under the Chevron doctrine was demonstrated in a 2008 study which disclosed a case win rate of 76% for agencies.⁵ The dilution of the Chevron doctrine enables the courts to make decisions on ambiguous laws and grants taxpayers a more level playing ground when disputing matters that have not been explicitly outlined by the agency. This safeguards the rights of the taxpayer and checks the powers of the tax agency.

¹ *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 468 U.S. 837 (1984)

² The Heritage Foundation, "Who Will Regulate the Regulators? Administrative Agencies, the Separation of Powers, and Chevron Deference," May 7, 2015

³ Legal Information Institute, "Chevron Deference," https://www.law.cornell.edu/wex/chevron_deference

⁴ William Eskridge, Jr. & Lauren Baer, *The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan*, 96 *Geo. L.J.* 1083, 1129 (2008).

⁵ *Ibid*



SB 185 still maintains that any statute with explicit application will be upheld. However, SB 185 now gives the Georgia Tax Tribunal the ability to rule in cases with ambiguous application in a way that may be counter to an agency's interpretation. Thereby, granting taxpayers a greater chance for a favorable outcome when contesting equivocal statutes.

As BT Partner Peter Stathopoulos states, "Removal of Chevron deference helps level the playing field for taxpayers when a controversy involves the proper interpretation of state tax regulations and supports one of the original purposes for the creation of the Tax Tribunal, namely a de novo review of state tax controversies."

Contact Us

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