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## State and Local Taxation

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# State and Local Taxation

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## I. INTRODUCTION

This Article surveys the most critical and comprehensive changes in Georgia law occurring between June 1, 2019, and May 31, 2020.<sup>1</sup> Most notably, the article discusses Georgia's tax response to COVID-19, Georgia's new marketplace facilitator statute, the jurisdictional limits of the Georgia Tax tribunal, and other important topics.

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<sup>1</sup> For an analysis of state and local tax during the prior survey period, see Brian Sengson, DiAndria Green, and David Greenberg, *State and Local Taxation: A Two-Year Survey, Annual Survey of Georgia Law*, 71 MERCER L. REV. 279 (2019).

## II. CORONAVIRUS DISEASE 2019 TAX RELIEF

The Coronavirus Disease 2019 (COVID-19) pandemic created unique tax issues related to employee income tax withholdings, nexus, and property tax. With an almost nationwide shift to a remote workplace, individual taxpayers who live and work in different states need to determine whether they must file a tax return in the work state or the domiciliary state. Businesses must ensure that they are following proper employee withholding laws. Additionally, businesses must determine whether government mandated remote working requirements, with respect to the businesses' employees and business personal property, create or modify nexus for purposes of sales and income tax. Likewise, businesses must also determine whether the presence of company owned equipment being used for income producing activities—such as laptops, monitors, or digital storage devices—modifies their state income tax apportionment ratios or creates local personal property tax filing and payment obligations.

Considering the great uncertainty, the Georgia Department of Revenue (Department of Revenue) provided guidance through its “Coronavirus Tax Relief Frequently Asked Questions” webpage.<sup>2</sup> The Department of Revenue addressed topics including, but not limited to, nexus considerations, withholding tax obligations, and income tax filing deadlines.<sup>3</sup>

Mirroring the Internal Revenue Service (IRS), the Department of Revenue automatically granted taxpayers an income tax filing and payment deadline extension for returns due on or after April 15, 2020, and before July 15, 2020.<sup>4</sup> The extension was available until July 15, 2020.<sup>5</sup> The extension deadline also applied to estimated income tax payments and “any statute of limitations relat[ed] to claiming prior year income tax refunds” or income tax credits.<sup>6</sup> Notably, the extension did not apply to sales tax collected or employee withholding amounts.<sup>7</sup>

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<sup>2</sup> Ga. Dep't of Revenue, Coronavirus Tax Relief FAQs, <https://dor.georgia.gov/coronavirus-tax-relief-faqs> (last visited Jul. 21, 2020). [hereinafter Ga. COVID-19 Tax Relief FAQ]

<sup>3</sup> Ga. COVID-19 Tax Relief FAQ, *supra* note 2.

<sup>4</sup> See Internal Revenue Serv., Notice 2020-23, Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic (Apr. 27, 2020), <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>. at 7. [hereinafter IRS, Update to Notice 2020-18]

<sup>5</sup> IRS, Update to Notice 2020-18, *supra* note 4.

<sup>6</sup> Ga. COVID-19 Tax Relief FAQ, *supra* note 2.

<sup>7</sup> Ga. COVID-19 Tax Relief FAQ, *supra* note 2.

Importantly, responding to remote work requirement questions, the Department of Revenue provided that, if an employee's relocation is the direct result of temporary remote work requirements arising from and during the COVID-19 pandemic, the Department of Revenue will not use such relocation as the basis for establishing Georgia income tax nexus or, for going beyond the bounds of the federal statutory protections granted by Public Law 86-272.<sup>8</sup> Additionally, wages earned by an employee temporarily working in Georgia during the COVID-19 pandemic will not be considered Georgia income for Georgia income tax withholdings purposes. Consequently, the Department of Revenue stated that it will treat wages paid to a nonresident employee who normally works in Georgia, but who is temporarily working in a different state, as Georgia wages subject to Georgia income taxes.<sup>9</sup> However, this guidance is temporary and may not reflect ongoing Department of Revenue policies.<sup>10</sup>

### III. GEORGIA SALES AND USE TAXATION

#### A. *Changes to Georgia's Remote Seller Economic Nexus Law*

In the wake of *South Dakota v. Wayfair, Inc.*,<sup>11</sup> Georgia joined many states passing economic nexus laws targeting remote retailers. House Bill 61<sup>12</sup> established an economic nexus test in Georgia.<sup>13</sup> House Bill 182,<sup>14</sup> effective January 1, 2020, reduced the gross revenue threshold for economic nexus from an amount exceeding \$250,000 to an amount exceeding \$100,000.<sup>15</sup> The transactional threshold of 200 or more retail sales transactions remains in effect.<sup>16</sup>

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<sup>8</sup> Ga. COVID-19 Tax Relief FAQ, *supra* note 2. *See also* 15 U.S.C. §§ 381–384 (2020) (providing relief from direct income taxation if the only connection to a state is due to solicitation activities).

<sup>9</sup> Ga. COVID-19 Tax Relief FAQ, *supra* note 2.

<sup>10</sup> Ga. COVID-19 Tax Relief FAQ, *supra* note 2.

<sup>11</sup> 138 S. Ct. 2080 (2018).

<sup>12</sup> Ga. H.R. Bill 61, Reg. Sess., 2018 Ga. Laws 259 (codified at O.C.G.A. §§ 48-8-2, 48-8-30 (2019)).

<sup>13</sup> For more information regarding the Georgia economic nexus rule, see Sengson et al., *supra* note 1 at 281.

<sup>14</sup> Ga. H.R. Bill 182, Reg. Sess., 2019 Ga. Laws 282 (codified at O.C.G.A. § 48-8-2 (2020)).

<sup>15</sup> *Id.* § 1.

<sup>16</sup> O.C.G.A. § 48-8-2(8)(M.2) (2020).

*B. Georgia Enacts a Marketplace Facilitator Law*

The General Assembly enacted House Bill 276<sup>17</sup> creating increased sales tax collection and remittance obligations for taxpayers facilitating taxable retail sales in Georgia. Effective April 1, 2020, any person meeting the definition of marketplace facilitator that facilitates taxable retail sales in Georgia is required to collect and remit sales tax when the aggregate retail sales equals or exceeds \$100,000 in the previous or current calendar year.<sup>18</sup>

Georgia defines marketplace facilitator as a person that contracts with a seller in exchange for consideration to make available or facilitate a taxable retail sale on behalf of the seller by providing a specifically identified service.<sup>19</sup> Additionally, the person must facilitate payment for the “sale on behalf of the marketplace seller.”<sup>20</sup> The Georgia legislature expressly defined marketplace seller to include a person conducting a retail sale through any physical marketplace, electronic marketplace, or other “platform operated directly or indirectly by a marketplace facilitator.”<sup>21</sup> Notably, a marketplace facilitator may be facilitating sales on behalf of a marketplace seller regardless of whether the seller is required to maintain a Georgia Dealer’s certificate of registration.<sup>22</sup> Every person operating as a state-defined marketplace facilitator is deemed to be the dealer and retailer of each retail sale sourced within Georgia.<sup>23</sup>

The General Assembly House Bill 276 incorporates a safe harbor provision “for failure to collect and remit the correct amount of [sales] tax.”<sup>24</sup> Specifically, a marketplace facilitator may be relieved from liability for failure to collect and remit tax if the marketplace facilitator can demonstrate that the “error was due to insufficient or incorrect information” supplied by the seller, and that the “facilitator made a reasonable effort to obtain correct and sufficient information.”<sup>25</sup> The requisite showing is subjective as the marketplace facilitator must

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<sup>17</sup> Ga. House Bill 276, Reg. Sess. (2020) (codified at O.C.G.A. §§ 48-8-2, 48-8-30, 48-8-59, 48-8-77, 48-7-28.3 (2020)).

<sup>18</sup> O.C.G.A. § 48-8-2(8)(M.3) (2020). *See also* Ga. Dep’t of Revenue, Policy Bulletin SUT-2020-01, Marketplace Facilitators (Mar. 17, 2020).

<sup>19</sup> O.C.G.A. § 48-8-2(18.1) (2020).

<sup>20</sup> O.C.G.A. § 48-8-2(18.1)(B) (2020).

<sup>21</sup> O.C.G.A. § 48-8-2(18.2) (2020).

<sup>22</sup> *Id.* *See also* O.C.G.A. § 48-8-59(a)(1).

<sup>23</sup> O.C.G.A. § 48-8-30(c.2)(1) (2020) (effective Apr. 1, 2020; replacing previous section (c.2) repealed effective April 28, 2019).

<sup>24</sup> O.C.G.A. § 48-8-30(c.2)(9) (2020).

<sup>25</sup> *Id.*

demonstrate its efforts to the “satisfaction of the department.”<sup>26</sup> Exempted from the definition of marketplace facilitator are certain qualifying franchisors, as defined by federal regulation,<sup>27</sup> and persons who would otherwise meet the definition of a marketplace seller of such franchisors, provided that, in addition to other factors, the seller “made annual gross sales in Georgia of at least \$500 million.”<sup>28</sup> The legislation prohibits class actions against marketplace facilitators “related to an overpayment of sales or use tax collected on sales facilitated by [a] marketplace facilitator.”<sup>29</sup> While this exclusion prohibits class actions styled as a tax refund claim, it does not limit a “customer’s [individual] right to seek a refund of taxes erroneously paid.”<sup>30</sup>

#### IV. GEORGIA INCOME TAX

In *North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust (N.C. Dep’t. of Revenue)*,<sup>31</sup> the state governments asked the Supreme Court of the United States to further expand its taxing authority. In rejecting this opportunity, the Court clarified the relationship between the Court’s holdings in *Quill Corporation v. North Dakota*,<sup>32</sup> and *Wayfair*.<sup>33</sup> Joseph Rice formed a series of trusts for the benefit of his children. These trusts were formed under the laws of New York and managed in Massachusetts and Connecticut. One of these trusts was the Kimberley Rice Kaestner 1992 Family Trust (KRK Trust). Under the KRK Trust’s terms, the beneficiary lacked an absolute right to the trust assets and had no guaranteed right to income. In 1997, the beneficiary moved to North Carolina. While in North Carolina, the KRK Trust did not distribute any funds to the beneficiary. In 2009, at the discretion of the trustee, the KRK Trust loaned \$250,000 to the beneficiary, but the beneficiary repaid the loan. Outside this loan, the KRK Trust did not provide any financial benefit to the beneficiary.<sup>34</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> O.C.G.A. § 48-8-30(c.2)(10) (2020). *See also* 16 C.F.R. 436.1 (2020).

<sup>28</sup> O.C.G.A. § 48-8-30(c.2)(11) (2020). *See also* Ga. Dep’t of Revenue, Policy Bulletin SUT-2020-01, *supra* note 18.

<sup>29</sup> O.C.G.A. § 48-8-30(c.2)(7) (2020).

<sup>30</sup> *Id.*

<sup>31</sup> 139 S. Ct. 2213 (2019).

<sup>32</sup> 504 U.S. 298, 112 S. Ct. 1904 (1992).

<sup>33</sup> *See N.C. Dep’t. of Revenue*, 139 S. Ct. 2213. *See also* Sengson et al., *supra* note 1, at 280–81.

<sup>34</sup> *Kimberly Rice Kaestner 1992 Family Trust v. N.C. Dep’t. of Revenue*, 371 N.C. 133, 134–35, 814 S.E.2d 43, 45 (2018).

North Carolina statute provided if a trust's beneficiary is domiciled within North Carolina then the trust must be subject to income tax on its undistributed income.<sup>35</sup> From 2005 through 2008, the KRK Trust paid state income taxes under the management of a new trustee despite making no distributions. In 2009, the KRK Trust filed a request for refund claiming, taxing a Trust income prior to distributing to a beneficiary violated the Due Process Clause and Dormant Commerce Clause. The North Carolina Department of Revenue (North Carolina) rejected their claim for a refund.<sup>36</sup> Relying on *Quill*, the North Carolina Supreme Court held that the statute violated the Due Process clause because the KRK Trust did not personally avail itself to the economic market through the acts of its beneficiary.<sup>37</sup> Thirteen days after the supreme court's decision, the Supreme Court of the United States reversed its Commerce Clause holding in *Quill*.<sup>38</sup> Accordingly, North Carolina appealed the decision chiefly arguing the North Carolina's supreme court's formulative holding should be revised considering the Court's *Wayfair* decision.<sup>39</sup> As such, many practitioners feared the Supreme Court of the United States may further extend state's power to tax out of state actors.<sup>40</sup>

Nevertheless the Supreme Court, reemphasizing its past trust income tax cases, held when a state asserts income tax nexus of a trust based on the in-state residency of the beneficiary, the Due Process Clause requires the resident beneficiary have some possession, control, or enjoyment of the trust's funds for the trust to have sufficient minimum contacts with

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<sup>35</sup> *Id.* at 135–36, 814 S.E.2d at 46 (citing N.C. Gen. Stat. § 105-160.2). *See also* O.C.G.A. § 48-7-22(a)(1)(B) (1987) (providing the same authority).

<sup>36</sup> *Id.* at 141–42, 814 S.E.2d at 49–50.

<sup>37</sup> *Kimberly Rice*, 371 N.C. at 142, 814 S.E.2d at 49 (citing *Quill*, 504 U.S. at 306–07, 112 S. Ct. at 1909–10).

<sup>38</sup> *Wayfair*, 138 S. Ct. at 2092.

<sup>39</sup> *Id.* at 2099–100. *See also* Brief for Minnesota and Nineteen Other States and the District of Columbia as Amici Curiae Supporting the Petitioner, *N.C. Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*, 139 S. Ct. 2213 (2019) (No. 18-457) 2019 U.S. S. Ct. Briefs LEXIS 843 at \*5–6.

<sup>40</sup> *See e.g.*, Roger Russell, *Supreme Court hears arguments on major state trust tax case*, Accounting Today (Apr. 17, 2019, 5:00 PM), <https://www.accountingtoday.com/news/supreme-court-hears-arguments-on-major-state-trust-tax-case>; Michael Bowen, *Kaestner Trust May Pick Up Where Wayfair Left Off*, Law360 (Feb. 21, 2019, 1:13 PM), <https://www.law360.com/articles/1131212/kaestner-trust-may-pick-up-where-wayfair-left-off>; Michael I. Lurie & Megan Q. Miller, *Supreme Court to Consider Due Process Nexus*, ReedSmith Client Alerts (Jan. 11, 2019).

the state.<sup>41</sup> The Court held that the beneficiary's possession, control, and enjoyment over the KRK Trust did not meet the Due Process standard because she "received no income from the Trust, had no right to demand income from the Trust, and had no assurance[s] that they would eventually receive a specific share of Trust income."<sup>42</sup>

In so holding, the Supreme Court of the United States limited the *Wayfair* decision to merely eliminate *Quill's* artificial formalism when applying the older standard articulated in *Complete Auto Transit, Inc. v. Brady*<sup>43</sup> for the Dormant Commerce Clause; thereby confirming that the Court's *Wayfair* decision did not establish a radically new nexus standard.<sup>44</sup> The holding had direct and meaningful effects for Georgia taxpayers. Georgia statutes asserted nexus on nonresident trusts whose loan contact was the beneficiary's residency.<sup>45</sup> After the release of the Supreme Court of the United States' decision, the Georgia Department of Revenue (Department of Revenue) released a policy bulletin announcing its acquiescence.<sup>46</sup> The Department of Revenue will not challenge claims for refund on any request not otherwise barred by the statute of limitations if the beneficiaries in the tax years at issue (1) did not receive any income from the trust; (2) had no right to demand trust income or otherwise control, possess, or enjoy the trust assets; and (3) were uncertain they would receive any income from the trust in the future.<sup>47</sup> If the trust does not meet these qualifications, the Department of Revenue will reject any claims for refund and will assert nexus on future tax returns.<sup>48</sup>

## V. TAX CONTROVERSY

### A. *New Cingular Wireless PCS, LLC v. Georgia Department of*

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<sup>41</sup> *N.C. Dep't of Revenue*, 139 S. Ct. at 2222 (citing *Quill*, 504 U.S. at 306, 112 S. Ct. at 1909–10; *Safe Deposit & Trust Co. of Baltimore v. Virginia*, 280 U.S. 83, 91–92, 50 S. Ct. 59, 60–61 (1929)).

<sup>42</sup> *N.C. Dep't of Revenue*, 139 S. Ct. at 2224.

<sup>43</sup> 430 U.S. 274, 97 S. Ct. 1076 (1977).

<sup>44</sup> *N.C. Dep't of Revenue*, 139 S. Ct. at 2219 (noting *Wayfair* reversed *Quill* on different grounds). See also *Wayfair*, 138 S. Ct. at 2092.

<sup>45</sup> O.C.G.A. § 48-7-22(a)(1)–(3); O.C.G.A. § 48-7-50(a)(1)–(5) (2020).

<sup>46</sup> Ga. Dep't of Revenue, Policy Bulletin IT-2019-02, Taxation of Nonresident Trust Fiduciaries—Effect of Kaestner Decision (2019).

<sup>47</sup> Ga. Dep't of Revenue, Policy Bulletin IT-2019-02, *supra* note 56, at 6.

<sup>48</sup> Ga. Dep't of Revenue, Policy Bulletin IT-2019-02, *supra* note 56, at 2.



*Revenue*

The long-standing dispute between New Cingular Wireless PCS, LLC et al. (AT&T)<sup>49</sup> and the Georgia Department of Revenue (Department of Revenue) continues. The principle issues in the case are (1) whether AT&T was required to reimburse customers for taxes improperly collected and remitted to the state before seeking a refund from the Department of Revenue; (2) whether AT&T had standing to pursue refund claims prior to May 5, 2009; and (3) whether AT&T's claims were barred as a class action.<sup>50</sup> To summarize relevant procedural history, the Department of Revenue promulgated regulations<sup>51</sup> outlining procedures for requesting a tax refund.<sup>52</sup> AT&T filed refund claims in November 2010, seeking reimbursement on behalf of its customers for taxes improperly collected and paid. The Department of Revenue denied the refund request. AT&T filed a complaint in DeKalb County Superior Court challenging the Department of Revenue's denial. The Department of Revenue moved to dismiss the Complaint, and the trial court granted the Department of Revenue's motion.<sup>53</sup> AT&T appealed and the Georgia Court of Appeals held that the trial court properly granted the Department of Revenue's motion to dismiss because AT&T had not repaid erroneously collected taxes prior to requesting a refund as the regulation required.<sup>54</sup> The court of appeals did not reach the remaining two issues on appeal.<sup>55</sup> The Georgia Supreme Court granted certiorari and held the Department of Revenue's regulatory interpretation was unreasonable.<sup>56</sup> Notably, the supreme court held that the regulation at issue does not require AT&T to repay funds before filing a refund request or before the Department of Revenue determines whether any refund is due.<sup>57</sup> The case was remanded back to the Georgia Court of Appeals to address two issues: (1) whether AT&T had standing to seek a refund for

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<sup>49</sup> *New Cingular Wireless PCS, LLC v. Ga. Dep't of Revenue*, 340 Ga. App. 316, 797 S.E.2d 190 (2017).

<sup>50</sup> *Id.* at 316, 797 S.E.2d at 191.

<sup>51</sup> Ga. Comp. R. & Regs. 560-12-1-.25(2) (1994).

<sup>52</sup> O.C.G.A. § 48-2-35 (2020); O.C.G.A. § 48-2-35.1 (2020).

<sup>53</sup> *New Cingular Wireless PCS, LLC*, 340 Ga. App. at 316, 797 S.E.2d at 191. For additional discussion on the trial court's rationale on Motion to Dismiss, see Sengson et al., *supra* note 1, at 290–93.

<sup>54</sup> *New Cingular Wireless PCS, LLC*, 340 Ga. App. at 323–24, 797 S.E.2d at 196. See also Ga. Comp. R. & Regs. 560-12-1-.25(2) (1994).

<sup>55</sup> *New Cingular Wireless PCS, LLC*, 340 Ga. App. at 324, 797 S.E.2d at 196.

<sup>56</sup> *New Cingular Wireless PCS, LLC v. Ga. Dep't of Revenue*, 303 Ga. 468, 470–71, 813 S.E.2d 388, 391 (2018).

<sup>57</sup> *Id.* at 472, 813 S.E.2d at 392.

tax collected prior to May 5, 2009, and (2) whether the action was an impermissible class action.<sup>58</sup>

On remand from the supreme court, the court of appeals—addressing (1) whether AT&T had standing to seek a refund for tax collected prior to May 5, 2009, and (2) whether the action was an impermissible class action—affirmed the trial court’s ruling that AT&T lacked standing to pursue refunds for taxes collected prior to May 5, 2009, but reversed the trial court’s class action determination.<sup>59</sup> On the first issue, the court of appeals concluded the amended statutes provided a new right to request a refund on behalf of its customers that AT&T did not possess prior to May 5, 2009.<sup>60</sup> On the second issue, the court of appeals held the refund action was not a class-action lawsuit barred by Georgia law because AT&T was seeking a refund on behalf of its customers, not other similarly situated taxpayer-dealers.<sup>61</sup>

AT&T sought a second petition for certiorari to address the question of whether AT&T lacked standing to file refund claims prior to May 5, 2009.<sup>62</sup> The supreme court held that the court of appeals erred by holding AT&T lacked standing.<sup>63</sup> Justice Boggs, writing for the supreme court, opined that the court of appeals correctly recognized “legislation which involves mere procedural or evidentiary changes may operate retrospectively; however, legislation which affects substantive rights may only operate prospectively,” and that “a substantive law creates rights, duties, and obligations while a procedural law prescribes the methods of enforcing those rights, duties, and obligations.”<sup>64</sup> Nevertheless, the supreme court took issue with the court of appeals’ declaration that “a statute broadening standing always and necessarily creates ‘a substantive right,’ so that such a statute ‘may only operate prospectively.’”<sup>65</sup> Specifically, the supreme court noted that the statutes

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<sup>58</sup> *Id.* at 474, 813 S.E.2d at 393.

<sup>59</sup> *New Cingular Wireless PCS, LLC*, 348 Ga. App. at 520–21, 823 S.E.2d at 837 (2019).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 521, 823 S.E.2d at 837–38. For more information about this longstanding legal battle, see Sengson et al., *supra* note 1, at 290–93.

<sup>62</sup> *New Cingular Wireless PCS, LLC v. Department of Revenue*, 308 Ga. 729, 843 S.E.2d 431–33, (2020) (Georgia Department of Revenue did not petition for certiorari on the issue of whether AT&T’s claims were barred as a class action (see *New Cingular Wireless*, 308 Ga. at 731, 843 S.E.2d at 433 (2020))).

<sup>63</sup> *Id.* at 735–36, 843 S.E.2d at 436.

<sup>64</sup> *Id.* at 731, 843 S.E.2d at 434 (quoting *New Cingular Wireless PCS, LLC*, 348 Ga. App. at 519–20, 823 S.E.2d at 837).

<sup>65</sup> *New Cingular Wireless PCS, LLC*, at 732, 843 S.E.2d at 434 (quoting *New Cingular Wireless PCS, LLC*, 348 Ga. App. at 520, 823 S.E.2d at 837).

at issue granted AT&T representative standing similar to other areas of Georgia law.<sup>66</sup> Therefore, the amended statutes did not create a substantive change in the law because the Department of Revenue was still obligated to return the wrongfully imposed sales tax, the customer maintains the right to recover wrongfully imposed sales tax, and AT&T was not granted the right to obtain any refund for itself.<sup>67</sup> The supreme court concluded that the amendment may be applied retroactively because the amended statute is procedural and does not alter or create any rights or obligations.<sup>68</sup> The case was subsequently remanded back to the court of appeals.<sup>69</sup>

*B. Moosa Company, LLC v. Georgia Department of Revenue*

In *Moosa Company, LLC v. Department of Revenue*,<sup>70</sup> the Georgia Court of Appeals considered the Tax Tribunal's jurisdictional limits. Moosa Company (Moosa) received an assessment for unpaid tobacco excise taxes. After an administrative appeal, Moosa appealed its case to the Georgia Tax Tribunal. The Georgia Department of Revenue moved to dismiss for lack of subject matter jurisdiction, and the tax tribunal found it lacked proper subject matter jurisdiction.<sup>71</sup> Moosa appealed the decision to the Georgia Court of Appeals, which accepted the case.<sup>72</sup>

The court of appeals disagreed with Moosa and affirmed the Tax Tribunal's decision.<sup>73</sup> The court of appeals reiterated its existing holding that "[f]or purposes of statutory interpretation, a specific statute will prevail over a general statute, absent any indication of a contrary legislative intent."<sup>74</sup> Relying on this longstanding holding, the court of appeals determined the clear language of the governing statute precluded extending the tax tribunal's jurisdiction to include appeals of

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<sup>66</sup> *Id.* at 732–33, 843 S.E.2d at 434–35.

<sup>67</sup> *Id.* at 735, 843 S.E.2d at 436.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 735–36, 843 S.E.2d at 436. *See also* James Nani, *AT&T Units Win \$6M Tax Refunds In Ga. High Court*, Law360 Tax Authority (May 20, 2020, 5:56 PM), <https://www.law360.com/tax-authority/articles/1275453/>.

<sup>70</sup> 353 Ga. App. 429, 838 S.E.2d 108 (2020).

<sup>71</sup> *Moosa Co. LLC v. Commissioner of the Ga. Dep't of Revenue*, No. 1902782, Decision No. 2018-1 (Ga. Tax Tribunal Oct. 16, 2018).

<sup>72</sup> *Moosa Co. LLC*, 353 Ga. App. at 429, 838 S.E.2d at 109 (Tax Tribunal appeals to the Georgia Court of Appeals are discretionary appeals); *see* O.C.G.A. § 5-6-35(a) (2020) (not including tax tribunal decisions).

<sup>73</sup> *Moosa Co. LLC* at 433, 838 S.E.2d at 112.

<sup>74</sup> *Id.* at 432, 838 S.E.2d at 111 (quoting *Goldberg v. State*, 282 Ga. 542, 544, 651 S.E.2d 667, 668 (2007)).

tobacco excise tax determinations.<sup>75</sup> The controlling statute provided an aggrieved party “may appeal from the decision to the superior court of the county in which the appellant resides.”<sup>76</sup> Moosa’s argument that the general statute either directly extends the subject matter jurisdiction of the tax tribunal to include these appeals or extends them due to the Tax Tribunal Act’s legislative intent is insufficient to overcome its clear language.<sup>77</sup>

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 431, 838 S.E.2d at 110 (quoting O.C.G.A. § 48-11-18(b) (2020)) (emphasis in original).

<sup>77</sup> *Id.* at 432, 838 S.E.2d at 110–11 (citing O.C.G.A. §§ 48-2-59, 50-13A-9 (2020)).