

Sales/Use/Indirect:

Georgia Appellate Court Remands Telecom's High-Tech Exemption Case Back to Trial Court

Case No. A22A0095, Ga. Ct. App. (6/28/22). After the Fulton County, Georgia Superior Court (trial court) reversed a Georgia Tax Tribunal (Tribunal) decision from 2020 [see *Docket Nos. 1732418 and 1800700*, Ga. Tax Trib. (8/6/20) for more details on the Tribunal's 2020 ruling], which originally held in favor of a telecommunications company that certain purchased equipment was eligible for state sales and use tax exemption under O.C.G.A. section 48-8-3(68) (*i.e.*, Georgia's "high-tech exemption"), the Georgia Court of Appeals (Court) now has vacated the trial court's ruling and remanded the case back to the trial court "for its consideration under the proper standard of review." In doing so, the Court explained that the trial court is prohibited from undertaking a *de novo* determination of evidentiary questions, and it instead should determine whether the facts found by the Tribunal are supported by any evidence. The Court also noted that nothing in its opinion "is intended to indicate how the trial court should rule in this matter after the application of the proper standard of review."

URL: <https://efast.gaappeals.us/download?filingId=773ad819-acbd-4511-8f4f-419658fd8422>

In 2020, the Tribunal held that the telecom successfully showed that the equipment at issue adequately qualified as "computer equipment," exceeded the required \$15 million annual purchase threshold, and was *not* otherwise excepted from the exemption as non-qualifying "telephone central office equipment or other voice data transport technology." Among its arguments to the contrary, the Georgia Department of Revenue (Department) claimed the equipment at issue constituted non-qualifying telephone central office equipment or other voice data transport technology. The Tribunal rejected the Department's broader interpretation of non-qualifying equipment/technology from the statutory exemption, reasoning that the state legislature only intended to except certain narrowly defined equipment/technology rather than technology (in this case, "4G technology") that could not have been contemplated at the time of enactment. Please contact us with any questions.

— Doug Nagode (Atlanta)
Managing Director
Deloitte Tax LLP
dnagode@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

John Paek (Atlanta)
Principal
Deloitte Tax LLP
jpaek@deloitte.com

Liudmila Wilhelm (Atlanta)
Senior Manager
Deloitte Tax LLP
lwilhelm@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.