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MULTISTATE INDIRECT TAX

Georgia Court of Appeals upholds sales tax liability on ride share provider

Tax Alert

Overview

On May 1, 2025, the Georgia Court of Appeals ("Court") affirmed the Georgia Tax Tribunal's ("Tribunal") decision in *Uber Technologies, Inc. v. O'Connell*, and concluded that Uber Technologies, Inc. ("Taxpayer") is responsible for collecting and remitting sales tax from its riders to the Georgia Department of Revenue ("Department") on behalf of its drivers for transportation service charges.

This Tax Alert summarizes the Georgia Court of Appeals' decision.

Background

Taxpayer is a technology company that operates a mobile ride share application ("app"). The app collects real-time GPS data and connects riders with nearby independent drivers. Both riders and drivers download the app for free, but drivers pay a fee upon use of the app's services. Anyone who wants to utilize the app must agree with Taxpayer's terms of service and violation of such policies could prevent the user from further accessing the app.

In July 2012, Taxpayer began doing business in Georgia, including maintaining an office that oversaw marketplace operations and a technical support center. Between 2012 and 2015, Taxpayer did not collect Georgia sales tax from riders, contending that the drivers were responsible for collecting and remitting sales tax on the riders' fares. The Department disagreed and assessed Taxpayer for unpaid sales tax and penalties under Ga. Comp. R. & Regs., r. 560-12-2-.84 ("Taxicab Regulation"). Taxpayer appealed the assessment to the Georgia Tax Tribunal. The Tribunal upheld the Department's assessment, ruling that Taxpayer was subject to the Taxicab Regulation and was responsible for collecting sales tax from its riders on fares for transportation services. Taxpayer further appealed, bringing the assessment to the Georgia Court of Appeals for review.

Summary of decision

The main issue before the Court was whether Taxpayer was required to collect Georgia sales tax on behalf of its drivers for tax years 2012 to 2015. Taxpayer argued that the Taxicab Regulation did not apply because it is an online marketplace facilitator that connects riders and drivers and does not "furnish" taxable transportation services, and marketplace facilitators were not required to collect and remit sales tax during the years at issue.

Applicability of the Taxicab Regulation

Under the Taxicab Regulation, Georgia shifts the obligation to collect and remit sales tax from the driver to the headquarters operator. The intent behind shifting the sales tax burden is "to enforce and collect sales tax by ensuring that the party best positioned to collect the tax is required to do so." With this in mind, the Court stated that the Taxicab Regulation directly applies to businesses like Taxpayer because "the operation and very nature of ride share network providers poses even more of a likelihood that the State will lose tax funds due to the difficulty of policing the collection of sales tax from a changing cast of thousands of independent drivers." Furthermore, the Court held that shifting the sales tax liability to the headquarters operator makes sales tax collection much easier for businesses like Taxpayer because there is "an automated electronic flow of funds between drivers and riders and [Taxpayer] could easily collect sales tax from its individual drivers to pay to the State Revenue Commissioner, which is exactly why the Taxicab Regulation exists."

Definition of a headquarters operator

The Court rejected Taxpayer's argument that it was merely a "marketplace platform" or "ride share network service" and ruled that the Taxicab Regulation applies because Taxpayer meets the definition of a "headquarters operator". A headquarters operator is defined as "any person operating a headquarters for taxicabs and supervising or directing taxicab drivers, or receiving and relaying calls to cab driver members." The Court emphasized that "operating a headquarters" does not require a physical office or location in the state, but may be satisfied by certain actions, such as supervising or facilitating drivers to riders. Additionally, the Court stated that the app itself is the "administrative center or central nexus from which [Taxpayer's] functions are performed and its business operates," and thus meets the definition of a headquarters. Furthermore, the Court found that Taxpayer's business is a headquarters operator because the app "receives ride requests (or "calls") from prospective riders to find nearby ride share drivers, and [Taxpayer] tracks both the riders' and drivers' locations within the app to relay those requests to the nearest ride share rider utilizing the app at that time." Lastly, the Court held that Taxpayer supervises its drivers because only those drivers that adhere to Taxpayer's policies may use the app and the app determines where the drivers provide their service. Therefore, the Court held that under the Taxicab Regulation, Taxpayer was required to collect and remit Georgia sales tax on behalf of its drivers for tax years 2012 to 2015.

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