

# PUBLICATION

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## Spotlight on Mississippi: Supreme Court Rules Against Department of Revenue's Claimed Entitlement to Deference

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The Mississippi Supreme Court recently declined to give deference to the findings of the Department of Revenue in *Miss. Dept. of Revenue v. Hotel and Restaurant Supply* because the Department's findings were contrary to the best reading of the applicable statutes.

The Department had conducted an audit of Hotel and Restaurant Supply, a retailer of commercial kitchen equipment and related supplies (Hotel), and concluded that Hotel failed to collect sales tax at a rate of seven percent on certain purchases by customers, even though in each case the customer presented a materials purchase certificate. Mississippi law provides that a contractor possessing a material purchase certificate is entitled to purchase materials and services that become components of his or her project "with no tax due." Instead of paying sales tax at the time materials are purchased, a contractor possessing a materials purchase contract is assessed a 3.5 percent tax on the total contract price for the project. Notwithstanding this law, the Department determined that Hotel should have collected tax on sales of items that, in its opinion, did not become a component part of the customer's project.

Hotel petitioned the Department's Board of Review for relief, but the Board upheld substantially all of the Department's assessment. Hotel then appealed the Department's decision to the Mississippi Board of Tax Appeals. Finding for Hotel, the Board of Tax Appeals abated the assessment in full. The Department then appealed the Board of Tax Appeals' decisions to the Hinds County Chancery Court, who on considering motions for summary judgment filed by both parties, declined to give deference to the Department's prior interpretation of law. The court found that the Department failed to offer proof that the Board of Tax Appeals' decision was "...[U]nsupported by substantial evidence, ...arbitrary and capricious, ...beyond the power of the administrative agency to make, and/or the decision...violated the complaining party's statutory or constitutional right."

The Department then appealed the chancery court's decision to the Mississippi Supreme Court, claiming that under the applicable standard of review, the lower court was required to defer to the Department's prior findings in this case. In its written opinion, the court acknowledged the Department's correct application of the prior rule for judicial-review of tax appeals that a chancery court should review tax appeals de novo, but should give great deference to an agency interpretation unless such interpretation is contrary to the unambiguous terms or best reading of a statute. (The application of this standard of review is described in more detail in our [November 26, 2013 alert](#)). The current rule for judicial-review of tax appeals, which was signed into law on April 10, 2014, provides that a chancery court "shall give no deference" to prior agency decisions, but by its terms it only applies with respect to assessments made on or after January 1, 2015.

Notwithstanding the language of the prior statute, however, the court upheld the lower court's ruling in favor of Hotel. The court reasoned that even without the conflicting decisions by the Department and the Board of Tax Appeals, the Department is still not entitled to deference in this case because its interpretation of the law is contrary to the best reading of the subject statutes.

This case is significant for taxpayers disputing tax assessments still pending under prior law because it clarifies that the deference the Department claims it is entitled to is not available in cases involving matters of statutory interpretation. In those cases, it is within the role of the judiciary to determine the best reading of the statute.

If you have any questions concerning how the court's decision in this case could impact the review of an assessment made against you or otherwise affect your position on a tax appeal, please contact the authors of this alert, C. Tyler Ball or Stacy E. Thomas, or any of the attorneys in the Firm's Tax Group.