By Steven Leibel

Don't Mess with the Government's Money!

As a retailer it's easy to overlook the importance of timely tax paperwork, and remittance of sales tax to the government. Folks, the Department of Revenue takes sales taxes personally! I have had cases where a small business person has "used" tax money in an emergency, and failed to remit sales taxes to the Department of Revenue. The penalties are enormous, and the rate of interest charged is extremely unkind. However, the importance of a retailer's freedom is also at risk.

In June, the Department of Revenue sent out a press release about Cherlyn Baggarley, 42, of Macon, who was sentenced to 46 days in jail - plus an additional 10 months in a work release program, and ordered to pay $116,358 restitution to the state, and placed on 25 years probation. According to the Press release, Baggarley had pleaded guilty on Nov. 6, 2007 to 11 counts of felony theft by taking for failure to remit sales and use tax and withholding tax to the state from 2000 through 2005.

Revenue Commissioner Bart Graham commented that "We are very happy with this sentence. She stole from her employees by deducting withholding tax from their paychecks and never remitting the money to the state. Instead she used the money for her personal use."

Indeed the government's reach to make certain that all its taxes are paid extends to sales of businesses, even where the sales involve only the assets of a business. In JD Design Group v. Graham, it was ruled that JD Design failed to protect itself from liability for the taxes owed when it purchased substantially all of Parker's assets, including its stock of goods and equipment. Although JD Design had no actual or constructive notice of the taxes, because Parker represented that no taxes were due and there were no recorded liens at the time of the sale, JD Design could have required Parker to produce a certificate from the tax commissioner that no taxes were due or could have withheld a portion of the purchase money to cover the taxes. The Supreme Court of Georgia said that JD Design was put on notice of the possibility of tax liability – not apparent from a search of the lien recordings – and imposed a duty on it to inquire about the seller's tax liability and provided a means whereby "JD Design could have prevented its liability by withholding part of the purchase money to cover such taxes . . . or could have required Parker to produce a certificate from the commissioner that no taxes . . . were due." The Court also found that the Department of Revenue's failure to file a lien doesn't prevent it from following its claim for delinquent taxes beyond the original taxpayer.

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Clearly in the sale of a business it would be good practice to get the Department of Revenue's certificate to protect the purchaser from the Governments claims for taxes.

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