

Criminal Penalties for Failing to Remit, Report or Maintain Records of Sales Taxes

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Attorneys and other tax advisors constantly implore their business clients to pay trust taxes to the government. Georgia's criminal tax statutes may add additional motivation to business owners. Under amendments that became effective July 1, 2006, business owners face stiff fines and felony charges, including prison time, for criminal violations tied to sales and use taxes.

Criminal Infractions

H.B. 1506, which Gov. Perdue signed into law on April 10, 2006, amended four statutes that impose criminal penalties on a "dealer" that fails to adhere to the sales and use tax laws. The amendments apply to offenses committed after July 1, 2006. The term "dealer" is broadly-defined in the tax code and includes any person or business that sells at retail in Georgia or otherwise is required to comply with Georgia's sales and use tax laws. See O.C.G.A. § 48-8-2(3).

Generally, under amended statutes, a "dealer" must *knowingly and willfully* do one of the following: (1) fail to collect sales and use tax, by himself or through his employees or agents (O.C.G.A. § 48-8-7); (2) file false or fraudulent sales and use tax returns with intent to evade the tax (O.C.G.A. § 48-8-8); (3) refuse to furnish a sales and use tax return or other information required by the Department (O.C.G.A. § 48-8-9); or (4) fail to keep sales tax records or open such records for inspection by the Department (O.C.G.A. § 48-8-10).

Penalties Stiffened

Prior to the amendments, the penalties lacked the strength of both substantial prison time and harsh fines. A guilty business owner faced a misdemeanor with a maximum fine of \$300.00 and/or three months imprisonment.

Under the recently-enacted amendments, a business owner who commits his first violation faces a misdemeanor of high and aggravated nature, carrying a maximum fine of \$5,000.00 and/or one year imprisonment. For a subsequent violation, the business owner can be convicted of a felony, carrying a maximum fine of \$10,000.00 and/or five years' imprisonment.

Public Access to Report Tax Crimes

Department of Revenue resources facilitate reporting criminal tax activity. First, the Department maintains a tax fraud hotline. Suspicious activities can be reported by calling (404) 417-4266. Second, the Department's web site contains a link, entitled "Reporting Tax Evasion and Tax Fraud." Visitors to the Department's site can report illegal tax activities with assurances that anonymity will be respected, if requested. The Department's web site is www.etax.dor.ga.gov. At the home page, go to "Business Taxes" which is on the menu on the left side of the page. Then, go to the hyperlink for the respective tax type (withholding, sales, etc.) to find the link to the form to use to report fraud.