

# PUBLICATION

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## Spotlight On Georgia: Georgia Supreme Court Rules Purchaser Liable for Delinquent Sales Tax as Successor in Interest

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A purchaser of a business who fails to consider the seller's Georgia sales and use tax obligations does so at the purchaser's own peril. In the recent tax case of *JD Design Group, Inc. v. Graham*, the ruling by the Georgia Supreme Court makes that point all too clear.

### Background

JD Design Group, Inc. (JD Design) agreed to purchase assets of an existing florist business, Parker's Flower Shoppe. The purchase agreement contained representations by Parker's Flower Shoppe that all taxes had been paid. In fact, however, there was an outstanding balance of Georgia sales tax due; although the Georgia Department of Revenue (Department) had not at that time filed a lien for unpaid sales taxes. Several months after the purchase the Department assessed sales taxes against JD Design as successor to Parker's Flower Shoppe pursuant to Georgia statutory law found at Official Code of Georgia Annotated § 48-8-46. This statute requires the successor of a business to withhold a sufficient amount of the purchase price to cover the business's unpaid sales tax until the seller provides a certificate from the Department that no sales tax is due.

The Georgia Supreme Court ruled that JD Design, as the purchaser of substantially all of the assets of a business, was liable for delinquent Georgia sales taxes owed by Parker's Flower Shoppe in an amount not to exceed the purchase price.

### What you should consider

Purchasers of business assets must take affirmative steps to protect themselves from liability for the seller's unpaid sales tax. The purchase transaction should be well documented. Purchase documents, such as a letter of intent and purchase agreement, must protect the purchaser's right to inquire about sales tax liabilities. These documents should include appropriate representations and warranties from the seller and indemnification provisions for the purchaser.

However, a purchaser should not rely solely upon the seller's representations or upon the lien records to assure that there is no outstanding tax liability. At a minimum, a purchaser's due diligence should include serious consideration of simple compliance with the statutory obligation to withhold a sufficient amount until presented with a paid receipt or the Department's certificate acknowledging no tax is due. Otherwise, §48-8-46 is available to the Department so as to hold the purchaser personally liable for the amount of the unpaid sales tax, to the extent of the purchase price. In addition, the failure to comply with this statute is a misdemeanor.