## Case Study - Ronald Reagan Taught us "Trust but Verify"

I looked at my client, the seller, incredulously. We were two days out until closing and the Certificate of Tax Compliance from the Department of Revenue came back as noncompliant. Obtaining a Certificate of Tax Compliance is but one step in the due diligence process. My seller's business had an unpaid tax lien for failure to pay sales tax for an entire year…an entire year, mind you. When asked if he was aware of this "oversight" and whether or not he had been receiving notices from the Department of Revenue his reply was a less than satisfying "I didn't think that would matter." Well, it mattered. In an asset purchase sale, which is the typical type of business sale transaction structure, all assets of the business must be transferred free and clear of all encumbrances. When I was asked what could be done my answer was quite direct. Prepare the twelve months of sales tax returns, grab your checkbook and get in your car and drive to Columbia to remove the lien. He reluctantly did so and we closed on the transaction; albeit five days later than scheduled.

At times, the period between contract and closing known as due diligence just does not go well due to uncontrollable circumstances. But let's back up a minute to explain the due diligence process. Once your business is under contract the prospective purchaser will have a defined period of time in order to verify the accuracy of all information you have provided to the prospective purchaser. In this regard, if your deal crashes and burns in due diligence then pull out the mirror. Why? As in the story above, sellers, with proper representation, should never be surprised by a request made by the prospective purchaser in the due diligence process.

### Lesson Learned

The ostrich technique; i.e. putting your head in the sand, is an ineffective technique for getting from contract to closing. The due diligence process is not complex. It can certainly be tiring but, for the most part, it should be a smooth process if you have provided accurate financial information, honestly discussed with the prospective purchaser all aspects of your business – especially any challenges, and provided full disclosure to everyone involved in the process. Honesty is always the best policy.

### TIP (Thoughtful in Preparation)

Step one is really quite simple. Be open and honest with your intermediary about all aspects of your business. Every business has a real or perceived wart so that fact alone will not necessarily kill your deal.

What will kill your deal is not disclosing those warts, going to contract and then the buyer discovering the wart in due diligence. The buyer’s immediate reaction will be “if you didn’t bring this to my attention then what else is out there that you haven’t told me.” Deal over.

Also, don’t take the due diligence process personally. Ronald Reagan taught us “trust but verify.” The sale of your business is a business transaction. Verification is the order of the day.

The other practical consideration in due diligence is the proper management of due diligence by your intermediary. CBB prepares what we call a due diligence checklist. That important document supplements the purchase agreement by providing a list of items needed for review by the buyer, identifies who is responsible for document delivery and provides for a deadline for delivery of each and every line item required for review. It is important to note here that time is the enemy of all deals. Once a contract is signed you and your intermediary must make every effort to keep the process of due diligence moving forward effectively and efficiently. Don’t let deal fatigue set in and kill the deal. Be fully engaged in the process and be responsive in a timely manner.


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