

A purchaser of the assets of a business oftentimes does not understand that they (or the acquisition entity they form for the purpose of the transaction) may be liable for unpaid taxes and other payments owed to the Commonwealth of Pennsylvania by the seller of such business assets. Such liability will be imposed on the purchaser if the assets being sold represent 51% or more of the assets (or any class of assets) owned by the seller in the Commonwealth of Pennsylvania.

This liability can be significant as it is not limited by the amount of the purchase price for the assets and/or the taxes or other payments which are settled as of the closing for the purchase of the assets. In light of such potential liability, it is important that the purchaser conduct due diligence prior to the purchase of such assets to determine if the seller owes taxes or other payments to the Commonwealth of Pennsylvania. Further, it is generally prudent for the purchaser to insist upon a portion of the purchase price for the assets being held in escrow until certain assurances (called "clearance certificates") are received from the Commonwealth of Pennsylvania confirming that the purchaser will not be subject to such liability.

If you are considering the purchase of the assets of a business, call Paul Rushton, the Chair of our Business & Finance Department, to discuss the steps that should be taken to protect yourself from liability that may arise from such transaction. Paul can be reached at 570-826-5623 or prushton@rjglaw.com.