

OBLIVIOUSITY

OCTOBER 2006

I am going to invent a word.

Obliviousity

Definition: A rapidly growing (at least to me) annoying trait of modern society and our modern workforce that embodies feckless behavior, absence of any attention to detail, and a chronic lack of pride that many workers take in their endeavors.

For example: I was out to dinner with my wife at a new Sarasota restaurant. It was a comfortable evening, so we decided to sit in their outdoor seating section. After waiting for what seemed like an eternity for our drinks to be delivered from our waiter (Mr. Oblivious), my wife noticed a small insect in her beverage (note: If you happen to get a Mr. Oblivious waiter, one needs to utilize the taxi hailing skills of a seasoned New York City commuter on a rainy day)

Mr. Oblivious finally decided to return when he was ready to take our order. Another aspect of *obliviousity* is the put out, annoyed looks that are delivered by individuals affected by it. When I asked Mr. Oblivious for today's specials (which he neglected to tell us when delivering us our soiled menus along with my wife's insect infused beverage) the look on his face might have been acceptable if I asked him to change a diaper.

Mr. Oblivious reluctantly complied with my request and fished around in his pocket for his specials cheat sheet (is it really too much to ask a server to memorize three dishes? It's not as if the chef is asking them to memorize the Periodic Table of the Elements.) I thought about asking him a question about one of the specials but out of fear of dying of malnutrition decided against it? I did however tell him that there was an insect in my wife's drink and could he be kind enough to get her another one. Mr. Oblivious looked at me like I had just asked him to give us our entire meal for free. His response went something like this, ***"Uhh I don't think that fly was there when I brought it, you guys are sitting outside so it's not my fault."***

With three kids under the age of four, I do not get to go out with my wife that often and was determined not to get angry and ruin my evening. So rather than going with my initial reaction and ripping Mr. Oblivious' tongue piercing out, I asked nicely to just bring her a fresh half of a glass.

Granted, restaurant worker malfeasance is not a serious situation, one doesn't get hurt or losses any money when dealing with an indifferent waiter, however, when it comes to financial services apathy like this it is downright destructive. Not to mention becoming more and more prevalent. I have regular conversations with my great friend and colleague John Donofrio, an accountant and President of Donofrio Inc. that usually start off with this phrase...

"You are not going to believe what this #@\$\$%* accountant/broker did to this new client of mine." This is a healthy way that John and I can blow off some steam at our industry's Mr. & Mrs. Oblivious before we have to clean up the mess.

I have shared many of my encounters with the oblivious and incompetent and or ethically challenged in the *Markowski Monthly* and on our radio program, so this month I decided to let John have the bully pulpit.

I have new client who has built a very successful C Corporation over the years and decided he wanted out. His decision was to sell the company outright. His prior accountant failed to convert

him into an S Corporation. An S Corporation is a structure the IRS allows in order to help small businesses by allowing income and expenses to flow to an individual's tax return; 99% of S Corporations are not taxed at the federal level.

The failure to do a little bit of homework and some extra paperwork forced this business owner to pony up an additional \$75,000 to Uncle Sam. All of this because of a C Corporation! Adding insult to injury, my client's prior accountant didn't even give him the facts about the two corporate structure types; he just let him continue business as normal.

In regards to the sale of a business, there are two ways to sell. One would be the sale of the corporate stock and the other would be the sale of the assets. It would be an advantage for the seller to sell the stock because you are subject to the long term capital gains of 15% (all things being equal) for federal purposes (disregarding state for simplicity). Therefore, you subtract from the sale price what you invested into the company and the difference is a capital gain, which in turn is reported on your personal tax return.

Now the buyer normally does not want to do this because he is purchasing the corporation along with its liabilities. In addition, the buyer's investment in the company is capital stock; therefore, any assets that you have purchased can't be depreciated (recovered). Because even if you purchase something used you can still recover your money. (Depreciation recapture is a topic for another day.) The buyer's investment sits on the books until you sell the company.

On the flipside, if the assets are sold, the seller must recognize gain or loss on all assets, this will be done separately for each asset, yes each asset and you report that gain on the corporate return. If you have a C Corporation, then you must recognize gain/loss all at the corporation tax rate because you don't get favorable capital gain rates with a C Corporation; however, if you have an S Corporation you would report the information on the corporate return, but it flows to your personal return, which does have favorable capital gain rates. A buyer likes the purchase of assets because now he can depreciate the assets, including amortizing goodwill or client list. Normally if a stock sale goes through the purchase price is a little cheaper in order to compensate for not being able to depreciate or amortize the assets.

My client sold the assets of the company because the new owner did not want to take on the liabilities; therefore, the taxes were paid at the corporate level, not favorable, which equaled to \$75,000 more in taxes (this is federal, state and city). However, because the owner was not informed of all his options he could have negotiated a much better deal. I am not saying that I have all the answers, because with a nine million word tax code no one does. But the complete disregard for any attention to detail is pathetic and costly. Ask your accountant a lot of questions when completing asset sales or simple tax returns. If you are not satisfied with the answers you are receiving I suggest getting a second opinion. It may save you \$75,000.

We have the war on terror; the war on poverty, what we also need is a war on obliviousness. It's really simple; all you need to do is to agree not to patronize businesses that treat your patronage with disrespect. There are always superior alternatives, you might have to look a little harder but there are individuals that will treat you with the respect you deserve. By accepting an advisor or an accountant's poor performance you make it acceptable. Businesses will not change unless customers force them. If a restaurant serves horrible food, but the customers keep coming back what is their incentive to change?