



BUSINESS VALUATION ADVISOR

*Commentary on the business of business valuation
for attorneys, accountants, estate planning professionals and business owners*

This newsletter is for the information of attorneys, financial planners and business owners who deal with business valuation issues and are interested in the current thinking in business appraisal. It is not a "how to" publication, but more of an explanation of a complex professional service.



COMMENTARY

With every financial downturn, there is a silver lining. As the financial markets ease back to normalcy, values of privately-held companies remain in the doldrums. These companies that would normally be worth 5-6 times earnings, are now worth just 4+ times. **Now is the time to transfer interests in privately-held operating companies.**

In normal times the business would be worth \$5 million. Today, it might be worth just \$4 million, but is expected to return to its former value within a few years. Gifts of stock to the children now have a built in 25% discount. Add somewhat normal minority discounts of 15%



and marketability discounts of 30%, then the value of minority and non-marketable stock in the company falls to just \$2.4 million. The current marginal estate tax rate is 45% (and is likely to remain so) and the capital gains tax rate is 15% (almost certain to go up). These tax rates make this an opportune time for the transfer of wealth. For many, outright gifts in support of a succession plan or transfers to a GRAT allow for very tax efficient and beneficial wealth transfer. o

VALUATION PERSPECTIVES

Tiered discounts have been controversial for many years. Some valuation professionals feel that the use of tired discounts is "double counting." And some valuation professionals have been applying tiered discounts incorrectly. The controversy

THE TUCKER & MELTZER DIFFERENCE

Tucker & Meltzer Valuation Advisors are independent business valuation advisors. We provide no other services (accounting, legal, financial planning or investment). Tucker & Meltzer represents an economical alternative to more expensive accounting and large valuation firms. We offer accurate, well documented, up to date, and market based value comparisons and promise an exceptional turn-around time. We have the experience and knowledge to handle the tough jobs and we look forward to having the opportunity to work with you.

ANNOUNCING . . .

Brooke Tucker will present "Succession Success" at the 57th Annual Architectural Woodwork



Institute Conference on October 8th.

Brooke Tucker, Anne Meltzer and Mark Norris will be attending the ASA Advanced



arises when a tax payer transfers a minority and non-marketable interest in an entity (upper tier) which in turns owns an interest in another minority and non-marketable entity (lower tier).



Consider that each of the entities is separate and has its own minority and marketability discounts. Each entity also has its own set of restrictive transfer covenants. Most importantly, in order to realize the value of the underlying assets, there must also be two separate liquidity events (sale, dissolution, liquidation). From this perspective, tiered discounting is appropriate, logical and defensible. In the recent case of [Astleford v. Commissioner \(TC Memo 2008-128 \(2008\)\)](#), the tax court found that tiered discounts (that is, discounts at the lower-tier entity level and the upper-tier entity level) were appropriate where a taxpayer owned a minority interest in an entity that held a minority interest in another entity.

Just as discounts for minority interest (lack of control) and marketability (lack of liquidity) are multiplicative, so too, are the application of tiered discounts. Assume that combine discounts for the lower tier are 32% and the discounts for the upper tier are 30%. The combined tiered discounts would be 52.4% and are calculated as follows: $100\% - (68\% \times 70\%) = 52.4\%$. The practitioner should use caution in the selection of marketability discounts when the entities are expected to have a relatively short remaining life (< 5 years) as the holding period greatly affects the overall tiered discount rate. o

CASES IN BRIEF

Keller v. U.S., Civil Action No. V-02-62 (S.D. Tex. August 20, 2009).

This case is remarkable for two reasons. First, this was an estate tax refund case in which the FLP was recognized, although not funded, before the decedent's death. Secondly, the net asset value of a bond portfolio carried combined discounts of 47.5%. The court concluded that the decedent had expressed the clear intent to fund the partnership with specifically identified assets, and under Texas law that caused the assets to become partnership assets. The court accepted the taxpayer's valuation expert's opinion, resulting in a discount of 47.5% with respect to the bonds and cash in the partnership. The IRS's expert's opinion was rejected because it violated several of the tenets of the hypothetical willing buyer-willing seller valuation principle. A copy of the decision may be found on our web site, [\[click here\]](#). o



Business Valuation
Conference from October
19th through October 21st.

Brooke Tucker and Mark Norris will present "Representing Small Business Clients" to the



MSBA 11th Annual Solo and Small Firm
Conference on November 7th. o

SELECTING A VALUATION EXPERT

Selecting a valuation expert in a litigation engagement, whether it is a shareholder dispute, divorce, or other litigation matter, can represent one of the most important decisions in planning for a successful case. One of the first things an attorney should do is request the curriculum vitae of the expert being considered. This document should at a minimum include the following:

- Positions held by the expert along with a description of each;
- Experience, specifically in the area of expertise that is being sought;
- Whether the expert provides these services on a full-time versus part-time basis;
- Credentials

One of the last, but not least areas of concern for the attorney as it relates to the expert is whether the expert has good communication skills. No matter how good an expert is in developing analyses related to valuations or economic damages; unless they can effectively communicate their analyses and opinions to a Trier of fact, all the work invested in the case may not produce the desired results.

At Tucker & Meltzer, we have full-time experts who not only have the experience, but also the credentials that are needed to provide efficient, complete and objective litigation support to attorneys and their clients. o

RECENT ASSIGNMENTS

ESOP - Construction
R&D Company - GRAT
R&D Company - Capital Raise
FLPs (7) - Gifts

TUCKER & MELTZER
VALUATION ADVISORS

Tucker & Meltzer - Valuation Advisors is a business valuation firm focused on the needs of family limited partnerships and closely-held companies. The firm's founding partners have extensive experience and credentials in valuing closely-held and asset holding companies. We have performed over 800 valuations for companies in a large number of industries, reflecting our broad experience in accounting, finance, litigation services, valuation theory and capital transactions.

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Auto Dealer - Capital Raise

ESOP - Defense Contractor

Construction Company - Gift

Business Litigation:

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