



The Franchise Valuations Reporter



Our Expertise

Within the franchise, distribution and dealership context, we are experts in:

- Finance, Accounting and Tax
- Damages, Valuations & Expert Testimony
- Cyber Security and E-discovery of Electronically Stored Information



We offer a free initial consultation. If any readers have questions, you are welcome to email or phone us and we will provide our best answer as quickly as possible.

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Franchise Technology Risk Management



Our franchise law and computer forensics experts provide consulting and implementation of all aspects of cyber security, ESI management and e-discovery for franchise systems - from preparation of cyber security and ESI-related policies and procedures manuals through collection, preservation, processing, production and presentation.

To inquire about our services, please e-mail
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"Click Through" Nexus

Many states have new laws on the books allowing them to go after online vendors for sales and use taxes.

Click through nexus has become all the rage since court acceptance of New York's so-called Amazon law. It holds that economic nexus derived from the actions of an agent who is compensated is sufficient without physical presence to require online retailers to collect sales and use tax. The New York statute survived attacks on its constitutionality brought by Amazon and Overstock.

Similar legislation has been passed in Colorado, Rhode Island and Virginia and has been introduced in Connecticut, Hawaii, California, Tennessee, North Carolina and Vermont.

[More on states where Amazon-type bills have been introduced. . .](#)

CyberCrime

Last week it was revealed that hackers have repeatedly broken into Nasdaq servers in the past year. One has to wonder, who will be next?

In the February 2011 issue of LJM's *Franchising Business & Law Alert* 12 franchise experts (including myself) were asked about [Key Trends in Franchise Law in 2011](#). One of my predictions was on the theme of Internet Security: "A prominent franchisor will be the victim of an internet security attack and millions of its customers will be subject to identity theft. The franchisor will face a huge financial burden to recover from the breach and its reputation will suffer."

For more on the NASDAQ hacking incident see:

[Hackers Penetrate Nasdaq Computers](#)

For more on yet another incident:

[Two Arrested in iPad Security Breach](#)

Wrongful Termination - "Obey All Laws"

Big Brother Donut is watching your every move.

In the recent case of *Dunkin' Donuts v. Strategic Venture Group, Inc.*, a Federal court held that Dunkin' Donuts could terminate a franchisee for criminal tax fraud - a felony - even though no such crime had been alleged by the IRS or any other agency with criminal authority. Furthermore, the franchisor's burden of proof was only a "preponderance of the evidence" as opposed to the criminal burden of "beyond a reasonable doubt."

On the basis of language in the franchise agreement calling for the franchisee to "comply with all civil and criminal laws," the court found that Dunkin' had the right to terminate the franchisee (who had provided apartments for certain employees but had not reported it as compensation for payroll tax purposes) even though Dunkin' had suffered no monetary damages.

[More on Obey All Laws. . .](#)

DISCLAIMER

The information provided in this newsletter is for informational purposes only and should not be construed as legal or expert advice which can only be obtained from appropriate professionals. Franchise Valuations, Ltd. and Franchise Technology Risk Management provide such expert advice on the topics addressed herein.

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Valuations

Use of sole source for valuation is deemed not acceptable.

In *Assessor of Roger Mills County v. Unit Drilling Company* [Oklahoma Supreme Court, No. 107699, January 25, 2011, Para. 201-068], the Oklahoma Supreme Court ruled that a statute that mandated the sole use of the *Hadco International Bulletin* in the assessment of taxable personal property used in the exploration of oil, natural gas, and other minerals, such as a drilling rig, was unconstitutional because the statute violated the state constitution's "fair cash value" assessment requirement.

The court held that while the state's legislature could recognize a specialized means of determining a property's fair cash value, the legislature could not divorce that specialized means from the fair market value requirement. Making the *Bulletin* the sole and conclusive means for determining the fair cash value, to the specific exclusion of other relevant and reliable market data obtained by an assessor, such as a recent voluntary arm's length sale, violated the standard for valuing personal property set forth in the state's constitution. Evidence of a bona fide, arm's-length sale could not be disregarded in determining value for tax purposes.