



# 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.

Bruce S. Schaeffer, Editor  
[Bruce@FranchiseValuations.com](mailto:Bruce@FranchiseValuations.com)  
 212.689.0400

## 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.

Please visit our websites at  
[www.FranchiseValuations.com](http://www.FranchiseValuations.com)  
 and  
[www.ftm.biz](http://www.ftm.biz)



## Income Tax Nexus

*No Surprise: A Franchisor's "Physical Presence" Is Not a Requirement for Income Tax Nexus in Iowa; Once Again Economic Nexus for Income Taxation is Upheld*

The truth is that nothing about the decision in *KFC Corporation vs. Iowa Department of Revenue* No. 09-1032 (filed December 30, 2010) is really news. Because the argument that "physical presence" is a prerequisite for income tax nexus has been so consistently rejected by so many courts at so many levels for so many years, starting with South Carolina's *Geoffrey* case, it is hard to fathom why these pseudo-constitutional arguments are still being made.

[More on the KFC case. . .](#)

## ESI and E-Discovery

*Would you know how to comply with Madoff case e-discovery rules?*

We recently were confronted with a Bankruptcy Court order in the Madoff clawback proceedings that specifies, in part:

"The [parties] shall produce any system-created or non-privileged captured objective metadata, such as data fields, author fields, custodian fields, path to native file, etc."

The order went on to say that the parties may produce discovery "in an electronic data room."

If this is just gibberish to you, then your first step should be to talk to our data management experts at Franchise Technology Risk Management. They can explain in plain English what it means and how you will be able to fulfill your discovery obligations professionally and cost-effectively. For more information, contact Henry Chan at [Henry@FTRM.biz](mailto:Henry@FTRM.biz) or 212.689.0400.

## Valuations

*Tough times for small companies and franchises*

Even in this improving economic environment, it appears that only businesses with strong profits and cash flow attract buyers. Otherwise it's really hard to sell a business nowadays. And even when buyers can be found, they are having a very tough time obtaining financing.

Although sales of private companies are hard to track, Business Valuation Resources, a leading provider of information about private company transactions, recorded just 1,006 business sales in 2009 - a 40 percent drop from the 1,678 deals in 2008 and a 35 percent drop from the 1,538 transactions recorded in 2007. BVR, which publishes Pratt's Stats, gets its data from a vast network of business brokers and investment bankers.

## Expert Witnesses

*Experts' draft opinions no longer discoverable*

The Federal Rules of Evidence Rule 26 (3) (A) and (B), relating to experts' draft reports and expert-attorney communications, have been changed effective December 1, 2010. This means such documents will no longer be discoverable except for: (i) those that relate to the expert's compensation; (ii) facts and data provided by counsel that the expert considered; and (iii) assumptions provided by counsel that the expert considered.