



The Franchise Valuations Reporter

Our Expertise

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

- Valuations, Damages & Expert Testimony
- Finance, Accounting and Tax



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Have a Question About Succession Planning for Franchise Owners?

Call us for a free, confidential consultation. And we're always interested in your comments about the newsletter.

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We Write the Book

Franchise Regulation and Damages, the only treatise that covers valuations and damages in franchise disputes, is updated 3 times a year.

For more details, to see a Table of Contents or to place an order, go to the Wolters Kluwer Law & Business web page [here](#).

DISCLAIMER

New Tax Law Impact on Franchising

Omitted Words Cause Some To Postpone Renovations

According to [a report from The Wall Street Journal](#), four missing words in the new tax law mean far fewer restaurants will get renovated this year. The problem is the statute lacks the words "any qualified improvement property" in the correct place. Because of the drafting goof many food service establishments will be postponing those projects as the retail, restaurant and commercial real estate industries push Congress to correct the inadvertent omission. It was the intent of the new tax law to let companies deduct their renovation costs immediately, rather than over many years. This provides an incentive to do such work. But instead, as written, companies must depreciate building-renovation costs over 39 years - an even less favorable rule than existed before Congress changed the law.

Passthrough Deduction Guidance Expected Soon

The IRS could issue guidance on the new Code Sec. 199A passthrough deduction (a topic frequently discussed in this newsletter) in a "couple of weeks," Acting IRS Commissioner David Kautter has reportedly said. Kautter, speaking on June 8 at the University of Virginia 70th Annual Conference on Federal Taxation, announced that the release of the proposed regulations would likely be earlier than originally expected.

The new passthrough deduction was enacted under the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) last December and provides a 20 percent deduction for income from passthrough entities. But the deduction is limited by several controversial factors in a manner that is currently incomprehensible, including business activities, wages paid by the business, and property values. Even with the issuance of guidance, however, Kautter has said that the "complex" passthrough deduction will be a significant challenge for taxpayers and practitioners, according to several reports.

Tax Reform Hurts Homeowners, House Democratic Report Says

Homeowners will be hurt financially by last year's tax reform, according to a new House Democratic staff report. The report alleges that real estate developers will primarily benefit from the new tax law at the expense of homeowners. It highlights the effects of specific provisions of the Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) on homeowners across the United States.

Joint Employer and Vicarious Liability

State AGs Take Aim at Fast Food Franchise Systems for "No Poaching" Clauses

A group of 11 attorneys general announced that they have asked eight fast-food franchises to remove non-compete clauses in their contracts with franchisees, saying such clauses can be harmful to workers who want to move from one job to the next. Many major franchisors, such as McDonald's have agreed. The provisions under attack prohibit "poaching" effectively

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preventing low wage workers from changing their employment from one franchised unit to another. The clauses are most frequently found in the franchise agreements rather than employment contracts with the workers.

Wrongful Termination

New Jersey Gun Distributor's Franchise Claims Against Glock Fall for Failure to Allege a "Place of Business"

A New Jersey-based distributor of Glock guns for law enforcement had its claim under the New Jersey Franchise Practices Act ("NJFPA") dismissed but with the right to amend and directions on how to do so. The distributor failed to allege sufficiently that a "franchise" existed, for purposes of the statute, because it did not offer facts showing that the parties contemplated it would maintain a "place of business" in New Jersey. In all other respects, the complaining distributor adequately pleaded applicability and violation of the NJFPA. Therefore, the court dismissed the NJFPA claims, but granted leave to amend within 30 days. The court additionally dismissed a bevy of state common law claims and a New Jersey Consumer Fraud Act claim asserted by the distributor, but denied Glock dismissal as to breach of contract and breach of implied covenant of good faith and fair dealing claims (*Lawmen Supply Co. of New Jersey, Inc. v. Glock, Inc.*, June 29, 2018, Hillman, N., No. 1:17-cv-06166-NLH-JS).

No Constructive Termination of Franchise Agreement Where Store Remained Open

Because a 7-Eleven franchise store remained open, the franchisee could not maintain a claim against the franchisor for constructive termination, according to a federal district court in Pennsylvania. The franchisee claimed that 7-Eleven was trying to force him to close his franchise by lowering his profit margin. But to bring a claim for constructive termination, an actual termination is required.

Additionally, the court declined to impose a duty of good faith and fair dealing on a franchisor in pre-termination dealings. (*Takiedine v. 7-Eleven, Inc.*, June 27, 2018, Pratter, G. No. 17-4518). The Pennsylvania Supreme Court has not spoken to the issue, but the district courts have held that in the absence of an indication from that court otherwise, the duty of good faith dealing is not imposed on franchisors in pre-termination dealings.

In addition, the court noted that in analogous situations, such as employment termination or eviction, there must be an actual termination before a claim of constructive termination can be maintained. This rule offers predictability to litigants, because a rule that a mere attempted termination could give rise to a constructive termination claim would be unworkable. It would be difficult to articulate standards to distinguish between hard-nosed but legal business negotiations and actions aimed at strong-arming a franchisee into terminating the agreement.

Tax Nexus: State Reactions to SCOTUS Wayfair Decision

Legislation and Announcements to Date

As we just reviewed in a [special edition of this newsletter](#), the US Supreme Court, in *South Dakota v Wayfair*, held a few weeks ago that "physical presence" is no longer a requirement for a vendor to be obligated to collect

and pay over sales tax in the jurisdiction of their customer. That decision only applies specifically to South Dakota right now but since it was handed down many states have taken action - and it is presumed many more will. [Here is a compilation from CCH sources](#) of state activity resulting from *Wayfair*. Franchisors should plan for this new liability.

Scams: Warnings from Federal and State Authorities

Scammers Get Creative

There has been a veritable rash of notices in the past few weeks of scams - some tax related and others focusing on such things as email scams, telephone scams, impersonation scams, professional organization scams and natural disaster scams. [Here is a compilation of warnings from several CCH sources.](#)

Quotations

Words of Wisdom from George F. Kennan

Public opinion, or what passes for public opinion, is not invariably a moderating force in the jungle of politics.

Heroism is endurance for one moment more.