



The Franchise Valuations Reporter



Our Expertise

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



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

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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Have a Damages or Valuation Question?

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 damages in franchise disputes and valuations of franchises, is updated 3 times a year.

For more details, to see a Table of Contents or to place an order, go to

Valuations and Deals

Survey: Small and Middle Market Deal Flow To Grow

Business brokers and M&A advisors expect a 60% increase in deals in 2016, according to the ["Market Pulse Quarterly Survey Report."](#) This report examines the market conditions for businesses being sold in Main Street (values \$0 to \$2 million) and the lower-middle-market (values \$2 million to \$50 million) sectors.

Key findings include:

- Valuation multiples haven't seen much change over the last six quarters remaining at or near market peaks. Multiples depend on the size of the business being sold; for Main Street deals the common multiple is based on SDE (Sellers Discretionary Earnings) without working capital (2-3x SDE in 2015), whereas in the Lower Middle market EBITDA including working capital (4-5x EBITDA in 2015) is the most common multiple type.
- Year over year, buyers are increasing their advantage in the Main Street market, particularly for the smallest businesses. Meanwhile, the seller's market sentiment has improved, year over year, in the lower middle market.
- Main Street businesses sold for approximately 91% of their asking price in Q4 2015. By comparison, lower-middle-market businesses- which typically aren't marketed with an asking price-received 99.5% of the internal benchmark set by the advisor and seller.
- Service companies (business and personal) continue to lead Main Street market activity in Q4 2015, with a strong showing in the lower middle market as well. Manufacturing companies led the lower middle market.
- Buyer motivation depends on transaction size. Buyers in the Main Street market are most often motivated by a desire to buy a job. Buyers in the Lower Middle market are more often expanding an existing business through acquisition.

The survey for 4Q15 gathered information from 348 business brokers and M&A advisors representing 38 states who completed 410 transactions.

Nexus: Sales Tax "Presence" Test

States Deliberately Set Up a Fight Over Web Sales Tax

According to a [story in the Wall Street Journal](#), Joe Garrett, Alabama's deputy revenue commissioner, is one of many state officials who are tired of waiting for Congress to let them tax out-of-state retailers, so they are

the Wolters Kluwer Law & Business web page [here](#).

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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moving to impose taxes themselves. The purpose is to create business blowback that might force Congress to act. If not, they want to initiate litigation that will ask the Supreme Court to overturn *Quill* (*Quill Corp. v. North Dakota* 504 U.S. 298), a 1992 ruling that seemed to disallow sales tax liability with respect to retailers that lack "physical presence" in a state. In Alabama, the revenue department has begun enforcing a statute that it argues allows taxation of out-of-state sellers. The first taxes were due Feb. 20, and the state plans to audit companies that don't file returns.

IRS Tax Season Warnings

Identity Theft Warning: Fact Sheet FS-2016-3

The IRS has issued a fact sheet [IRS Fact Sheet FS-2016-3, January 21, 2016] explaining the identity theft victim assistance process and procedures involved in resolving tax-related identity theft cases. In situations where the taxpayers inform the IRS that they may be victims of identity theft for reasons like the rejection of their e-filed return because of a duplicate tax-filing with their Social Security number (SSN), they should then file by paper. The IRS noted that certain tax-related identity theft victims will be placed into the Identity Protection PIN program to add an extra layer of identity protection.

IRS Alert to Payroll and HR Professionals About Phishing Scheme Involving W-2s

On March 1, 2016, the Internal Revenue Service issued an alert [IR-2016-34] to payroll and human resources professionals to beware of a new phishing email scheme that purports to be from company executives and requests personal information on employees. "This is a new twist on an old scheme using the cover of the tax season and W-2 filings to try tricking people into sharing personal data. Now the criminals are focusing their schemes on company payroll departments," said IRS Commissioner John Koskinen. "If your CEO appears to be emailing you for a list of company employees, check it out before you respond."

IRS Criminal Investigation is reviewing this phishing variation known as a "spoofing" email. It often contains, for example, the actual name of the company chief executive officer. In the current variation, the "CEO" sends an email to a company payroll office employee and requests a list of employees and information including SSNs. The following are some of the details contained in the phishing e-mails:

- Kindly send me the individual 2015 W-2 (PDF) and earnings summary of all W-2 of our company staff for a quick review.
- Can you send me the updated list of employees with full details (Name, Social Security Number, Date of Birth, Home Address, Salary).
- I want you to send me the list of W-2 copy of employees wage and tax statement for 2015, I need them in PDF file type, you can send it as an attachment. Kindly prepare the lists and email them to me asap.

Myths About Tax Opinions

Tax Opinions Are Widely Misunderstood

According to Robert W. Wood, author of a very useful article, "Ten Myths About Tax Opinions," [1] tax opinions are widely misunderstood. For

example, some of the things they don't do:

- They are not binding on the IRS or any other tax authority
- They are not particularly good as anti-penalty insurance

And there are some myths should be dispelled:

- There's always time to get an opinion later when we're audited - Wrong
- An opinion should not discuss both sides of the issue - Wrong
- An opinion should be given to the return preparer - Wrong

As the author says in closing, "Even for those of us who may occasionally use shorthand to describe the benefits of a tax opinion, I suggest that the tax opinion deserves a more complete job description than it often receives."

And for any of our readers who are wondering: Yes, we provide tax opinions on matters affecting franchising as well as nexus.

[1]NYSBA Journal, Feb 2016, p. 41-44

Encroachment

Breach of Franchise Agreement Alleged For Failure to Enforce Territory Protections

A franchisor of direct mail advertising business opportunities has breached a franchise agreement by failing to provide the franchisee with the territorial benefits set forth in the agreement and failing to enforce its policies against violating franchisees that improperly poached business within the plaintiff's designated territory, according to a complaint filed in the federal district court in Tampa, Florida (*New York Direct Marketing Corp. v. Valpak Direct Marketing Systems, Inc.*, February 11, 2016).

Drug Laws: Going to Pot?

Hot Topic No Longer Taboo For Law Journals

Franchise Law Journal, published by the American Bar Association Forum on Franchising, has an interesting piece in the Winter 2016 issue: "Franchising a Marijuana Business: It's Not Quite Mission Impossible." And *The Tax Lawyer*, from the ABA Section on Taxation, has another interesting piece in its Fall 2015 issue: "Crafting a Constitutional Marijuana Tax."

Wisdom From Warriors

In the Midst of Franchise Disputes Practitioners Should Heed Sun Tzu

From *The Art of War*:

"If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle."

"If you wait by the river long enough, the bodies of your enemies will float

by."
