



# 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



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

## New Tax Law

### *G.O.P. Rushed to Pass Tax Overhaul Without Enough Care*

There are many problems with the new underplanned and passed-in-the-night tax legislation. For example, the pass-thru deduction for 20% of "Qualified Business Income" (QBI) of an LLC or Sub S is an English teacher's and tax lawyer's idea of a nightmare. The AICPA recently petitioned the IRS to "clarify" the definition(s) and treatment of QBI because the law is incomprehensible.

One provision that may have a dramatic effect on franchising was cited in a [recent article](#) by reporters Jim Takersley and Alan Rappeport:

Restaurants and retailers are concerned about a drafting error that will mitigate the tax benefits they receive when renovating. The law was supposed to simplify depreciation rules for businesses making renovations or other property improvements so that they could deduct these expenses over 15 years. Because of a mistake in the writing of the bill, the cost of these investments must be deducted over 39 years, diminishing the intended benefit.

Some other considerations affected by the new tax law:

- The reduction in corporate tax rates might change the market-based multiples for pretax valuation multiples such as EBIT and EBITDA.
- So-called "tax affecting" in valuations: The S corp "premium" may be negative in some cases.
- Pass-thru deduction: Will there be more reasonable compensation challenges under Sec. 199A?

## Joint Employer and Vicarious Liability

### *Browning-Ferris 'Joint-Employer' Ruling Reinstated by NLRB*

The NLRB vacated its decision in Hy-Brand Industrial Contractors, Ltd., in which a 3-2 Board overturned the agency's controversial "joint employer" ruling in Browning-Ferris Industries. The move came after the NLRB inspector general determined that new Board member William Emanuel was disqualified from participating in the case and should have recused himself from the proceeding. As a result of the decision to vacate Hy-Brand, the vexing 2015 Browning-Ferris decision still stands-for now. The IFA is in an uproar.

***Deadline Is Today in McDonald's Labor Case That Could Affect Millions***

## 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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According to [news reports](#), the general counsel of the National Labor Relations Board "has been exploring settlement terms with workers at the center of the board's complaint against McDonald's." If no settlement is reached, the trial is scheduled to resume today.

A ruling against McDonald's in a case brought by the National Labor Relations Board could have enormous implications for the franchise business model, forcing corporations to bargain with unionized workers at disparate franchise locations. The case was brought during the Obama administration, when the board was under Democratic control. Since President Trump's election, Republican members have regained a majority, steering the board away from a pro-labor orientation. A central question in the trial is whether McDonald's is a so-called joint employer of workers directly employed by its franchisees. A parent company is considered a joint employer if it controls their working conditions, although the legal criteria for determining control in this context has shifted in recent years.

## Recent Damages and Valuation Cases

### ***Some Recent Important Valuation Cases According to Bogdanski on Federal Tax Valuation***

- *Estate of Powell v. Commissioner*, in which the full Tax court determined that property that a decedent transferred to a family limited partnership should be included in her gross estate; the court divided sharply, however, on the statutory analysis driving this result.
- *Estate of Powell v. Commissioner*, wherein the Eleventh Circuit upheld the tax court's various valuation rulings, including that a decedent's interest in a family limited liability company should be considered as a controlling interest in light of pending redemptions of a younger generation's shares.
- *Washington Mutual, Inc. v. United States* (two cases), in which the Ninth circuit and the Court of Federal Claims ruled that a corporation had not established values needed to allocate an overall purchase price among acquired intangible assets for purposes of amortization and loss deductions; the Court of Federal Claims relied in part on the doctrine of collateral estoppel.

### ***Recent Important Damages Cases Noted by Dunn on Damages***

- *ACI Worldwide Corp. v. Baldwin Hackett & Meeks, Inc.* 296 Neb. 818, 896 N.W.2d 156 (2017), upholding a jury verdict awarding more than \$43 million in lost profits damages on claims including tortious interference with prospective business relationships.
- *Sonoma Apartment Associates v. United States*, 134 Fed. Cl. 90 (2017), analyzing competing lost profits estimates presented by plaintiff and defense experts on damages for an admitted breach of a loan agreement by United States.
- *Indianapolis Airport Authority v. Travelers Property Casualty Co. of America*, 849 F.3d 355 (7th Cir. 2017), applying Indiana law to vacate a district court order excluding testimony of knowledgeable lay witnesses from the construction industry regarding operational

costs.

- *Motion Medical Technologies, L.L.C. v. Thermotek, Inc*, 875 F.3d 765 (5th Cir. 2017), vacating a jury award of \$1,566,000 in lost profits under Texas law where the plaintiff presented evidence of gross, not net, profits.
- *National Union Fire Insurance Co. v. TransCanada Energy USA, Inc.*, 153 A.D.3d 1153, 61 N.Y.S.3d 4 (2017), aff'g 52 Misc. 3d 455, 28 N.Y.S.3d 800 (2016), affirming an award of more than \$48 million in coverage to the insured for business interruption losses that resulted when a power-generating turbine on Long Island City shut down.
- *LG Capital Funding, LLC v. Coroware, Inc.*, 2017 WL 3973921 (E.D.N.Y. 2017), applying New York law to hold that evidence of lost profits damages based on the highest sale price of stock in issue was unduly speculative, especially where the stock was extremely volatile.

## Quotations

"It only takes one drink to get me drunk. The trouble is I can't remember if it's the 13th or the 14th." George Burns

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