



# 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

### "Qualified Business Income" - 20% deduction

Business Valuation Resources reports that according to a flash poll conducted by Baker Tilly Virchow Krause LLP 36% of fund managers specify qualified business income (QBI) deductions as the greatest challenge faced from the passage of tax reform. New IRC Code Section 199A allows a 20% write-off of QBI for sole proprietors, owners of S corporations, and members of partnerships/LLCs. Since you need to calculate the deduction at each trade or business level, structures having several partnerships can find this calculation to be a tedious process. We have pointed this out in a previous newsletter.

### New Tax Law's Impact on Intangibles

Under the new tax law, intangibles are more broadly defined than under prior law so that everything that is not tangible is considered intangible and taxable under the new law, including goodwill. Of interest to franchisors, this new definition has an important impact on the valuation of intangible property transferred across borders. According to reports, the IRS and tax authorities of other countries are going after ill-prepared small and medium-sized firms over transfer pricing issues.

### New Interest Expense Limits

The Treasury Department and the IRS have issued guidance (Notice 2018-28) for computing the business interest expense limitation under the recently enacted Tax Cuts and Jobs Act. For most large businesses, the interest deduction is limited to business interest income plus 30% of adjusted taxable income.

## Joint Employer and Vicarious Liability

### Joint Employer Claims Survive Motions To Dismiss In 2 District Courts

Joint employer liability is not a dead letter as shown by two recent federal court decisions, *Harris v. Midas*, 2017 WL 5177668 (W.D. Pa. Nov. 8, 2017) and *Parrot v. Marriott International, Inc.*, 2017 WL 3891805 (E.D. Mich. Sept. 6, 2017). In each case, plaintiffs survived the franchisor's motion to dismiss. These cases are good reminders that franchisors should insulate themselves as much as possible from joint employer liability by careful attention to how their operation manuals and other system-wide documents are drafted.

## Valuations

### Valuation Credentials - Many and Varying

As reported by Business Valuation Resources, unlike accountants and lawyers, valuation professionals do not have common education requirements, a single identification in the marketplace, a single set of

## 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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standards, nor a disciplinary mechanism. We have reviewed the many and diverse qualifications (alphabet soup) of the various self-certifying organizations in previous newsletters.

### **Tax Reform and Valuation**

Some aspects on the valuation impact of the new tax law which should be considered:

- The reduction in corporate tax rates might change market-based valuation multiples such as EBIT and EBITDA.
- The S corp "premium" may be negative in some cases.

## Non-Attorney Work Product Privilege

### **Documents Produced By Non-Attorney Protected By Work Product Doctrine**

Documents accidentally produced by a non-attorney and then sought to be "clawed back" were protected from discovery by the work product doctrine because they were prepared in preparation for litigation, the federal district court in Brooklyn, New York, has ruled after 7-Eleven to whom the documents were accidentally produced, appealed the original finding of Magistrate Judge James Orenstein which held that the documents reflected opinion work product protected under the Rules of Civil Procedure[1] The district court analysis concluded that the documents were prepared for litigation and, thus, entitled to protection.

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[1] *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, February 26, 2018, Brodie, M.

## Attacking the IRS

### **Maligning the IRS has Become a Popular Stance for Many Politicians and the Government's Revenues Have Been the Victim**

As a result of the constant de-funding of IRS operations, according to a recent article in the *Wall Street Journal*, the percentage of individuals subjected to audits declined for the sixth consecutive year in 2017 to reach the lowest level since 2002. In that time the Service has lost nearly one-third of its enforcement staffers. Now they audit about 1 in 160 individual returns down from 1 in 90 in 2010.

The audit rate declined most for high-income households. In 2017, the IRS audited 4.37% of returns with income of \$1 million and higher, less than half of the 9.55% audit rate of such returns in 2015. It marked the lowest rate of audits for that income group since 2004, when the data was first released despite the fact that in late 2015, the Treasury inspector general said high earners should be an enforcement priority for the IRS.

## Quotations

If it's true that men are such beasts, this must account for the fact that most women are animal lovers. *Doris Day*

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I asked a Burmese why women, after centuries of following their men, now walk ahead. He said there were many unexploded land mines since the war.  
*Robert S. Mueller III*