



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.

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Franchise Estate Plans Must Be Updated

Credit Shelter Trusts Will Be Severely Overfunded in Estates of \$2-\$10 Million

Under the recently enacted tax law - The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 - for decedents dying and generation-skipping transfers (GSTs) made during 2010, 2011 and 2012, the modified federal estate and GST tax rules are as follows:

Transfer tax exclusion and exemption amounts.

The applicable exclusion amount increases to \$5 million for estates of decedents dying and GSTs made after 2009 and before 2013, and for gifts made after 2010 and before 2013.

Transfer tax rates.

New transfer tax rates apply for decedents dying and GSTs made after 2009 and before 2013. The maximum tax rate is generally reduced to 35%, though the tax rate for GSTs in 2010 is zero. Gift tax rates are the same as estate tax rates.

Thus, every estate plan executed in the past twenty years for estates between \$2 million and \$10 million which used a standard tax technique of first funding a credit shelter trust with the maximum amount that can pass free of federal taxes and then making a disposition to the surviving spouse will now result in an unintended, over-sized and overly restricted allocation to the Credit Shelter Trust.

Franchise Technology Risk Management



Our franchise law and computer forensics experts provide consulting and implementation of all aspects of cyber security, ESI management and e-discovery for franchise systems - from preparation of cyber security and ESI-related policies and procedures manuals through collection, preservation, processing, production and presentation.

To inquire about our services, please e-mail
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Nexus Notes - Intangible Property

Be Careful What You Ask For - Microsoft v. Franchise Tax Board

Out-of-state franchisors with franchisees that operate in California (and many other states) could have had their state income tax rates double if Microsoft had prevailed in its recent contest with California's franchise tax board. That is because to be Constitutional such taxes must be "fairly allocated" which has caused most states to adopt a three-part formula to determine the proper rate for out-of-state taxpayers consisting of (1) payroll, (2) capital or property and (3) income.

California's standard three-factor apportionment formula includes the value of real and tangible personal property in the property factor. Microsoft argued that California should have included the value of its intangible property in the property calculation. Since intellectual property tends to be a significant portion of the value of a franchise, e.g. service marks, logos, trade secrets, a decision in Microsoft's favor could have been a nightmare for licensor/franchisors.

[For more on the Microsoft case, see. . .](#)

Damages: Expert Testimony

An Expert's Opinion Must Have Substantial Basis in the Facts Established

An expert's opinion must have a substantial basis in the facts of the case

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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and cannot reach a conclusion by reliance upon a contingent, speculative, or merely possible foundation of material facts. This issue was reviewed in detail recently in a case brought against Pepsi Cola by its Peruvian bottler. The bottler's experts used data that they admitted was unreliable as a starting point and extrapolated on baseless assumptions from there.

The Court excluded both of the bottler's experts and Pepsi Cola was granted summary judgment when, as a result, the bottler had no expert to prove damages.

[For more on the Court's reasoning, see. . .](#)

CyberCrime

More Reasons to Secure Your Network Against Hackers

Here are some links to recent articles on cybercrime:

[Hackers Penetrate Nasdaq Computers](#)

[Oil Firms Hit by Hackers from China, Report Says](#)

[New Hacking Tools Pose Bigger Threats to Wi-Fi Users](#)

[Hackers Reveal Offers to Spy on Corporate Rivals](#)