



# 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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## Recently Published

An article in the Summer 2016 issue of *Franchise Law Journal* by Carmen D. Caruso and Bruce S. Schaeffer on the new business rule for lost profits claims is [available here](#).

## We Write the Book

**Franchise Regulation and Damages**, the only treatise that covers damages in franchise disputes and valuations of

## Possible Changes in Tax Policy: Update From CCH Wolters Kluwer

### *Trump's Win Expected to Bring Tax Law Changes*

Here are some of his campaign proposals:

#### Individual Income Tax

- Proposed reducing number of tax brackets to only 3: 12%, 25% and then top rate 33%.
- Capital Gains: Proposed no changes to rates on cap gains or dividends but did propose repealing the 3.8% of net investment income tax to pay for Obamacare.

#### Estate Tax, Alternative Minimum Tax and Others

- During the campaign proposed to repeal both.
- Childcare Expenses: Proposed to create a new deduction.
- Carried Interest: proposed taxing it as ordinary income.

#### Business Taxation

- Section 179 expensing: Proposed increasing the annual cap from \$500,000 to \$1 million.
- Manufacturing expensing: Proposed that manufacturing firms be allowed to immediately deduct all new investments in the business - no capitalization and depreciation.

#### International

- Repatriation: Proposed a "one time" deemed repatriation of offshore profits at a reduced rate.

## Valuations: Schaeffer Treatise Favorably Cited in ABA Forum Paper

### *Buckberg and Decker Presentation on Franchise Acquisitions*

At the recent ABA Forum on Franchising a comprehensive paper entitled "Advanced Issues in Franchisor Acquisitions of Franchises - Is Vertical Integration in Your future?" was presented by Joel Buckberg of Baker Donelson and Emily Decker of Buffalo Wild Wings. We were honored and flattered to be mentioned in this wide-ranging paper. In a section on valuations they say, "**Bruce Schaeffer and the late Byron Fox wrote an excellent explanation of the valuation of franchised businesses that appears in the CCH Treatise Franchise Regulation and Damages.**"

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](#).

## 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.

Please visit our websites at [www.FranchiseValuations.com](http://www.FranchiseValuations.com) and [www.ftm.biz](http://www.ftm.biz)

## Tax Nexus: Recent Decisions and Cases

### ***Illinois Administrative Remedies Must Be Exhausted on Nexus Question***

A nonresident corporation must exhaust Illinois administrative remedies on its claim that it did not have sales and use tax nexus with Illinois before seeking a judicial determination. A party that contests a state administrative action generally cannot seek judicial review without first pursuing all administrative remedies available to it.[1]

### ***Arizona-Sales and Use Tax: Substantial Nexus for Transaction Privilege Tax Discussed***

The Arizona Department of Revenue has issued a ruling determining that any resident of Arizona who maintains an inventory warehouse or place of business in Arizona, or maintains an employee, independent contractor or other business representative or agent in Arizona, has substantial nexus with the state and, therefore, will be subject to transaction privilege tax.[2]

### ***U.S. Supreme Court Conditionally Asked to Review and Overturn Quill***

A conditional cross-petition for certiorari has been filed in a pending matter (Dkt. 16-267) which asks the Court to reexamine and overturn *Quill Corp v. North Dakota*, 504 US 298 (1992). The Department argues that *Quill* should be overturned because the physical presence rule gives an unwarranted competitive advantage to online retailers and harms the fiscal health of states in today's e-commerce economy.[3]

### ***Washington-Sales and Use Tax: Business and Occupation Tax Reporting***

There are new cases discussing the business and occupation tax reporting responsibilities of beer and wine producers and resident brokers that sell their products directly to Washington retailers and discussing the nexus standard for wholesalers.[4]

### ***Illinois Amends Manufacturing Exemption Rule and Click-Through Nexus Rule***

The Illinois Department of Revenue has amended its rules addressing the manufacturing machinery and equipment exemption and to include the rebuttable presumption for the click-through nexus statute. [5]

### ***Colorado Income Tax: Nexus Potentially Created by Sales Within State***

The Colorado Department of Revenue has issued a general information letter in response to a franchisor corporation's (taxpayer's) request for guidance regarding whether it has substantial nexus with Colorado for corporate income on the basis of its sales of cooking oil cleaning products for use in commercial facilities.[6]

### ***Arizona: Nonresident Attorney Was Subject to Tax on Income From Services Performed In State for Out-of-State Clients***

A self-employed nonresident attorney was subject to Arizona personal income tax on income from services performed at his Arizona home while living in Arizona, even though his business did not provide legal services to Arizona residents and the State of Washington taxed the gross revenue of his business without reference to any income tax levied by Arizona.[7]

[1] *Airris Aviation and Marine, Inc. v. Beard*, Appellate Court of Illinois, First District, No. 1-15-2834, September 30, 2016

[2] TPR 16-1, Arizona Transaction Privilege Tax Ruling, Arizona Department of Revenue, September 20, 2016

[3] *Brohl v. Direct Marketing Association*, U.S. Supreme Court, Dkt. 16-458, conditional cross-petition for certiorari filed October 3, 2016

[4] Special Notice, Washington Department of Revenue, September 23, 2016; and Determination No. 15-0340, Washington Department of Revenue, September 30, 2016

[5] 86 Ill. Adm. Code Sec. 130.330, 86 Ill. Adm. Code Sec. 150.201, Illinois Department of Revenue, effective as noted

[6] GIL-16-004-- Substantial nexus, CCH Tax Guide ¶1201-339, Colorado Department of Revenue, (May 3, 2016) released Sept 13, 2016

[7] Private Taxpayer Ruling LR16-005, Arizona Department of Revenue, May 17, 2016, released September 2016

## Franchisees and Self-Employment Taxes

### *Recent Chief Counsel Advice*

Following a line of cases going back to 1954 with reference to Code Sec. 1402, the IRS recently issued the following advice:

Self-employment tax: Limited partnership: Partnership: Franchisee.-

A franchisee was not a limited partner and, therefore, was not exempt from self-employment tax with respect to his distributive share of the partnership's income. The franchisee directed the operations of the partnership, held regular meetings and discussions with his management team and staff, made strategic, succession planning decisions and investment management and planning decisions, and was involved in the company's regional and national board and conferences and strategic planning, in his capacity as a partner. The franchisee was the only partner of the partnership involved with the business and, therefore, was not a mere investor. The franchisee actively participated in the partnership's operations and performed extensive executive and operational management services for the partnership in his capacity as a partner (i.e., acting in the manner of a self-employed person). Therefore, the income the franchisee earned through the partnership was not the income of a mere passive investor that Congress sought to exclude from self-employment tax when it enacted the predecessor to Code Sec. 1402(a)(13).[1]

A compilation of authorities that make up the basis for this holding is available [here](#).

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[1]CCA 201640014, Internal Revenue Service, (Jun. 15, 2016)

## Are Business Valuation and Damages Experts Practicing Law Without a License?

### *Seeking Readers' Opinions*

All sorts of experts with qualifications from several self-certifying organizations (AICPA, NACVA etc.) are regularly opining and offering expert testimony as to business valuation and damages in the nature of Lost Profits in which they rely on, and offer recitations about, court cases. Can these "experts" be attacked as practicing law without a license? Let us know your opinion and experience for a forthcoming article on the subject. Write to me

at [Bruce@FranchiseValuations.com](mailto:Bruce@FranchiseValuations.com).

## **Succession Planning for Franchise Owners**

### ***Seeking Input From Readers***

For a forthcoming article to appear in the *Franchise Legal Digest* I invite readers to submit comments or issues you think should be addressed. Send me your ideas at [Bruce@FranchiseValuations.com](mailto:Bruce@FranchiseValuations.com) .