

Our Expertise

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

- Valuations
- Damages
- Expert Testimony
- Finance, Accounting & Tax



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.

Bruce S. Schaeffer, Editor
Bruce@FranchiseValuations.com
845.386.9622

We Write the Book

Franchise Regulation and Damages, the only treatise that covers valuations and damages in franchise disputes, 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](#).

Taxes - Proposals and Laws

Proposed \$2.18 Trillion Federal Tax Increase – Potential Impact

On September 13, the Democratically-controlled House Ways and Means Committee issued a vast trove of tax proposals. I've been watching these tax law ballets for decades and can state flatly they never come out as first proposed. But some glaring omissions should be noted. Despite tons of campaign rhetoric there is no proposal to fix "carried interest" capital gains treatment and there is no provision with respect to stepped-up basis – screaming about something is not the same as doing something about it. But some of the most notable proposed hikes are as follows:

- Increase of the corporate tax rate to a graduated structure topping out at 26.5%.
- Significant changes to the international tax regime.
- Increase of the top marginal individual rate to 39.6% for married individuals filing jointly with taxable income over \$450,000, and single filers with taxable income over \$400,000.
- Increase of the top capital gain rate for individuals to 25% (**effective as of the release date of the proposal**).
- A 3% surcharge on individuals with a "modified adjusted gross income" in excess of \$5,000,000 (beginning in 2022).

State Corporate Income Tax Rates and Brackets for 2021

In a wonderfully comprehensive review of state corporate tax levies by the Tax Foundation[1] which offers all the

rate tables for all the various states, etc. the key findings were:

- Forty-four states levy a corporate income tax. Rates range from 2.5 percent in North Carolina to 11.5 percent in New Jersey.
- Six states—Alaska, Illinois, Iowa, Minnesota, New Jersey, and Pennsylvania—levy top marginal corporate income tax rates of 9 percent or higher.
- Ten states—Arizona, Colorado, Florida, Kentucky, Mississippi, Missouri, North Carolina, North Dakota, South Carolina, and Utah—have top rates at or below 5 percent.
- Nevada, Ohio, Texas, and Washington impose gross receipts taxes instead of corporate income taxes. Gross receipts taxes are generally thought to be more economically harmful than corporate income taxes.
- South Dakota and Wyoming are the only states that levy neither a corporate income nor gross receipts tax.

[1] <https://taxfoundation.org/publications/state-corporate-income-tax-rates-and-brackets/>

Experts

Expert Witness Fees Denied to Patent and Trademark Office

The U.S. Court of Appeals for the Federal Circuit has overturned decades of practice in federal district courts holding that the PTO has always been entitled to expert witness fees in cases brought by patent applicants dissatisfied with an adverse judgment of the Patent Trial and Appeal Board. In affirming the denial by the federal district court in Washington, D.C. of expert witness fees to the PTO in challenges brought by prolific patent filer and inventor Gilbert Hyatt, the Federal Circuit held that the statute providing that "expenses of the proceedings" shall be paid by the applicant does not require the applicant to pay expert witness fees of the PTO. The Federal Circuit found that the statutory language does not overcome the American Rule presumption against fee-shifting. The Federal Circuit vacated, however, the district court's award of attorney fees to the patent applicant because he was no longer the prevailing party in the litigation (*Hyatt v. Hirshfeld*, United States Court of Appeals, Federal Circuit Nos. 2020-2321, 2020-2323, 2020-2324, 2020-2325. August 18, 2021, Hughes, T.).

Valuation Discounts and Premiums

Court Affirms No DLOM in Valuation of a Control Interest

In *Kakollu v. Vadlamudi*,^[1] it was noteworthy that the Court completely disallowed a discount for lack of marketability (DLOM) for a husband's ownership of five dental practices. But the precedent value for business disputes is not too strong because it was a divorce proceeding and the law with respect to valuations in divorce is not always the same as in business transactions.

[1] 2021 Ind. App. LEXIS 232, 2021 WL 3137204 (July 26, 2021).

Joint Employer/Independent Contractor **Judge Rules California's Gig Worker Law Is Unconstitutional**

Last year, more than \$200 million was spent on campaigning for a state proposition that ensured workers like Uber and Lyft drivers were considered independent contractors. It passed. But last month it was ruled unconstitutional. A California judge faulted Proposition 22 for restricting the State Legislature from making gig workers like Uber and Lyft drivers eligible for workers' compensation. The decision is not likely to immediately affect the new law and is certain to face appeals from Uber and other so-called gig economy companies. But it reopened the debate about whether drivers for ride-hailing services and delivery couriers are employees who deserve full benefits, or independent contractors who are responsible for their own businesses and benefits. Last year's Proposition 22, a ballot initiative backed by Uber, Lyft, DoorDash and other gig economy platforms, carved out a third classification for workers, granting gig workers limited benefits while preventing them from being considered employees of the tech giants. The initiative was approved in November with more than 58 percent of the vote.

Wrongful Termination **Jury Award of Lost Profits Affirmed**

Damages to a distributor of soup base products who brought a tortious interference claim after the supplier terminated a long-term arrangement were affirmed under Massachusetts law in *Primarque Products v. William West et al.* 988 F3d 26 (CA1 2021). The parties had a history of more than 40 years of doing business though there was no written agreement. At issue was: can there be a wrongful termination in a situation where there is no contract? But the Court held there was an "implied contract" and that one of the requirements of that "implied contract" was to give reasonable notice. Failure to do so resulted in the appellate court's affirming the jury verdict.

Quotations **Murphy's Law Corollaries**

If Everything Seems to be Going Well, You Obviously Don't Know What the Hell Is Going On

Never Argue with a Fool, People Might Not Know the Difference