

Financial Expert Update

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Solutions to Financial and Information Issues in Litigation and Tax Matters

November 2007

Kentner Sellers provides litigation consulting, valuation and expert services to help make sense of complex financial, economic and information issues. To each assignment we bring experience, credibility, objectivity, and creative thinking to help the attorney and their client work towards the best strategies and information solutions.

We Can Help You With...

Matters Such as These in Process or Recently Completed:

- ◆ Defense towards settlement of a damage claim where the plaintiff has done little to demonstrate or calculate lost profits.
- ◆ Valuation of a manufacturing concern to help two owners purchase the stock of a retiring owner.
- ◆ Calculation of potential lost profits and extra costs involved in the purchase of a business where the seller didn't disclose all the facts and issues.
- ◆ Investigation of plaintiff's stock valuation to assist in mediation of the break up of a business between 50/50 owners.
- ◆ Analysis of a real estate business for overcharges and for misappropriation of funds by the operating partner.
- ◆ Succession plan including seven business valuations and tax strategies for a family gifting and selling to the next generation.
- ◆ Court testimony regarding our analysis of \$3 million in damages from lost profit from diversion of customers and resources by a business partner.
- ◆ Stock valuations of a consulting business and a services business for estate tax and probate reporting.
- ◆ Analysis of a buyer's offer, valuation issues, and deal structure in the sale of a \$10 million construction business.

Critical Issues in Owners' Buy/Sell Agreements Can Create Chaos

In our experience, business owners' break ups have created many troubling situations for business owners, families, attorneys, and accountants. Whether the business is a professionally-managed enterprise or a simple family business, a well-defined and well understood owners' buy/sell agreement can reduce the potential for trouble. The following are some considerations for documentation to help remove possible confusion from these owners' situations.

1. Restrictions on transfer - who can transfer the ownership, under what conditions, and with whose approvals?
2. Triggering events - death, disability, divorce, retirement, termination, other?
3. Document the definition of disability.
4. Consider a covenant not to compete.
5. Under the differing events, when are the remaining owners or the company required to buy back the shares?
6. Pay out terms under differing events - consider life insurance proceeds upon death, long-term payouts, security for promissory notes to exiting owners.
7. Valuation of the ownership interest - a formula, an annual update by owners, a business appraiser, or "two pick a third" (*don't require the current CPA to do the valuation due to CPA independence issues*).
8. Is value different for differing events?





KENTNER SELLERS

EXPERT ADVICE for
FINANCIAL MATTERS

CPAs Experienced in Court, Tax, &
Financial Issues

- ✓ Expert Witness for Financial, Valuation & Tax Matters
- ✓ Business Valuation for Buy/Sell, Divorce, Litigation, Taxes
- ✓ Damages & Lost Profits Analysis; Financial & Tax Planning

In the Courts

Recent legislation and court decisions have better defined the federal tax treatment of proceeds, legal fees and court costs. Legal fees can be **(a)** non-deductible, **(b)** deductible from adjusted gross income (AGI, on form 1040 page 1), or **(c)** deductible as miscellaneous itemized deductions if in excess of 2% of AGI. Generally, legal fees and costs are tax deductible if they are related to producing or collecting income or getting tax advice. However, no legal fees are tax deductible when related or allocated to non-taxable awards or settlements, such as compensatory proceeds for personal injury or sickness (IRS Code 104(a)(2)).

Related or allocated legal costs can be deducted "above the line" as a deduction from adjusted gross income (AGI), per IRS Code section 62(a)(20), for age, gender, racial discrimination, and civil rights issues with employers. This "page 1" deduction is limited to the amount of award / settlement income.

Generally, awards or settlements from all other cases are taxable to the recipient. Related legal costs or costs paid directly to attorneys from the settlement are deductible as miscellaneous itemized deductions subject to 2% of AGI.

Punitive damages are taxable to the recipient, so if an award or settlement includes both compensatory injury damages and punitive damages, the taxpayer must allocate the case proceeds and the legal costs. Costs are then allocated to non-deductibles and to itemized deductions subject to 2% of AGI.

Find our litigation and valuation resources at
www.kentnersellers.com/expert.htm

★ Valuation Solutions

Kentner Sellers delivers logical solutions to help make sense of the complex valuation issues involved with closely-held business. With years of valuation experience, we add insight into business operations and bring professional objectivity to help fairly analyze and communicate the opportunities and options involved with valuation issues.

★ Financial Expert Solutions for Litigation Matters

Kentner Sellers can help attorneys, the courts, and clients make sense of the financial and economic issues involved in legal matters and legal agreements. Our practical background in consulting and in the courtroom helps us deliver quality work when you need it.



★ Financial Experts

Greg Toman, CPA/ABV – Greg has provided litigation consulting and business valuation services for over 20 years, helping attorneys and clients in legal and tax matters with analysis, research, reports, investigations, and expert testimony. Greg earned the Accreditation in Business Valuation (ABV) from the American Institute of CPAs, and has participated in national valuation or litigation conference education in each of the last seven years.

Jon Stangel, CPA/ABV – Jon's work with family and closely-held businesses gives him a special knack with business valuation and ownership matters. He specializes in working with contractors' and manufacturers' issues, especially in financial damage claims and lost profits issues. Jon also is Accredited in Business Valuation. Contact Jon at jstangel@kentnersellers.com

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