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AN ESTATE PLANNING ATTORNEY'S GUIDE TO BUSINESS VALUATIONS: PART ONE

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The importance of business valuation and the transfer of minority interest ownership interests in closely held entities cannot be overestimated as a component in effective estate, gift, and income tax planning. A recent United States Tax Court Memorandum decision supports this contention in the following excerpt:

Disputes over valuation fill our dockets, and for good reason. We approximate that 243 sections of the Code require fair market value estimates in order to assess tax liability, and that 15 million tax returns are filed each year on which taxpayers report an event involving a valuation-related issue. It is no mystery, therefore, why valuation cases are ubiquitous. Today, valuation is a highly sophisticated process. We cannot realistically expect that litigants will be able or want to settle rather than litigate their valuation controversies if the law relating to valuation is vague or unclear. We must provide guidance on the manner in which we resolve valuation issues so as to provide a roadmap by which the Commissioner, taxpayers, and valuation practitioners can comprehend the rules applicable thereto and use these rules to resolve their differences. Clearly articulated rules will also assist appellate courts in their review of our decisions in the event of an appeal.¹

Given the importance of valuation issues generally, and particularly business valuation issues related to Federal estate, gift, and income taxes

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matters, the estate planning attorney is well served by a sound understanding of business valuation fundamentals and practice. In an effort to assist the practitioner who practices in a Federal estate, gift, and income tax environment achieve this understanding, this begins a three-part series dealing with the theoretical, conceptual, and practical aspects of business valuation for such purposes. Part One discusses professional business valuation practice guidance for Federal estate, gift, and income tax purposes, with a specific emphasis on the importance of empirical capital market evidence as support for valuation opinions. Next month, Part Two will examine the valuation of operating companies; i.e., companies that are engaged in the manufacturing of products, the providing of services, or otherwise in the active conduct of a business. Finally, Part Three will look into the valuation of investment holding entities, such as family limited partnerships, limited liability companies and similar entities. Part Three will highlight the rationale for and derivation of discounts that are applicable to non-controlling interests in these entities. By definition, an investment holding entity is engaged in the passive and retention collection of assets for the purpose of earning income.² Part Three will also consider the appraiser's role in defending the appraisal. Thus, in Parts Two and Three, our focus will be on presenting business valuation theory and concepts, as well as on identifying common deficiencies in business valuation reports.

The goal of this series will be to facilitate the estate planning attorney's critical review of business valuation practice and reports. In order to achieve this goal, examples of business valuation practice before the United States Tax Court will be proffered in support of the specific theoretical, conceptual, and practical topics discussed. By presenting business valuation topics along with relevant corresponding Tax Court decisions, the estate planning attorney may then develop effective strategies in dealing with future valuation issues.

Standards of Business Valuation Practice

The universal foundation for any opinion of value is the *standard of value* applicable for a specific valuation engagement. With respect to business valuations prepared for Federal estate, gift, or income tax purposes, the standard of value is unambiguous and irrefutable: *fair market value*. Regulation §§ 20.2031-1(b) and 25.2512-1 define fair market value as the price at which the property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under compulsion to buy or sell, and both having reasonable knowledge of the relevant facts. This definition of fair market value is the classic and

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time-tested definition of value that has guided business appraisers for many decades in preparing opinions of value not only for Federal estate, gift, and income tax purposes, but for many other purposes.

For the valuation of closely held business interests in a Federal estate, gift, and income tax environment, the primary guidance is found in Revenue Ruling 59-60.³ Revenue Ruling 59-60 has been characterized as providing "the most significant legal guidelines in valuations,"⁴ also as "the primary source of IRS guidelines for valuing closely held business interests"⁵ and as "The Mother of all Valuation Rulings."⁶ Given the limited availability of published professional business valuation treatises in the mid-1950s, it is truly amazing that Revenue Ruling 59-60 was drafted with such insight as to enable it to withstand the test of time. Revenue Ruling 59-60 was originally applied as a guideline for valuations for estate and gift tax purposes. Within a decade, however, the Service extended it to incorporate the valuations of all business interests for all tax purposes.⁷

James H. Schilt offers the following synopsis of the history of Revenue Ruling 59-60:

The appraisal business was stimulated by the growth in the economy that followed World War II and the estate and gift tax regulations that were part of the Internal Revenue Code of 1954, particularly as they pertained to asset allocation and business valuation.

The Internal Revenue Service (IRS) had maintained a staff of valuation specialists in Washington to pass on valuation of closely held securities and other business interests. With the decentralization of audit activities in 1953, a guide became necessary for audit personnel in the field. This was done by the issuance of a mimeograph in December 1953, most of which was incorporated into Revenue Ruling 54-77 and issued in March 1954. The current revision, Revenue Ruling 59-60, was issued in March 1959 with a few material changes from the previous ruling. Since 1959, there have been several amendments issued for clarification.⁸

The Ruling states that its purpose is to "outline and review in general the approach, methods and factors to be considered in valuing shares of the capital stock of closely held corporations for estate and gift tax purposes."⁹ This purpose is accomplished by setting forth eight fundamental criteria as relevant for the valuation of closely held business interests:

- the nature and history of the business;

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- the economic outlook for the economy in general and for the particular industry;
- the book value of the stock and the financial condition of the business;
- the earning capacity of the business;
- the dividend-paying capacity of the business;
- the goodwill or other intangible value of the enterprise;
- sales of stock and the size of the block to be valued; and
- the market price of stocks of public corporations engaged in similar businesses.

Among these factors lie the three approaches to valuing a closely held business interest (or any asset, for that matter): cost, income, and market. Book value, which lies within the asset approach to value, rarely signifies fair market value, except by coincidence. The valuation of asset-rich holding companies commonly involves the use of the adjusted book value or net asset value method. This method involves restating assets and liabilities to current fair market value to derive the value of the equity of the enterprise. The asset approach is useful for valuing asset holding companies but also for failing operating entities "worth more dead than alive."

Earnings capacity usually is critical to a proper valuation of operating companies that are going concerns. Discounted returns and capitalized returns methods are two primary approaches to converting the earnings capacity of a closely held operating company into value. The Ruling also indicates that a closely held company's dividend history and dividend-paying capacity may be important indicators of available return and, therefore, parameters of valuation.

The final major method discussed by the Ruling is the market approach. This method commonly involves the use of publicly traded guideline companies from which valuation ratios may be developed and applied to the book value, earnings, cash flow, and dividends of the non-public company being valued. Differences between the closely held company and the public guidelines should be considered and appropriate allowances made in determining the value of the closely held company.

Over the years, additional guidance related to the valuation of closely held business interests has been promulgated by the Treasury Department. Several Rulings modify, expand, or amplify Revenue Ruling 59-60. Moreover, the Service has published nonauthoritative information on the subject of valuation for its appeals officers.¹⁰ The practitioner should consider these Rulings issued subsequent to Revenue Ruling 59-60:

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- Revenue Ruling 65–193 modifies Revenue Ruling 59–60 by recognizing that intangible assets have a separate value and may be valued separately from tangible assets.
- Revenue Ruling 68–609 discusses the formula (excess earnings) approach and expands upon Revenue Ruling 59–60.

The general approach, methods, and factors, outlined in Revenue Ruling 59–60, as modified, are equally applicable to valuations of corporate stocks for income tax and other purposes as well as for estate and gift tax purposes. They apply also to problems involving the determination of fair market value of business interests of any type, including partnerships and proprietorships, and intangible assets for all tax purposes.

- Revenue Ruling 77–287 specifically addresses the factors to be considered in valuing the restricted shares ("letter stock") of otherwise publicly traded companies. Because these securities cannot be immediately resold under the Securities Act, they suffer from impaired marketability. As we will discuss in Part Three, restricted stock studies provide a sound basis for measuring the lack of marketability of closely held equity interests.
- Revenue Ruling 80–213 amplifies Revenue Ruling 59–60. It discusses the valuation aspects of a corporation that has issued stock of a subsidiary company, which shares may not be sold apart from the stock of the distributing company.
- Revenue Ruling 81–253 held that a discount for minority interest was inapplicable when the members of the shareholder group are related, unless there was evidence of family discord. After unsuccessfully litigating this concept, the Government changed its tack and revoked Revenue Ruling 81–253 with the issuance of Revenue Ruling 93–12.
- Revenue Ruling 83–120 addresses valuations of closely held preferred stock. This Ruling is essentially a Revenue Procedure, with a step-by-step approach to valuing preferred securities. The Ruling discusses three principal considerations in valuing preferred securities (income coverage of the preferred principal, earnings protection of the dividend, and yield).

In addition to these rulings, the IRS Valuation Training for Appeals Officers is designed primarily to benefit Service officials who negotiate settlements of income, estate, and gift tax cases in which the valuation of real or personal property is necessary, including the valuation of closely held business interests. It gives taxpayers and tax advisors valuable insight into the major valuation problem areas and the accepted methods

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and approaches applied by Service appeals officers in considering valuation questions.

Professional Appraisal Organization and Standards

Over the last 15 to 20 years, several professional organizations involved in the valuation of closely held business interests have established either standards or principles for the valuation of closely held business interests for their members and/or affiliated individuals. These organizations include the Appraisal Foundation, the American Society of Appraisers ("ASA"), the Institute of Business Appraisers, Inc. ("IBA"), the American Institute of Certified Public Accountants ("AICPA") and the National Association of Certified Valuation Analysts ("NACVA"). Generally, the standards or principles of each of these professional organizations bind only the practice of their membership. Thus, these standards are not binding for valuations prepared for estate, gift, and income tax purposes, except to the extent a member of a particular organization is preparing the valuation.

Largely as a result of the dissatisfaction with many real estate appraisals that overvalued real estate and contributed to the failure of many thrift institutions in the late 1980s, the Appraisal Foundation was formed by several professional appraisal organizations in an effort to regulate the profession. The Appraisal Foundation's main purpose is to develop and implement uniform standards to be used in the appraisal of real estate, personal property, and business interests. These standards were codified with the establishment of the Uniform Standards of Professional Appraisal Practice ("USPAP"). Although the standards are not yet binding for appraisals of closely held business interests prepared for estate, gift, and income tax purposes, they nonetheless represent sound guidelines for appraisal practice and reporting. USPAP is updated every November.

The ASA is an independent multidisciplinary appraisal organization whose goal is to maintain and elevate the standards of the appraisal profession. With respect to business valuation, the ASA has established the American Society of Appraisers Standards on Business Valuation¹¹ ("the ASA Standards on BV"). These standards on business valuation provide minimum criteria to be followed by business appraisers in the valuation of businesses, business ownership interests, and securities. Although the ASA Standards on BV are nonbinding for estate, gift and income tax valuations, they also represent good appraisal practice and govern the practice of ASA members.

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The IBA is the oldest educational testing and certifying organization devoted solely to business appraisal. The IBA standards were developed to provide guidance to appraisers who are IBA members and others performing appraisals of closely held businesses, business ownership interests, or securities. Again, the IBA standards are not authoritative for Federal estate, gift, and income tax purposes.

The AICPA has established standards that generally apply to all services provided by CPAs. Some standards, including the *Statements for Consulting Services* and the *Standards of Professional Conduct*, apply to all valuation engagements. Standards that may apply to valuation engagements, depending on the nature of the engagement, include the *Standards for Reporting on Historical Financial Information*, the *Standards on Financial Forecasts*, and *Projections and Quality Control Standards*. The AICPA, in 1993, issued Practice Aid 93-3, *Conducting the Valuation of a Closely Held Business*. This resource, however, is not intended as an authoritative document for the practice of business valuation by CPAs.

Presently, Revenue Ruling 59-60 is the only guidance universally applicable to business valuation engagements in a Federal estate, gift, and income tax environment. As noted, the USPAP and the professional organization appraisal standards on business valuation are binding only for members of the professional organization to which they belong. Nonetheless, USPAP and the professional organization standards generally are updated periodically, while the IRS Rulings are not. Therefore, there are no universally accepted set of standards for business valuation that are both periodically updated and are currently binding in an estate, gift, and income tax environment. Nonetheless, one commentator has noted that the Tax Court, based on recent decisions, may be implicitly invoking standards, such as USPAP and the ASA Standards on BV.¹²

In contrast to the recent advances in the body of business valuation knowledge, educational opportunities and published standards, the practical application of this knowledge has been elusive. At least one professional appraisal organization, ASA, has looked into this issue in some detail by commissioning a study to examine Service valuation policies. In April 1997, the study culminated with the publication of a report entitled, "Deficiencies in Internal Revenue Service Policies Governing Taxpayer Valuations of Real Estate, Personal Property and Ownership Interests in Business Enterprises."

The ASA report concluded that there is "convincing" evidence that billions of dollars in tax revenues are being lost each year, because Service policies governing how taxpayers estimate the fair market value of real estate, personal property, and ownership interests in businesses "lack

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clarity and consistency and violate generally accepted appraisal standards." The report also recommended a number of changes based on the weaknesses in Service appraisal policies. The major weaknesses in these policies as identified in the report include:

- The Service valuation requirements differ on various tax forms;
- The Service does not use a uniform methodology to estimate fair market value;
- For most properties subject to income, estate or gift tax valuations, the Service does not require the use of appraisers, even to value complex and high-value properties (in contrast to the substantiation requirements for substantial charitable contributions of property); and
- The Service does not have a meaningful description of competency for appraisers who are used to value property.

Even Service personnel have concurred with the general conclusions of the ASA report. A senior appraiser with the IRS Manhattan district, Matthew N. McErlean, submitted a paper entitled, "The Internal Revenue Service and the Adoption of the Uniform Standards of Professional Appraisal Practice." Mr. McErlean took the position in this document that the adoption of the USPAP is long overdue and that the distribution of taxpayer/government errors in appraisals prepared for tax purposes is almost always pejorative to the government's and, therefore, the public's interest.

Because of the lack of universal acceptance of appraisal standards for business valuations prepared for Federal estate, gift, and income tax matters, practitioners using such appraisals are wise to acquire the requisite knowledge and to formulate appropriate strategies to ensure the best results for their clients. A practical approach to this challenge may be to identify the primary tenets of business valuation practice and focus attention in these areas. These tenets of business valuation practice include:

1. Defining the appraisal problem;
2. Adequate investigation and research of the empirical capital market evidence;
3. Sound analysis of this capital market evidence in relation to the business interest being valued; and
4. Effective and cogent communication of the research and analysis.

In preparing valuations in an estate, gift, and income tax environment, it is imperative that the appraiser address each tenet in a comprehensive manner. If shortcuts are taken in addressing any one

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tenet, the valuation conclusion and the appraiser's ability to defend the valuation conclusion will be significantly eroded. In other words, to optimally deploy business valuation techniques as a component of estate planning, a comprehensive approach to addressing each tenet by the appraiser will put the estate planning attorney in a position of strength both in negotiating with the Service and, if necessary, defending the appraisal before the United States Tax Court. Each of these tenets is examined in the next section.

The Primary Tenets of Business Valuation

Of the four primary tenets of business valuation practice, the foundation is definition of the appraisal problem. This entails identifying the various aspects of the business interest that is to be valued. Obviously, incorrect assumptions relative to any aspect of defining the appraisal problem will result in unsuitable valuation conclusions. In defining the appraisal problem, it is essential for the appraiser to make conclusive determinations on the following items:

1. Is the interest a minority interest or a controlling interest?
2. What is the legal form of registration of the business entity?
3. What rights are to be valued?
4. What is the standard of value to be used? (Of course, for estate, gift, and income tax purposes, the standard of value will be fair market value as defined in the Regulation §§ 20.2031-1(b) and 25.2512-1.)
5. For what purpose is the valuation to be used (e.g., for a gift tax filing, an estate tax filing, or as evidence of fair market value for transfers between related parties)?
6. What is the date of value? For estate tax purposes, the date of valuation will be either the date of death or the alternate date, six months after the date of death; for gift tax purposes, the date of valuation should correspond closely with the date the gift is completed.¹³
7. What is the scope of the appraisal and what type of report is needed; e.g., oral report, letter report, summary report, fully documented narrative report?
8. What are the general assumptions underlying and conditions limiting the valuation assignment?

The second primary tenet of business valuation practice is conducting adequate investigation and research in order to obtain appropriate capital market evidence in relation to the specific business interest that is being valued. The importance of obtaining appropriate capital market evidence appropriate to the interest being valued cannot be underestimated. In recent years, in large part due to the increased awareness of business

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valuation concepts and practice, an evolving trend began to develop in United States Tax Court decisions where the side presenting the best appraisal evidence prevailed. Many commentators believe this trend started with the landmark decision *Buffalo Tool & Die Mfg. Co., Inc. v. Commissioner*, 74 TC 441 (1980). A major contributing factor in the prevailing parties' success in Buffalo Tool and Die and other decisions is the incorporation of relevant capital market evidence in their valuation analysis. A caveat is in order, however, for a review of recent cases reveals a disturbing trend away from Buffalo Tool. This trend could be due to bad valuation practice, but it might not be so easily explained, so a careful observation of developing cases is still in order. Even if the trend continues, the observance of sound valuation practices is still likely to result in a stronger case for the practitioner.

Professional judgment related to the valuation of closely held business interests cannot be completely eliminated. This is due to the complex and subjective nature of the business entities being valued, as well as the relevancy of the capital market evidence being used. *When available and relevant, however, the use of capital market evidence as support for an opinion of value of a closely held business interest provides the most persuasive and compelling conclusions of value, leading to acceptance by the Service and the United States Tax Court.* In contrast, the arbiters of value will reject value conclusions based on unsupported opinions and, worse than unsupported opinions, reference to prior court cases¹⁴ which in no way, shape, or form represent empirical capital market evidence. Again, the use of relevant capital market evidence to support an opinion of value is central to achieving the benefits on minority interest transfers in a Federal estate, gift, and income tax environment.

As we will look at in detail in Parts Two and Three of this article, many examples of weak appraisal practice have occurred in cases decided by the United States Tax Court over many years. In many of these instances, weak or incorrect use of capital market evidence has contributed to the unfavorable outcomes associated with these appraisals. In the opinion of the authors, the United States Tax Court is arguably the most rigorous venue for an appraiser to defend his or her work. Given the level of practice demanded by the United States Tax Court, it is incomprehensible why in so many instances weak capital market evidence is used in the preparation in these appraisals. The reasons for the phenomena are ripe for speculation. Some of the reasons may be economically driven because clearly more time and effort are needed to support an appraisal opinion with good, hard capital market evidence. One would think, however, that once a decision has been made to litigate a matter in the Tax Court, it would be imperative at that time to obtain the best possible support for

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the position litigated. Of course, another reason for these weak appraisals is incompetent appraisal practice; given the availability of education and resources in business valuation, however, incompetent practice is inexcusable.

The use of capital market evidence to support an opinion of value of a closely held business interest can take many forms. In its classic form, capital market evidence consisting of publicly traded guideline companies is used for the valuation of operating companies. For the valuation of investment holding companies, including limited partnerships and limited liability companies, capital market evidence related to entities holding securities is commonly in the form of closed-end investment companies. For the valuation of investment holding companies investing primarily in real estate, transactions in publicly registered real estate limited partnerships ("RELPs") are the capital market evidence most commonly used presently. Because of its importance in the valuation of closely held business interests, the application of capital market evidence will be discussed in Parts Two and Three of this series.

The third tenet in the business valuation process involves sound analysis of the relevant capital market evidence. Sound analysis may be viewed as consisting of four steps as follows:

1. The appraiser must obtain an understanding of the fundamental position of the entity (qualitative analysis).
2. The appraiser must obtain an understanding of the financial characteristics of the entity through financial statement analysis (quantitative analysis).
3. The appraiser must select and employ appropriate valuation methodology; and
4. The appraiser must reconcile the conclusions derived from the various methods.

Each of these four steps will be discussed in detail in both Part Two of this series (dealing with the valuation of operating companies) and Part Three (dealing with the valuation of investment holding entities).

In the first step of sound analysis, the appraiser must understand the fundamental position of the entity that is being valued. This involves a complete understanding of the qualitative aspects of the entity. The objective of the appraiser should be to grasp the operational aspects of the entity and be in the position to answer the question, "What is the essence of this company?" In other words, the appraiser must look beyond the numbers in order to understand what the story is behind the entity being valued, including the risks, rewards, uniqueness, and outlook. Although

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understanding the qualitative aspects of the entity applies to both operating companies and investment holding companies, due to the nature and complexity of operating companies, the appraiser's task of understanding the qualitative aspects of the entity is significantly more exhaustive in the valuation of operating companies.

Once the fundamental position of the entity is understood, the second step is an assessment of the entity's financial statements. In this process, the appraiser attempts to understand the entity, this time from a quantitative standpoint. The objective of this step is to make the correlation between the qualitative aspects of the entity and the quantitative. After all, the financial statements of the company represent many of the qualitative aspects of an entity in numerical form. For example, if management proceeded in a new strategic direction for the company during a particular reporting period, the financial position and financial results of the company would reflect the financial aspects of the change in the qualitative nature of the company.

The third step in sound analysis is the employment of the appropriate valuation methodology. The objective in this step is to compare the capital market evidence with the qualitative and quantitative aspects of the entity so that the appraiser arrives at a well-reasoned conclusion of value. Whether the valuation methodology used in a particular valuation assignment consists of the market approach, the income approach or the cost (or asset) approach, or some combination of the three, the appraiser must take into consideration the differences between the entity being valued and the capital market evidence used. For example, an appraiser who relies on valuation multiples in an analysis of public guideline companies that are not adjusted for company size, management depth, geographic concentration, financial strength, and any other possible quantitative and qualitative factors that distinguish the closely held entity from the public guideline companies, will arrive at an incorrect value conclusion.

The fourth and final step in sound analysis is value reconciliation and conclusion. In this step, the appraiser analyzes the approaches used in the valuation of the entity. Generally speaking, the approach that yields the most representative value should be given the greatest weight in the reconciliation process. In practice, this takes the form of either a mathematical or a subjective weighting. An example of the reconciliation process would be an asset-rich agricultural concern, with a low rate of return on net asset value. An asset-based valuation approach (e.g., based on RELPs) typically yields a higher value than one based on earning power, and typically receives greater weight in the appraiser's reconciliation.

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Having satisfied tenets one through four, sound business valuation practice requires the effective and cogent communication of the valuation conclusion. If all four steps are performed adequately, but the analysis and conclusion are not communicated in a clear and convincing manner, both in written and in oral form, the value conclusions will have been impaired. This appears to have been the situation in *Scanlan v. Commissioner*, TC Memo 1996-331. Judge Laro's opinion gives several specific reasons why the estate's expert's, an investment banker, values were rejected. These criticisms center around the expert's lack of preparation and inadequate support for assertions made in the report and during testimony.

Summary

To sum up Part One, we have reviewed the applicable professional appraisal guidance influencing or dictating the preparation of business valuations within a Federal estate, gift, and income tax environment. We also have identified a framework for the preparation of business valuation opinions and reports within such an environment. In particular, we have discussed the importance of capital market evidence as support for an opinion of value for a closely held entity. Part Two will describe in detail the process of valuing closely held operating entities. In order to facilitate the attorney's critical review of business valuation reports, it will provide specific emphasis on the identification of common deficiencies in business valuation practice and reporting. Part Three will describe in detail the valuation of closely held investment holding companies and the discounts for lack of control and lack of marketability associated with valuing these entities also with an emphasis on common deficiencies. It also will examine other discounts associated with business valuation practice, and will look into the role of the appraiser in defending the appraisal.

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FOOTNOTES

¹Estate of Auker v. Comm., TC Memo 1998-185.

²See Reg § 1.6166(b)(8)(D), which defines business and holding companies and Rev Ruls 75-365, 75-366 and 75-367, 1975-2 CB 471-472 for clarifying examples.

³Rev Rul 59-60, 1959-1 CB 237.

⁴Blackman, Irving, *The Valuation of Closely Held Businesses*, 34 (1986).

⁵Adams, "New Directions in Valuation," 28th Southern Federal Tax Institute, Sept. 27-Oct. 1, 1993, at Z-23.

⁶Horowitz, "Toiling in King Solomon's Mine: A Study in Business Valuation for Transfer Tax Purposes" (Part I), *Taxes*, May 1998 at 18.

⁷Rev Rul 68-609, 1968-2 CB 327.

⁸Zukin et al., editors, *Financial Valuation: Business and Business Interests*, p.1-7 (1990).

⁹Rev Rul 59-60, 1959-1 CB 237.

¹⁰Commerce Clearing House, Inc., *IRS Valuation Training for Appeals Officers* (CCH 1998) at 11-10.

¹¹American Society of Appraisers Business Valuation Committee, *Business Valuation Standards*, Jan. 23, 1997.

¹²Mercer, "Are Business Valuation Standards Being Invoked by the Tax Court?" *Valuation Strategies*, July/Aug. 1999 at 34.

¹³In a recent United States Tax Court Memorandum decision, *Estate of Kaufmann v. Comm.*, TC Memo 1999-119, the Service expert's report was not admitted into evidence because the date of valuation was approximately four months prior to the appropriate valuation date. Also, his independence as an appraiser was questioned because of his full-time employment by the Service.

¹⁴For example, see the *Estate of Berg v. Comm.*, TC Memo 1991-279, *affd in part and revd on other grounds* 976 F2d 1163 (CA8 1992).