

## Valuing A Closely-Held Business for Marital Dissolution Purposes

In marital dissolution, it is necessary to determine the value of a couple's assets and liabilities. Frequently, one of the assets included in the marital estate is an interest in a closely-held business. Value of an interest in a closely-held business may be the single largest asset in the marital estate. An estimated value of an interest in the closely-held business must be ascertained to adequately perform a thorough and comprehensive analysis of the value of the entire marital estate. Usually the business is not divided between the spouses. Instead, one spouse keeps the family business and the other receives different assets of equal value as a distribution.

Perhaps the most important elements of a business valuation engagement are in the determination of the purpose and function of the assignment. The standard of value applied by the business appraiser will be determined by the purpose for the engagement. For example, if the business valuation is to be done for marital dissolution most state laws generally require the purpose

to be to derive the standard of "fair market value", while the function of the valuation will be to include the standard of "fair market value" in the marital estate.

### *There is no single standard or generally accepted formula for establishing the fair market value of a closely-held corporation.*

The standard of "fair market value" is defined, in Revenue Ruling 59-60, as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts"

There is no single standard or generally accepted formula for establishing the fair market value of a closely-held corporation. Rather, the estimated fair market value must be determined by an objective and thorough analysis of the business. The basic guidelines provided for business appraisers are in Revenue

Ruling 59-60, which lists the following eight factors to be considered in the valuation of closely-held businesses:

- The nature of the business and the history of the enterprise from its inception;
- The economic outlook in general and the condition and outlook of the specific industry in particular;
- The book value of the stock and the financial condition of the business;
- The earning capacity of the company;
- The dividend paying capacity;
- The enterprise's goodwill and other intangible values;
- Sales of the stock and the size of the block of stock to be valued;
- The market price of stock of corporations engaged in the same or a similar business and trading stocks in a free and open market either on an exchange or over the counter.

The Ruling further states that, although all relevant factors are to be taken into account, certain factors will carry more weight depending on the nature of a company's business. An experienced appraiser analyzes the business, the industry, and the general economy to arrive at a value for the business as a whole. However, the appraiser should be aware that valuation is both an art and a science and therefore, absolute precision will never be achieved.

#### PREMIUMS AND DISCOUNTS

Once a dollar value for a closely-held business is ascertained, the valuation process is not necessarily complete. Premiums or discounts may need to

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be applied. Because there is no ready market for the business, the value for marital dissolution purposes may need to be adjusted downward. This is referred to as a discount for lack of marketability.

Minority shareholders in a closely-held corporation often are at a distinct disadvantage. Control of the company lies with those holding a majority of the stock. Therefore, minority shareholders do not have the power to determine corporate policies, declare dividends, or to liquidate the business. As such, the value of minority shareholder stock is usually worth less than a pro-rata share of the entire business. This is referred to as a minority interest discount.

#### CONCLUSION

Marital dissolution for the owner of a closely-held business requires a comprehensive, supportable business valuation report. Attorneys and other profes-

sionals involved in family mediation should consider choosing a business appraiser certified or accredited, in business valuation, by one or more of the following organizations: The National Association of Certified Valuation Analysts, The American Society of Appraisers, The Institute of Business Appraisers, or the American Institute of Certified Public Accountants.

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