

FOOTNOTES

- See AICPA, STATEMENT ON STANDARDS FOR VALUATION SERVICES No. 1: VALUATION OF A BUSINESS, BUSINESS OWNERSHIP INTEREST, SECURITY, OR INTANGIBLE ASSETS (2007) (hereinafter STANDARDS). CPAs requested to value a business practicing in California must comply with this statement. Its standards allow two types of engagements: a valuation engagement (comprehensive) and a calculation engagement (limited). There is, however, a litigation exception.
- GARY TRUGMAN, UNDERSTANDING BUSINESS VALUATION: A PRACTICAL GUIDE TO VALUING SMALL TO MEDIUM SIZED BUSINESSES (4th ed. 2012) (hereinafter TRUGMAN).
- FAMILY CODE §770. See also Marriage of Lopez, 38 Cal. App. 3d 93, 108-10 (1974).
- BUS. & PROF. CODE §14100.
- INTERNATIONAL GLOSSARY OF BUSINESS VALUATION TERMS (2001), available at <http://www.aicpa.org> (hereinafter GLOSSARY).
- Marriage of Rosen, 105 Cal. App. 4th 808, 819 (2002). See also Marriage of Foster, 42 Cal. App. 3d 577, 584 (1974).
- "Fair market value" applies to a buyer and a seller acting at arm's length in an open market, not a dissolution.
- See DAWN GRAY & STEPHEN WAGNER, *Family Law Business Valuations: Fundamental Legal Principles for Family Law Practitioners and Forensic Experts*, 1.03, in COMPLEX ISSUES IN CALIFORNIA FAMILY LAW (2007).
- See Marriage of Lopez, 38 Cal. App. 3d 93, 109 (1974); Marriage of Foster, 42 Cal. App. 3d at 584.
- Paul French III, *Determining Enterprise Value*, in FAMILY LAW SERVICES HANDBOOK: THE ROLE OF THE FINANCIAL EXPERT, 158, 162 (Wiley 2010) (hereinafter French).
- Community assets and liabilities will ordinarily be valued "as near as practicable to the time of trial" unless (as is the case with smaller medical practices) it can be shown that the value of the practice devolves largely from the personal skill, industry, and guidance of the operating spouse, as opposed to the underlying capital. Marriage of Green, 213 Cal. App. 3d 14, 2021 (1989); Marriage of Aufmuth, 89 Cal. App. 3d 446, 463-65 (1979). Another relevant factor is a partnership agreement that provides for payment upon withdrawal. Marriage of Fonstein, 17 Cal. 3d 738 (1979); Marriage of Green, 213 Cal. App. 3d at 21.
- See Donald A. Glenn et al., Court or *Neutral* Expert, in FAMILY LAW SERVICES HANDBOOK: THE ROLE OF THE FINANCIAL EXPERT (2010).
- See GLOSSARY, *supra* note 5.
- See TRUGMAN, *supra* note 2, at 426. The capitalization of earnings method is sometimes called capitalization of benefits, capitalization of income, single-period capitalization, or similar terms.
- I.R.S. Appeals and Rev. Mem. 34 (1920).
- Rev. Rul. 68-609, 1968-2 C.B. 327. See also TRUGMAN, *supra* note 2, at 436.
- Michael A. Paschall, *Kick the Habit: The Excess Earnings Method Must Go!*, BUSINESS VALUATION REV. 2 (Sept. 2001).
- See Marriage of Rosen, 105 Cal. App. 4th 808, 818 (2002) (quoting Marriage of Garrity and Bishton, 181 Cal. App. 3d 675, 688 n.14 (1986)); see also Marriage of McTiernan and Dubrow, 133 Cal. App. 4th 1090 (2005); Marriage of Ackerman, 146 Cal. App. 4th 191 (2006).
- See GLOSSARY, *supra* note 5. Normalized Earnings are "economic benefits adjusted for nonrecurring, noneconomic or other unusual items to eliminate anomalies and/or facilitate comparisons."

- JAMES R. HITCHNER, FINANCIAL VALUATION: APPLICATIONS AND MODELS 152 (2006).
- Marriage of Rosen, 105 Cal. App. 4th at 820.
- A reasonable compensation analysis for tax purposes differs from that of a marital valuation. *See* I.R.C. 5162(a)(1); RONALD BROWN, ED., VALUING PROFESSIONAL PRACTICES AND LICENSES ch. 8.8 (2011); *Elliot, Inc. v. C.I.R.*, 716 F. 2d 1241, 1245 (1983) (five factor test).
- *See* Marriage of Garrity & Bishton, 181 Cal. App. 3d 675 (1986); Marriage of Rosen, 105 Cal. App. 4th 808 (2002).
- Marriage of Iredale v. Cates, 121 Cal. App. 4th 321 (2004).
- *Id.* at 325.26.
- Marriage of Ackerman, 146 Cal. App. 4th 191 (2006).
- *See* <http://www.mgma.com/physcomp>. The AMA survey cited in Marriage of Ackerman is no longer published.
- In Marriage of Ackerman, the wife objected to the informal survey, and the trial court stated that it gave little weight to the survey. *See also* *Korsak v. Atlas Hotels, Inc.*, 2 Cal. App. 4th 1516 (1992).
- Marriage of Ackerman, 146 Cal. App. 4th at 202.
- SHANNON P. PRATT ET AL., EDS., VALUING SMALL BUSINESSES AND PROFESSIONAL PRACTICES 206 (1998).
- *See* TRUGMAN, *supra* note 2, at 444.
- *Id.* at 460; *see also* HITCHENER, *supra* note 20, at 206.
- The case study assumes that the practice earnings are equal to its equity net cash flow and excludes analysis of net cash flows and taxes.
- Among these databases are Pratt's Scats, BIZCOMPS, IBA, and Done Deals.
- Older data should not immediately be discounted unless there have been fundamental changes in the industry. *See* French, *supra* note 10, at 162.
- The valuation multiple of 30% was arrived at to avoid publishing proprietary data. Valuers may also use the earnings multiple published by the Goodwill Registry.
- Marriage of Foster, 42 Cal. App. 3d 577 (1974).
- Marriage of Green, 213 Cal. App. 3d 14, 21 (1989).
- Marriage of Nichols, 27 Cal. App. 4th 667 (1994).
- *See* STANDARDS, *supra* note 1 (recommending site visits).
- *See* Marriage of Hewitson, 142 Cal. App. 3d 874, 888 n.9 (1983) (citing eight valuation factors found in Rev. Rul. 59-60, 1959-1 CB 237).
- For more information regarding tax-affecting earning in a divorce, *see* Mark Luttrell, et al., *Tax-Affecting S Corporations for Business Valuations in a Marital Dissolution: A Rebuttal*, 31 FAMILY L. NEWS 2, at 20 (2009).
- A valuator may tax-affect the earnings for California taxes if an entity paid tax. In the case study, tax-affecting earnings is deemphasized for simplicity.