

Business Valuation Notes

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GIFTING & VALUATION CHECKLIST

Getting the Charitable Gift Deduction

Joel Grundmeier, Tax Manager for Olsen Thielen & Co., Ltd, and Valuation Analyst for the Minnesota Business Valuation Group, recently summarized important considerations for those who are gifting or made charitable contributions for 2007 and now reporting. Although



Grundmeier

ideally the work has already been finished for the past tax year, the guidance Grundmeier offers is an important prospective for giftors who MBVG believes may face closer scrutiny by the Internal Revenue Service (IRS). Reviewing Grundmeier's suggestions should ease accumulating the correct information for gifts made during 2008.

There are many kinds of property which may be subject to gifting, such as household goods, used clothing, jewelry and gems, paintings and other objects of art, collections, vehicles, inventory, patents, stocks and bonds, real estate, life insurance and annuity contracts, and interests in a business. Determining if an organization you are considering making a donation to will qualify for a tax deduction can be obtained in IRS Publication 78.

Michael A. Gregory, Territory Man-

ager, IRS, LMSB:FS:ENG:5, Badge No. 41-03676, and Robin Ruegg, Supervisory Manager, IRS, Team 1864, Badge # 41-03382, both valuation specialists for the IRS with offices in Saint Paul, Minnesota, are regular presenters at valuation conferences. Both have been stressing the IRS focus on 'abusive' tax shelters in the past year and have assured appraisers that when the amount of contributions are sufficient, it is likely the work will be reviewed.

Publication 561, issued by the IRS in 2007, notes, "...you will generally need an appraisal for donated property for which you claim a deduction of more than \$5,000" when determining the fair market value of donated property. "The weight given an appraisal depends on the completeness of the report, the qualifications of the appraiser, and the appraiser's demonstrated knowledge of the donated property."

A qualified appraiser, according to Publication 561, is an individual who has earned an appraisal designation or has met certain minimum education and experience requirements, must regularly prepare appraisals, and demonstrate verifiable education or experience in the type of property ap-

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MBVG Grows Again

Laurel Sorensen Rob Fuglie

Minnesota Business Valuation Group, LLC, President Randall Schostag has announced the appointment of Ms. Laurel Sorensen as Senior Valuation Analyst and Mr. Rob Fuglie as Analyst in training.

Sorensen and Fuglie join Steve Sarracco, MBVG Vice President and Senior Valuation Analyst, Joel Grundmeier, Valuation Analyst, Rob Koch, Telephone Company

support specialist, and Andy Gillund, support specialist as new persons added to MBVG's staff since MBVG was acquired by Olsen Thielen & Co., Ltd. in 2007.

"Laurel and Rob provide an excellent balance for MBVG."

Sorensen

Sorensen relocated to the Twin Cities from Indianapolis, Indiana, to be near her son, daughter-in-law, and grandchildren, who moved here in 2006.

"MBVG is very fortunate to have Laurel join us to assist our growth," Schostag said. "Even before MBVG was acquired by Olsen Thielen, it was growing faster than our ability to take on engagements.

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Sorensen

GIFTING

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praised. Furthermore, the individual must not be the donor or donee of the property or other party to the transaction, including being an employee or otherwise receives a majority of his or her appraisals from those persons, or have been prohibited from practicing before the IRS at any time during the past three years.

MBVG President Randall Schostag said that within Publication 561 there are significant penalties for appraisers who overstate the value of a donated property, including penalties of up to 10% of the underpayment or 125% of the gross income received for the appraisal. In addition, the appraiser may be subject to a civil penalty for aiding and abetting, may have the appraisal disregarded, and may be sanctioned from further practice before the IRS. "The IRS has been doing a great job getting their engineers in valuation trained and certified by the various appraisal organizations. This is making it much easier to sit down with them during audit and find someone who understands the appraisal process. However, they are also becoming much tougher when the analyst fails to do the proper work, believing that is what we are paid to do. The penalty for bad work has gone up."

Because MBVG conducts valuations of businesses and business assets, both tangible and intangible, Grundmeier focused on donated business property which may become the subject of a valuation.

APPRAISAL FOR A CHARITABLE DEDUCTION ON AN INCOME TAX RETURN

Grundmeier said that a donor who makes a charitable contribution of property valued at more than \$5,000 (other than money or publicly traded securities) must obtain a "qualified

appraisal" from a "qualified appraiser" in accordance with generally accepted appraisal standards and IRS guidance. Non-publicly traded stock must be appraised if the claimed value is more than \$10,000. The Pension Protection Act of 2006 (PPA), signed into law on August 17, 2006, added new definitions for qualified appraiser and qualified appraisal. It also added a new penalty provision (IRC 6695A) regarding substantial or gross valuation misstatements.

The IRS has not yet issued regulations under IRC Section 170 as amended by the PPA. Notice 2006-96 was issued to provide transitional guidance on what constitutes a qualified appraisal. Under the notice:

An appraisal will be treated as a qualified appraisal if it complies with all the requirements of Reg. 1.170A-13 (c) (except to the extent inconsistent with IRC 170(f)(11)). Under this regulation that was issued before enactment, the appraisal must be made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the due date of the return. It must be prepared and signed by a qualified appraiser and it may not involve a prohibited appraisal fee. The appraisal must include:

- a description of the property in enough detail so that a person not generally familiar with the type of property can tell that the property appraised is the property contributed,
- the physical condition of any tangible property,
- the contribution date,
- the terms of any understanding between the donor and donee relating to the use, sale, or other disposition of the contributed property (including the right to vote donated securities or the earmarking of donated property for a particular use),
- the qualified appraiser's name, address, and, if otherwise required by Code Sec. 6109, taxpayer identifica-

tion number,

- the qualified appraiser's qualifications, including background, experience, education, and membership in professional associations,
- a statement that the appraisal was prepared for income-tax purposes,
- the date when the property was appraised,
- the appraised fair market value of the property on the contribution date,
- the valuation method used, and
- the specific basis for the valuation.

An appraisal will be treated as having been conducted in accordance with generally accepted appraisal standards if, for example, the appraisal is consistent with the substance and principles of the Uniform Standards of Professional Appraisal Practice ("USPAP").

A qualified appraiser means an individual who has earned an appraisal designation from a recognized professional appraiser organization, or has otherwise met minimum education and experience requirements, and regularly performs appraisals for which the individual receives compensation.

An appraiser will be treated as having earned an appraisal designation from a recognized professional appraiser organization if the appraisal designation is awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed.

An appraiser will be treated as having demonstrated verifiable education and experience in valuing the type of property subject to the appraisal if the appraiser makes a declaration in the appraisal that, because of the appraiser's background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property *being valued*.

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SORENSEN FUGLIE

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“Now that the ‘honeymoon’ is over and work is flowing in, our board of directors has moved to ensure that MBVG is able to deliver timely work product without sacrificing quality.”

Schostag said that in addition to an impressive background and interviews, Sorensen has been practicing as a certified public accountant since 1986. She attained the ABV (Accredited in Business Valuation) designation from the American Institute of Certified Public Accountants (AICPA) in 1998 after completing the Institutes integrated program in business valuation in 1997.

Sorensen has continued her professional education by taking advanced valuation courses offered by the AICPA and by attending regional and national valuation conferences. Sorensen has been involved in various valuation presentations including an update on valuation case law to the Indiana Continuing Legal Education Forum.

Since becoming involved in valuation services in 1996, Sorensen has completed more than 160 valuation engagements. Her past responsibilities have included project management, financial statement analysis, creating financial models, report writing and other due diligence relating to business valuation services. Sorensen’s experience includes valuations for estate and gifts, shareholder disputes, succession planning, and mergers and acquisitions.

Sorensen attained an master’s degree from the University of Nebraska at Omaha and a bachelor of science degree from Case Western Reserve University. She is a member of the American Institute of Certified Public Accountants and the Indiana CPA Society.

Fuglie

“Rob brings energy to MBVG and a broad perspective,” Schostag said. “He has solid knowledge of operating companies already, and a natural knowledge about business and value drivers.

“Rob is presently working as Manager, Business Development, for Olsen Thielen & Co., MBVG’s holding company. As such he has a very broad knowledge of the many products and services which Olsen Thielen has to offer.”



Fuglie

Fuglie has broad business and corporate development experience, primarily in the capital intensive environments of start-up and turn-around management.

Prior to MBVG / Olsen Thielen, Fuglie was president and Chief Executive Officer of a family business which he turned around to 53% CAGR during his four-year tenure. The turnaround included developing cash flow models, analyses, and marketing the business to secure both restructuring and growth capital.

Fuglie also has expertise in developing joint venture propositions in affiliate relationship models; strategic partner acquisition; national program launch; start-up/Fortune 500 partnership management; and contract negotiation.

Fuglie is scheduled to complete his Masters in Business Administration from the University of St. Thomas in May 2009. He holds a bachelors of science in Communication from St. Cloud State University, with emphasis in Organizational Development and Labor Relations.

“Rob and Laurel represent the best of where MBVG is headed,” Schostag said. “I can’t over emphasize their importance to MBVG’s future.”

Jelke v Commissioner Appealed

Earlier this month the Internal Revenue Service filed a motion with the 11th Circuit Court of Appeals to reconsider *en banc* the decision in *Estate of Jelke v Commissioner*. The IRS is arguing that valuation is a question of fact and the Court’s holding that permits dollar-for-dollar discounts for embedded capital gains as a matter of law violates this basic tenet.

In the November issue of MBVG’s Business Valuation Notes we provided an article entitled *Built- In Capital Gains Enforced For Tax Purpose* wherein we discussed the case of the Estate of Frazier Jelke, III, deceased, versus Commissioner (United States Court of Appeals for the 11th Circuit, 2007 U.S. Appeals No. 05-15549, Tax Court No. 13512-03). The appeals decision was filed November 15, 2007. In that appeals court ruling, the tax court value was vacated and the value of an investment holding company was remanded, ordering the tax court to use a dollar-for-dollar reduction of the entire built-in capital gains tax liability of a company.

MBVG learned about the motion to the appeals court from Business Valuation Resources, LLC by way of their period email *BVWire*TM (ISSN 1933-9364). The update was obtained by Business Valuation Resources during a teleconference which they sponsored in early January on the *Jelke* reversal and which included participation by attorney John Porter. Business Valuation Resources is a subscription-based service for appraisers; it can be reached at <http://www.BVResources.com>. Information regarding the motion is contained in *BVWire* # 64-3.

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An appraiser will be treated as having met minimum education and experience requirements if (a) For real property the appraiser is licensed or certified for the type of property being appraised in the state in which the appraised real property is located. (b) For property other than real property the appraiser has (A) successfully completed college or professional-level coursework that is relevant to the property being valued, (B) obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued, and (C) fully described in the appraisal the appraiser's education and experience that qualify the appraiser to value the type of property being valued.

A qualified appraiser cannot be the donor or the donee of the property, or a member of the family of the donor or donee, or any person employed by the donor, donee, or a member of the family of either. The appraiser cannot be a party to the transaction in which the donor acquired the property, unless the property is donated within two months of the acquisition date and its appraised value doesn't exceed its acquisition price.

An appraisal summary, IRS Form 8283, must be signed by the qualified appraiser, as well as the donor and donee. The declaration on the form must include an additional statement that the appraiser understands that a substantial or gross valuation misstatement resulting from an appraisal of the value of property that the appraiser knows, or reasonably should have known, would be used in connection with a return or claim for refund, may subject the appraiser to a civil

penalty under § 6695A.

APPRAISAL FOR A GIFT TAX RETURN

Grundmeier said that in the case of non-charitable gifts, the donor must file a Form 709, U.S. Gift Tax Return which provides "adequate disclosure" to start a three-year statute of limitations on the ability of the IRS to contest the value of the gift. IRS Regulation 301.6501(c)-1 provides specific reporting requirements necessary for adequate disclosure.

"Failure to meet these requirements could result in the three-year period not being triggered, which would allow the IRS to assess gift taxes on the transfer many years later," Grundmeier said. "By following the guidance outlined in the Regulations, your clients start the clock running for IRS assessments and the appraiser may avoid a malpractice claim."

Charitable contributions reported on an individual or business income tax return also have specific valuation requirements to support the amount of the deduction.

As an alternative to providing the information required by Reg. 301.6501(c)-1, an appraisal may be submitted with the donor's gift tax return. The regulation provides that the appraisal must meet the following requirements:

1. The appraisal must be prepared by an appraiser who:

- Holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

- Because of the appraiser's qualifications, as described in the appraisal that details the appraiser's background, experience, education, and membership, if any, in professional appraisal associations, the appraiser is qualified to make appraisals of the type of property being valued; and

- The appraiser is not the donor or the donee of the property, or a member of the family of the donor or

donee, or any person employed by the donor, donee, or a member of the family of either.

2. The appraisal must contain all of the following:

- The date of the transfer, the date on which the transferred property was appraised, and the purpose of the appraisal.

- A description of the property;

- A description of the appraisal process employed;

- A description of the assumptions, hypothetical conditions, and any limiting conditions and restrictions on the transferred property that affect the analyses, opinions, and conclusions;

- The information considered in determining the appraised value, including in the case of an ownership interest in a business, all financial data that was used in determining the value of the interest that is sufficiently detailed so that another person can replicate the process and arrive at the appraised value;

- The appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

- The valuation method utilized, the rationale for the valuation method, and the procedure used in determining the fair market value of the asset transferred; and

- The specific basis for the valuation, such as specific comparable sales or transactions, sales of similar interest, asset-based approaches, merger-acquisition transactions, etc.

Valuations for gift and estate tax returns are submitted to Valuation Engagement procedures as required by the Statement on Standards for Valuation Services Number 1, issued by the American Institute of Certified Public Accountants, January 1, 2008, Schostag said.

"As a subsidiary of a certified public accounting firm, MBVG is very sensitive to what accountants and the IRS want and need."

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BUSINESS VALUATION

Goodwill Impairment Analysis (141/142)

Businesses

Intellectual Property

Intangible Assets

Options

Strategic Planning

ESOP

Divorce

Shareholder Oppression / Dissenting Rights

Buy/Sell Agreements

Merger / Acquisitions

Fairness Opinions /Purchase Allocation

Planning

BUSINESS ASSET VALUATION

Experts or Consultants

Sale / Purchase

Insurance

Fair Rental Rates

Financing

Ad Valorem Taxes

Condemnation

Feasibility

Purchase Price Allocation

Property Records

Fiduciary Review

Sale / Leaseback Structuring

Business Planning

**WE ARE AVAILABLE FOR PRESENTATIONS FOR ESOP IMPLEMENTATION,
MERGER & ACQUISITION CONSIDERATIONS, EXPERT TESTIMONY PREPARATION,
GENERAL BUSINESS VALUATION, AND MANY OTHER TOPICS.**

OUR FORMAT IS POWER POINT - BASED.

**WE REQUEST THAT YOU SUPPLY THE SOUND SYSTEM AND APPROPRIATE DISPLAY
INSTRUMENT.**

WE WILL CONNECT OUR COMPUTER.

PLEASE ALLOW AT LEAST 30 DAYS FOR SCHEDULING.