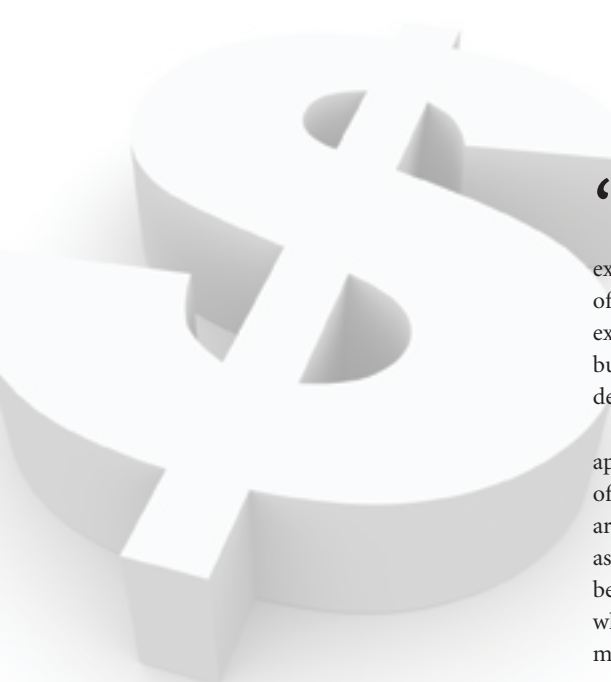


WHAT IS VALUE



“E^{ncarta}” defines value as “an amount expressed in money or another medium of exchange that is thought to be a fair exchange for something.” In the context of business valuation, however, there is more to determining value.

Defining value begins with identifying the appropriate standard of value, that is, the type of value being sought and its purpose. There are many standards of value, each based on assumptions determined by the type of value being used in a particular engagement. Even when a standard of value is specified, there may be disagreement on the underlying assumptions of that standard.

In his pioneering book, “Valuation of Property,” James C. Bonbright wrote “When one reads the conventional value definitions critically, one finds, in the first place, that they themselves contain serious ambiguities, and in the second place, that they invoke concepts of value acceptable only for certain purposes and quite unacceptable for other purposes.”

Differing standards of value are often applied in four distinct contexts: estate and gift taxation, shareholder dissent and oppression, divorce and financial reporting.

The standard of value used in estate and gift taxation matters is fair market value. According to the “International Glossary of Business Valuation Terms,” this standard is “the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm’s length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the

relevant facts.”

In matters of shareholder dissent and oppression, the applicable standard may be fair value, as statutorily defined in Florida (FS 607.131) and applying in certain business circumstances. In this statute, the fair value of a corporation’s shares must be determined: (a) immediately before the effectuation of the objectionable action; (b) using customary and current valuation concepts and techniques generally employed for similar businesses undertaking the transaction requiring appraisal, excluding any appreciation or depreciation due to the transaction unless exclusion would be inequitable to the corporation and its remaining shareholders; and (c) for a corporation with 10 or fewer shareholders, without discounting for lack of marketability or minority status. Similar Florida statutes govern for limited liability companies and limited partnerships.

For divorce matters in Florida, the standard of value used is fair market value, subject to a twist in business valuations. The value of the business assumes that the presence and reputation of the individual who is a party to the divorce will not continue.

The correct standard of value for financial reporting purposes is fair value as defined by Financial Accounting Standard 157, as well as in other financial standards. This standard is distinct from the fair value standard applied to shareholder dissent and oppression.

Given these differing contexts, it is imperative that counsel understand the various standards of value and work closely with a valuation expert to ensure that the standard of value requested matches the requirements of the assignment. ¹



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