

Current Valuation & Taxation Rulings Regarding Divorce

Valuation of Separate Property Business Showing it Appreciated During the Marriage Required

In *Roger L. Ratigan v. Doris Cheryl Ratigan*, No. A-02-333 (Neb. App. September 2, 2003), unpublished, the Nebraska Court of Appeals considered whether the appreciation in a separate property business should be divided between the parties. Prior to the marriage, the husband operated Ratigan Motor Center (RMC). The trial court determined that the business was the husband's separate property. In making this decision, it found that the wife presented "no evidence that establishes the value of ... [her] contributions or that they were significant in terms of having any impact on [RMC]." The wife appealed.

On appeal, she challenged the lower court's findings that her contributions to the business had no impact on the value of the business and that the business had not appreciated during the marriage. The appellate court initially noted that in order for separate property to be recharacterized as marital property, the party claiming a marital property interest in that property must present "evidence of the value of the contributions and evidence that the contributions were significant." In this case, the court noted that the wife "maintained the parties' homes in Arizona and Nebraska, attended numerous social functions with Roger, enjoyed 'conjugal relations,' and cared for Roger's mother." However, the appellate court stated, "Cheryl failed to demonstrate the significance of the aforementioned contributions. There is also no

(Continued on page 3: [Ratigan v. Ratigan](#))

Published By:

LARSON APPRAISAL SERVICES

11445 E. Via Linda Ste. 2
Scottsdale, AZ 85259

For Professional Appraisals of Privately-Owned Business Interests contact:

**James A. Larson,
Ph.D., ASA, CFA**

(480) 657-6219

Jim@larsonappraisal.com

For an electronic copy of our brochure, visit us on the web at:

larsonappraisal.com



For Valuation Expertise...

Alimony?

In *Michael Robert Peterson v. CIR*, T.C. Summary Opinion 2003-122, the Tax Court considered whether unallocated family support payments were deductible to the payor as alimony under IRC sec. 215. In 1999, the petitioner and his wife separated. They had two children, and joint custody was awarded to the parties. In 2000, a New Jersey court ordered the petitioner to pay \$325 per week to his spouse in pendente lite unallocated family support back to December 1999. On his 2000 tax return, the petitioner declared deductible alimony of \$24,424. The IRS contested that deduction, arguing that the petitioner would be responsible for the payments following the death of his spouse. The matter proceeded to trial before the Tax Court.

The Tax Court initially noted that in order for payments to be treated as deductible alimony under sec. 215, they must meet the four requirements of sec. 71: (1) payments must be made under a divorce instrument, (2) the payments must not be designated as not includible in income under sec. 71 or not deductible from income under sec. 215, (3) the payee and payor must not be members of the same household, and (4) there is no liability to continue the payments following the death of the payee spouse. The parties only contested the application of the last requirement. The Tax Court found that the pendente lite order

(Continued on page 3: [Alimony? ...](#))

In This Issue:

Valuation of Separate Property Business Showing it Appreciated During the Marriage Required	1	Experienced, Unbiased Testimony Required	2
Alimony?	1	Personal Goodwill is Not a Marital Asset in West Virginia	3
Marital Business Must Be Valued	2		

Marital Business Must Be Valued

In *Diane Marilyn Guthmiller v. Kevin Dean Guthmiller*, 2003 SD 120 (October 1, 2003), the South Dakota Supreme Court considered the lower court's disposition of a captive insurance business. During the marriage, the husband operated a captive insurance agency for American Family Insurance. Under his agreement with American Family, the agency owns the insurance policies, office equipment and supplies of the business. The husband only owns his office furniture. During the eight-years preceding the divorce, the husband earned an average annual income of \$30,000 from new and renewal premiums on policies he wrote.

Neither party presented expert testimony regarding the valuation of

the business to the trial court. The wife testified that the business had a value of \$62,177.80 based on her knowledge of the husband's past earnings. The husband valued the business at zero. The trial court also received testimony from an American Family representative, who indicated that if the husband's contract were terminated, he would receive \$33,873.01 in renewal premiums over the next five to ten years. The trial court declined to fix the value of the business. Rather, it awarded the wife 40 percent of the business's gross renewal income for the next ten years. The husband appealed.

On appeal, he argued that the lower court's decision not to value

the business was an abuse of discretion. The Supreme Court agreed. It stated, "Here, the trial court should have made a specific finding regarding the value of Guthmiller Insurance before making an equitable distribution. The court merely surmised that the business was worth 'something' and then proceeded to distribute 40 percent of the future renewal premiums for the next ten years to ... [the wife]." It found this distribution scheme inequitable in light of the fact that the business generated gross annual premiums of \$50,000 to \$60,000, but only \$30,000 in net income to the husband. Thus, it reversed the lower court and remanded for a valuation of the business.

Experienced, Unbiased Testimony Required

In *Vatche Minassian v. Dalida Minassian*, No. 240481 (Mich. App. September 25, 2003), unpublished, the Michigan Court of Appeals considered the lower court's valuation of a jewelry business. During the marriage the husband expanded his wholesale jewelry business and opened a retail store. The valuation of the jewelry business was contested at trial. The trial court appointed an expert to value the business.

That expert assigned the valuation to another appraiser in his firm. This appraiser, a financial analyst, had no prior experience valuing a jewelry business and was unaware of the industry standard, which is that jewelry stores operate on consignment, rather than traditional accounts receivable. The expert determined that the business's income was understated after discussions with the husband and a review of its financial documents that

disclosed no accounts payable. He then valued the store using comparable companies from across the nation, and concluded that the business had a value of \$400,000. The wife did not independently engage an appraiser, but relied on this expert's testimony.

The husband presented testimony from the business's bookkeeper, who held an MBA and the English equivalent of a CPA license. This accountant also serviced numerous other local jewelry stores. He was a close friend of the husband. He concluded that the business had a value of \$80,000.

The trial court accepted the valuation put forward by the husband's accountant. It rejected the financial analyst because he had no experience in the relevant industry. The wife appealed.

On appeal, the wife argued that

the trial court erred in accepting the testimony of the husband's accountant. The appellate court agreed. It found the husband's accountant to be biased because "he was not impartial or neutral" due to his relationship with the husband. It also determined that the financial analyst's opinion was unreliable because he lacked experience in the relevant industry and utilized comparables of retail stores from around the United States, which were not comparable to the subject company's "mostly wholesale nature." It further found that this expert was not the court appointed expert, but merely worked at the same firm as the court appointed expert. Thus, it reversed the lower court's valuation and remanded the matter. On remand, it instructed the lower court "to appoint an independent expert to correctly assess the value of the jewelry business."

The brief summaries in this publication discuss only some valuation aspects of the subject cases and pronouncements. The reader is referred to the actual documents for additional details. This publication does not constitute legal, tax, accounting, or valuation advice, and it is offered as an informational service only. Those seeking specific advice should contact a professional advisor. No liability whatsoever is assumed in connection with use of this newsletter.

Personal Goodwill Is Not A Marital Asset in West Virginia

In *Hillman H. May v. Carol S. May*, No. 31123 (W.V. November 10, 2003), the Supreme Court of West Virginia considered whether the personal goodwill of a sole practitioner should be treated as a marital asset, divisible in divorce. The husband operated a dental practice as a solo practitioner during the marriage. Both parties presented expert testimony regarding the value of the practice to the trial court. The wife's expert valued the practice at \$120,000, inclusive of goodwill. He valued the goodwill using a capitalization of excess earnings method, which resulted in goodwill of \$80,568. The husband's expert valued the business at \$55,000. His expert included a 20 percent discount for lack of marketability. The trial court accepted the valuation put forward by the wife's expert, and awarded the wife one-half that value. The husband appealed.

On appeal, the husband argued that lower court should not have included the

value of goodwill in the practice. He further argued that if the value of goodwill should have been included in the practice, the lower court valued it incorrectly. The Supreme Court first considered whether goodwill should be included in the valuation of a sole practitioner. The court first reviewed case law regarding the inclusion of goodwill from a variety of jurisdictions. It concluded:

...we hold that 'enterprise goodwill' is an asset of the business and may be attributed to a business by virtue of its existing arrangements with suppliers, customers or others, and its anticipated future customer base due to factors attributable to the business. Additionally, we hold that 'personal goodwill' is a personal asset that depends on the continued presence of a particular individual and may be attributed to

the individual owner's personal skill, training or reputation.

It then held that enterprise goodwill was a marital asset subject to division in divorce while personal goodwill was not. In reaching this decision, the court likened personal goodwill to a professional degree, which West Virginia had previously determined could not be separated from the holder.

After determining that goodwill is included in the valuation of a sole proprietorship if the goodwill was enterprise goodwill, the court turned to the facts of this case. The court first considered the testimony of the wife's expert regarding goodwill. It found that the testimony from that expert clearly showed that the expert considered personal goodwill rather than enterprise goodwill. Thus, it concluded that the lower court erred in accepting the opinion of the wife's expert and reversed this case.

Ratigan v. Ratigan... *Continued from page 1*

indication in the record regarding the value of Cheryl's contributions. The evidence establishes that Cheryl did not have anything to do with RMC." Therefore, the appellate court affirmed the lower court's decision denying the wife a portion of the appreciation in the business.

The appellate court also noted that

the husband presented an expert witness who valued the business at the time of the marriage and at the time of the divorce. This witness concluded that the business had a value of zero on both dates. It further noted that the wife did not present any expert witness testimony as to the value of the business on either date. Therefore, the

court concluded, "The only expert testimony presented opined that RMC has a zero value. As such, even if we assume that Cheryl's contributions were valuable and significant, Cheryl cannot be awarded a portion of RMC's increased value during the course of the marriage, because the evidence establishes that RMC did not increase in value."

Alimony?... *Continued from page 1*

was silent regarding the death contingency and thus looked to New Jersey law. The Tax Court found that under New Jersey law there is no obligation to continue paying alimony following the death of the payee spouse, the divorce action terminates upon the death of one

of the parties, and that the petitioner would have obtained custody of his children following the hypothetical death of the payee spouse, which in turn would have terminated any child support. Thus, the Tax Court concluded that the pendente lite unallo-

cated support payments would not have continued following the death of the payee spouse, and therefore, the payments were entitled to be treated as deductible alimony for Federal tax purposes.

"Valuation Verdicts" is a publication of Larson Appraisal Services (LAS). LAS provides a wide range of business and financial services including the valuation of businesses, business ownership interests, intangible assets, and financial litigation support. This work has been performed for a variety of businesses and for various purposes including divorce. The principal, Jim Larson, has been involved in preparation and defense of those valuations since 1993. For further information on Larson Appraisal Services please call 480-657-6219 or access the electronic brochure on the web at:

<http://LarsonAppraisal.com>.