

# ACCESS VALUE

■ BUSINESS VALUATION CONSULTING

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## Valuation Trends

### *Business Owners and Transaction Advisors,*

The 2012 tax season was a particularly busy one in business valuation, due to expectations for increased tax rates for businesses and wealthy individuals. As a result, businesses and individuals had heightened motivations for having year-end valuations conducted on their privately held operating businesses, real estate holdings and investment holding companies.

Two of the key drivers of valuing privately held businesses are the valuation discounts for lack of control, for minority interests, and for lack of marketability, by comparison to more liquid publicly traded securities. Numerous factors impact a company's valuation on a given valuation date, and valuation discounts can reduce the value of a privately held business interest up to 90%, which can create significant tax planning advantage.

### *Recent Valuation Court Cases*

In addition to closed end fund discounts for benchmarking lack of control discounts ("LOCD"), and restricted stock and IPO studies for benchmarking lack of marketability discounts ("LOMD"), recent court cases relating to business valuation matters often provide insights to control and liquidity factors and discount levels for privately held business interests. In 2012, a sampling of just three cases involving business valuation, two related to marital dissolution matters and one related to estate settlement, incorporated combined discounts from 35% to 72.5%.

Case	Court	Business Entity	LOCD+LOMD
Keller v United States	U.S. Court of Appeals	Family Limited Partnership	47.5%
Marriage of Gay	Oregon Appellate Court	Building/Construction Related	35.0%
Barth v Barth	Missouri Appeals Court	Real Estate Holding Company	72.5%

Case specific facts supporting the above combined LOCD/LOMD applications included:

- ✓ transferability restrictions
- ✓ low sale activity
- ✓ length of holding period
- ✓ minority basis of interest
- ✓ net losses in the real estate market
- ✓ pool of potential buyers

### *Revisiting a Landmark Case in Business Valuation*

In *Mandelbaum v. Commissioner*, a 1995 gift and estate tax case, Tax Court Judge Davis Laro established ten factors often cited for analyzing LOMD development. Among these factors are private versus public sales of stock; financial statement analysis; the company's dividend policy; the nature of the company, its history, position in the industry, and its economic outlook; the company's management; the amount of control in the transferred shares; the restrictions on transferability of the stock; the holding period of the stock; the company's redemption policy; and the costs associated with making a public offering.

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