

801.10

From: [Redacted]
To: Michael Vento [Redacted]
Date: Tue, Mar 6, 2001 8:29 AM
Subject: RE: Fair Market Value

① Thanks. You will recall that at least one hypothetical explored during our discussion had one additional wrinkle. That is, a half-owner of an LLC was buying out the other half-owner, and therefore was buying assets only in the sense that the PNO deemed him to be buying all of the assets of the LLC. My contention is that FMV of those assets has nothing to do with what the assets could be sold for if they weren't part of a going concern that also has liabilities, because the assets aren't being acquired and wouldn't be sold that way. In reality, the buyer is buying only half of a going concern. Even if you deem him to be buying the entire going concern, the value of that purchase can never be more than the value of the enterprise. To ignore the liabilities is to inflate the transaction well beyond what the underlying business is worth.

② I raised another question with [Redacted] yesterday. In a nutshell, A grants B an exclusive license to intellectual property, in return for agreement by B to pay royalties to A over the life of the license. A is able to estimate the gross amount of the royalty payments that it reasonably expects to receive over the life of the license. A is also able to estimate the amount that it would receive today if it were to make a similar license available on a fully paid up basis. The latter, it seems to me, is the best measure of fair market value, and it inherently reflects discounting to present value. I think that the "acquisition price" should be the estimated total anticipated royalty payments, discounted to present value, because that's another way of determining the amount of consideration being paid to the licensor. What think you?

[Redacted]

OUR PRESENT POSITION IS:

- ① VALUE IS FAIR MARKET VALUE OF ALL ASSETS OF THE LLC WITHOUT REGARD TO LIABILITIES.
- ② IF ABLE TO DETERMINE THE AMOUNTS OF THE FUTURE ROYALTIES THEY MUST BE AT FACE VALUE, NOT DISCOUNTED TO PRESENT VALUE. IF UNABLE TO DETERMINE, ACQUISITION PRICE IS UNDETERMINED, AND VALUE IS CURRENT FAIR MARKET VALUE.

R. SMITH & N. OVOICA CONCUR.

B. Michael Vento
3/8/01