Why the valuation date is so critical

Valuations are prepared for a number of reasons: estate planning, divorce settlements and shareholder litigation, just to name a few. And while the parties in these various matters may focus solely on the valuation amount, a valuation expert will also be focusing on the valuation date. Here's why.

Estate planning matters

Gifted assets are valued as of the date of the gift. For a taxpayer planning to make a gift of real estate or an interest in a business, it may make sense to delay the transfer if the value of the underlying asset is likely to continue to decline.

When values are low, a taxpayer can move more assets for the dollar out of his or her estate. When a transferred asset begins to appreciate again, it will no longer be part of the estate.

For estate tax purposes, assets are normally valued on the date of death. But under certain circumstances, an executor may elect to use the "alternate valuation date," which is six months after the date of death. The later date may be advantageous if the decedent's estate includes securities, real estate or other property that has declined substantially in value since the date of death. Using this alternative date may lead to a reduced tax liability.

There's a catch, though. The executor can't selectively apply the election to assets whose values have declined sharply. Rather, if the alternate valuation date is selected, it must be used for all assets in the estate (except for those sold between the date of death and the alternate valuation date, which are valued on the sale date).

Requirements in divorce

For divorce purposes, the valuation date is usually prescribed by state law.

Typically, it's the date the divorce action was commenced, but it could also be the trial date, a recent date near the date of a hearing or mediation, the date a divorce decree is issued or some other date established by law or by agreement of the parties. In some states, the court may select a valuation date that would be fair to both parties. In most cases, however, it's up to the attorney to decide which valuation date should be used.

If one spouse has an interest in real estate or a business that has lost value, the nonowner spouse will receive less when splitting the interest's value. These decreasing values are, in some cases, affecting divorce dates: The owner spouse wants to act when assets have low values, while the nonowner spouse wants to wait, anticipating that values will rise (and vice versa).

Because values are changing so quickly and significantly, some courts are reconsidering divorce settlements. In today's economic conditions, a settlement can't be assumed until the final decree is signed and filed.

Shareholder oppression

In shareholder oppression cases, applicable law often provides that the presumptive valuation date is immediately before the wrongful act that triggered the litigation. But it's not unusual for the parties to argue for an alternate valuation date if they feel that using the presumptive date would be unfair.

Circumstances that might call for an alternate date include the unavailability of sufficient market information on the presumptive valuation date or the existence of a contingency or potential liability that wasn't yet resolved on the presumptive date. Another circumstance creating a need for an alternate date is an aberration that temporarily increased or decreased the stock's value around the time of the corporation's wrongful act.

Finally, an alternate date might be required in instances where evidence exists that a corporation's wrongful act was timed to take advantage of a historically high or low stock price.

Lean on an expert

As you can see, the valuation date plays a major role in estate planning, divorce settlements and shareholder litigation. That's why you need to engage a qualified valuator to help ensure a positive outcome.

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