

# VALUATION SERVICES

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## Overview

The Valuation Services group at Berdon has been working side-by-side with clients and their attorneys across the tax, litigation and corporate advisory arenas for decades. We are keenly aware of the pressures that attorneys and their clients face and their desire to get a product that meets expectations of scope, costs, deadlines, and quality. Berdon has been retained by many of the nation's most prominent law firms and successful businesses, and we have performed valuations for many different purposes, among them:

- ▶ Litigation matters, including fair market value, statutory fair value, and commercial damages analyses;
- ▶ Tax related matters, including those for estate, gift, and income tax purposes;
- ▶ Internal and third party sales and buyouts;
- ▶ Company planning and restructurings; and
- ▶ Matrimonial matters.

Led by professionals with a wide range of experiences in both valuation and other business areas, members of the group have defended

their work in front of the Internal Revenue Service and as expert witnesses in federal and state litigation matters. Fred E. Chilkowitz, CPA, ABV, ASA and John D. Agogliati, CFA, ASA, who chair the group, have performed hundreds of valuation assignments over their combined careers. Members of the group hold various professional designations and licenses, including: Chartered Financial Analyst (CFA), Certified Public Accountant (CPA), Accredited in Business Valuation (ABV) by the AICPA, Accredited Senior Appraiser (ASA) by the American Society of Appraisers and Certified Valuation Analyst (CVA) by the National Association of Certified Valuators and Analysts.

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No matter what the purpose, hiring a qualified valuation professional is of the utmost importance. A qualified professional can ensure that the appraisal meets business valuation standards and will be completed in accordance with accepted methodologies. Two recent court cases demonstrate the negative consequences of failing to hire a qualified valuation professional:

- ▶ ***Estate of Richmond v. Commissioner, T.C. Memo 2014-26*** – As a result of a ruling in a recent decision released by the Tax Court, the Estate incurred a 20% accuracy-related penalty as there was a substantial tax valuation understatement. The individual retained by the Estate to prepare the valuation did not have any business valuation certifications and the Estate did not demonstrate that the appraiser was qualified as an expert in business valuation. The court explicitly stressed “...the importance of hiring a qualified appraiser.”

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- ▶ ***Superior Vending Services, Inc. v. Workmen's Circle Home and Infirmary Foundation For The Aged, et al., Supreme Court, Westchester County (2013)*** – The Court found that the plaintiff failed to sustain its burden of proof as to the amount of alleged lost profits as a result of a breach of contract by the defendant and did not award any damages. The plaintiff did not hire a valuation expert to support its lost profits claim and the only testimony supporting the plaintiff's claim was provided by the plaintiff's president. Mr. Chilkowitz of Berdon was the valuation expert witness engaged by the defendant and he provided expert testimony rebutting the plaintiff's damages analysis.

With the Berdon Valuation Services group, clients not only work with a well-credentialed and highly experienced valuation team, but also get access to a nationally respected full-service accounting and advisory firm with nearly 400 professionals and staff. We have dedicated audit and tax partners who readily assist as issues arise. In addition, the client can be assured that every valuation report is reviewed at multiple levels for quality control purposes.

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## Representative Valuation Engagements

These representative engagements demonstrate Berdon's extensive experience performing valuations:

- ▶ Valuation for a professional services practice for internal planning purposes. The company was in the process of allowing internal partners to 'buy-in' to the company and required a valuation to set the value of each new partner's equity stake.
- ▶ Valuation of a private equity fund general partner and management company for litigation purposes in connection with an alleged breach of contract with a former partner. A Berdon principal provided an expert report and deposition testimony in this federal court matter.
- ▶ Valuation of private equity fund general partners and management companies for tax planning purposes. The underlying private equity funds held various debt and equity investments.
- ▶ Estimation of a reasonable guaranty fee in connection with a debtor guaranty for a promissory note issued in connection with a minority interest transaction.
- ▶ Estimation of both the fair market values of minority interests in real estate companies that were contributed to a newly formed limited liability company and an appropriate rate of return for the preferred interest in the newly formed entity. The engagement was performed in connection with a 'Freeze Partnership.'



- ▶ Valuation for an estate that held both direct and indirect interests in over 75 commercial real estate properties and an interest in a real estate management company. For the estate's indirect interests, the analysis considered valuation discounts for lack of control and lack of marketability at multiple ownership levels.
- ▶ Valuation consulting services in connection with a company's repurchase of a minority interest in a real estate entity in a litigious setting.
- ▶ Determination of the fair market values of limited partnership interests in a real estate partnership after the general partner exercised its right to buy out certain partners that failed to meet successive calls for additional capital contributions.
- ▶ Determination of the fair market values of promissory notes for estate and gift tax purposes. Certain promissory notes made payments on a regular basis and others had asymmetrical payment schedules.
- ▶ Determination of the fair market value of an earnout provision following a corporate transaction, in connection with the valuation of a minority interest transfer for gift tax purposes. An option pricing model was used to estimate the value of the earnout provision.
- ▶ Litigation consulting in connection with a real estate venture, specifically regarding the interpretation of the 'waterfall distribution' provision in the operating agreement and a disagreement over the interpretation of the governing agreement.
- ▶ Valuation of undivided tenancy-in-common interests in residential property for gift tax purposes. The valuation incorporated an analysis of fractional interest discounts for the partial interests.
- ▶ Determination of the fair value of various service companies in a litigation matter. A Berdon principal was selected as the neutral valuation expert and provided an expert report and testimony to the referee in this state court matter.
- ▶ Rebuttal expert in a litigation matter involving the alleged infringement of a food equipment patent. An expert report was provided for this federal court matter.