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& COMPANY

DISCOVERY BLOCK
828 GREAT NORTHERN BOULEVARD
P.O. BOX 1040 • HELENA, MONTANA 59610
406•442•1040 FAX 406•442•1100

SENATE PUBLIC HEALTH, WELFARE & SAFETY	
BILL NO. 13	ON THE
EXHIBIT NO. 1040	DATE: 2-11-05
DATE:	EXHIBIT NO.
BILL NO. SB317	SENATE PUBLIC HEALTH, WELFARE & SAFETY

SB317
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FEB 04 2005

LEGAL DEPARTMENT

February 2, 2005

Mr. Greg Gould
Associate General Counsel
Blue Cross and Blue Shield of Montana
P.O. Box 4309
Helena, MT 59604

RE: Senate Bill No. 317

Dear Mr. Gould:

Per your request, I have reviewed Section 1 (3) and Section 14 (3) (a) – (f) of Senate Bill No. 317 (SB 317). This letter documents that review.

Section 1 (3) purports to define what is referred to as *full fair market value*. This is a term that has no relevancy for either business valuations or real estate appraisals. In business valuations the term utilized for the standard of value is *fair market value* and for real estate appraisals *market value*. The wording in Section 1 (3) appears to be from the Appraisal Foundation's definition of "market value" related to real estate appraisals.

The most widely recognized and generally accepted standard of value related to business valuations is "fair market value." With regards to business valuations it is the standard that applies to virtually all federal and state tax matters and is also the legal standard in many other valuation situations, such as divorce. The American Society of Appraisers, Business Valuations Standards defines *fair market value* as:

the amount at which property would change hands between a willing seller and a willing buyer when neither is acting under compulsion and when both have reasonable knowledge of the relevant facts.

The willing buyer and willing seller are hypothetical persons dealing at arm's length, rather than a particular buyer or seller. Also, the concept of *fair market value* means the price at which a transaction could be expected to take place under conditions existing at the specific valuation date.

Section 14 (3) (a) – (f) denotes relevant factors for consideration in determining *full fair market value*. Most of these factors would already be considered as part of an independent appraisal of

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the fair market value of a business. One cited factor is *the value as a going concern*. Under the willing buyer/willing seller concept it is assumed that the transactional circumstances will be those that maximize the value of the business enterprise. A subject business may be worth more to a willing buyer as a collection of individual assets to be put to separate uses than as a going concern that will continue to operate as such. As part of an independent appraisal of the fair market value of a business the appraiser determines the premise that would best maximize the value (liquidation value, going concern value, etc.)

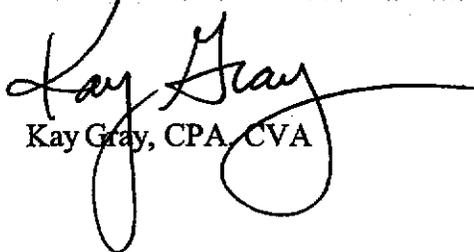
Business valuation standards require that, in valuing a business, the appraiser consider three valuation approaches— the Market Approach, the Income Approach and the Net Asset Approach. Section 14 (3) lists *market value*, *earnings value* and *net asset value* as relevant factors to be considered. Also listed is *a control premium*. Standards require the consideration of any relevant discounts and premiums when valuing a business. Such considerations would be part of an independent appraisal of the fair market value of a business.

Section 14 (3) also lists *investment value* as a consideration for determining *full fair market value*. In both real estate value and business value terminology, investment value is not market or fair market value. It is defined as “the specific value of an investment to a particular investor or class of investors based on individual investment requirements, distinguished from market (or fair market) value, which is impersonal and detached.” Investment value should not be a consideration in determining fair market value.

SB 317 uses terminology that is not generally accepted where generally accepted terminology exists. As such the bill creates confusion as to the proper definition of value. To avoid confusion existing generally accepted terminology should be used.

If you have any further questions or require additional clarification, please let me know.

ANDERSON ZURMUEHLEN & CO., P.C.


Kay Gray, CPA, CVA