

## **Putting it to the Test: Deducting Reasonable Compensation**

*The Historical (and Taxpayer-Friendly) Role of the  
Sixth Circuit in Determining Reasonable Compensation*

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# Putting it to the Test: Deducting Reasonable Compensation

## *The Historical (and Taxpayer-Friendly) Role of the Sixth Circuit in Determining Reasonable Compensation*

### Introduction

While the recent favorable tax rate on qualified dividends has reduced the incentive to try to restructure nondeductible dividends as deductible compensation, that incentive has not been eliminated, as the shareholder-employee of a closely-held corporation still benefits when the tax rate applied to corporate earnings is taxed once at the individual tax rates as compensation to the shareholder versus being taxed twice when distributed as a dividend. Now is a good time to meet with your clients or shareholder-employees to review their compensation plans to ensure that amounts paid as compensation are not reclassified as dividends by the government. This article will address the criteria that are used by the Sixth Circuit to determine whether compensation is reasonable or not.

The deduction for compensation is limited to “a reasonable allowance for salaries or other compensation for personal services actually rendered.”<sup>1</sup> The reasonable compensation issue generally arises in closely-held corporations. Amounts in excess of reasonable compensation are generally reclassified as dividends.<sup>2</sup> In *The John Harsch Bronze & Foundry Co.*, the Tax Court describes the issue perfectly:

“Where those whose compensation is at issue for tax purposes own the controlling stock of the employer-corporation, it is necessary to examine the facts carefully in order to determine whether dividends are in fact being distributed under the guise of compensation for services.”<sup>3</sup>

Although the regulations list the two tests that must be satisfied in order for a business to deduct compensation expense, most of the authority on this issue has been developed judicially. In *Alpha Medical*,<sup>4</sup> the Appeals Court stated:

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<sup>1</sup> IRC Section 162(a)(1).

<sup>2</sup> Reg 1.162-8.

<sup>3</sup> *The John Harsch Bronze & Foundry Co.*, TC Memo1958-25.

<sup>4</sup> *Alpha Medical Inc. v Comr.*, 83 AFTR 2d 99-1922.

“Inherently, there is a natural tension between (1) shareholder/employees who feel that they are entitled to be paid from a corporation’s profit an amount that reflects their skills and efforts, and (2) a provision in the tax law that conditions the deductibility of compensation on the concept of reasonableness. What is reasonable to the entrepreneur/employee often may not be reasonable to the tax collector. Accordingly, courts are asked to examine the relevant facts and circumstances of the business and the underlying employment relationship in order to render an opinion as to whether the compensation paid was reasonable.”

The Sixth Circuit, which is comprised of Ohio, Tennessee, Michigan, and Kentucky, has been one of the most influential in developing the judicial framework for determining deductible amounts of reasonable compensation. Furthermore, as addressed below, the Sixth Circuit has been generous to taxpayers in determining reasonable compensation.

The Regulations under Section 162 state that two tests must be satisfied in order for compensation to be deductible by the corporation: the compensation must be both intended as compensation and reasonable in amount.<sup>5</sup> Whether these two tests are met is determined based upon all of the facts and circumstances.<sup>6</sup>

### **Amount test**

Most reasonable compensation cases focus on the amount of the compensation payment to determine if it is reasonable. Generally, all twelve circuits rely on a multi-factor test to determine the amount of reasonable compensation.<sup>7</sup> *Mayson Manufacturing Co.*,<sup>8</sup> heard by the US Court of Appeals for the Sixth Circuit in 1949, is probably the most-used case in determining whether or not compensation is reasonable. Of the twelve circuits, seven use the multiple factors identified in *Mayson Manufacturing*. In *Mayson Manufacturing*, the Sixth Circuit Court of Appeals generated a list of nine criteria to be used in evaluating

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<sup>5</sup> Reg 1.162-7(a).

<sup>6</sup> *Mayson Manufacturing Co. v Comm.*, 38 AFTR 1028.

<sup>7</sup> The single-factor, independent investor standard test identified by the Seventh Circuit in *Exacto Springs Corp. v Comm*, 84 AFTR 2d 99-6977, has been largely dismissed. Rather, Courts analyze the multi-factor tests through the lens of an independent investor.

<sup>8</sup> *Mayson Manufacturing Co. v Comm.*, *supra*.

compensation and noted that no single factor is decisive. See Exhibit 1. These nine factors are discussed here in more detail.<sup>9</sup>

#### *Employee's qualifications*

When analyzing the employee's qualifications, courts usually look at the employee's experience and any specialized knowledge or skills that the employee used to contribute to the success of the taxpayer. The employee's education, inventions, competence, resourcefulness, aggressiveness, previous successes, etc. are usually considered in analyzing this factor.

Recommendation to comply with this factor: Keep track of shareholder-employee successes, resourcefulness, etc., especially when the economy is down but the shareholder-employee is able to increase sales, profits, etc.

#### *Nature, extent and scope of the employee's work*

Drexel Park Pharmacy, Inc.<sup>10</sup> provides much insight on the nature, extent, and scope of the employee's work. If the employee performed the work of several employees, some courts have allowed the aggregation of salaries to determine the amount that is reasonable for this employee. For example, the court in Drexel stated: “[b]ecause he performed these several functions, this would tend to justify a salary in excess of the average proprietor-pharmacist operating a pharmacy.” However, aggregating of salaries was not allowed by the Tax Court in a case that was appealable to the Sixth Circuit where the court stated: “[a]lthough Miller may have performed some of the functions of those employees, he most assuredly did

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<sup>9</sup> In 1982, the Sixth Circuit Court of Appeals heard *Kennedy, Jr. v Comm.*, 49 AFTR 2d 82-628, and listed other factors to consider in addition to the Mayson criteria, including success of the employee's efforts, profitability of the business, absence of the usual fringe benefits such as a pension or profit sharing plan or stock options, unusual capability of employees, and bonuses not paid in the same ratio as stockholdings. The Kennedy case was decided after the Tax Court heard *Helen L. Foos*, TC Memo 1981-61, in which the court considered a list of 21 factors. The Courts have since indicated that the list of factors can grow too long, and the Sixth Circuit has reverted back to using just the nine factors in Mayson. See *Alpha Medical Inc., v Comm.*, supra.

<sup>10</sup> 1979 TC Memo 1978-518.

not perform the same services. There were not enough hours in the day for Miller to perform the same services...”<sup>11</sup>

Complications can arise when the employee works for several businesses. One way to determine salaries amounts paid by each corporation is to have each corporation pay the employee based upon the number of hours worked for each one.<sup>12</sup> However, this criterion need not be strictly followed in the Sixth Circuit. In Drexel Park Pharmacy the court stated:

“[W]e are loathe to value services rendered on such a quantitative basis when qualitative factors such as the business success so obvious here provide such an objective means of valuation. Additionally, the record indicates that petitioner did spend time, apart from those periods when he was physically present at the pharmacy, working on its problems. Although physical presence on the job is a relevant consideration when the issue is one of reasonable compensation, in the instant case we believe it does not carry great weight in light of the other data available. The value of services rendered may go far to mitigate their part-time character.”

Recommendation to comply with this factor: Record the hours the shareholder-employee spends working in the business but keep in mind the qualitative factors listed under employee’s qualifications.

#### *Size and complexities of the business*

Courts usually look at the number of products/services offered by the taxpayer, total sales, number of clients and number of employees<sup>13</sup> when analyzing the size and complexities of the business. Growth in these areas is also considered relevant<sup>14</sup> as is compliance with government regulations such as Medicare, insurance requirements, and state health licensing rules.<sup>15</sup> Length of tenure with the business is also a factor since employees who have been with the company since inception will have much information on the history and functionality of the corporation.

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<sup>11</sup> Ken Miller Supply, Inc. v Comm., TC Memo 1978-228.

<sup>12</sup> Geraldine C. Medina, et al, TC Memo 1983-253.

<sup>13</sup> The shareholder-employee does not have to supervise the employees directly. The Appeals Court stated that all successful executives must delegate responsibility. James D. Kennedy Jr. v Comm., 49 AFTR 2d 82-628.

<sup>14</sup> The John Harsch Bronze & Foundry Co, TC Memo 1958-125

<sup>15</sup> See, for example, Apha Medical, 83 AFTR 2d 99-1922 and John Harsch Bronze & Foundry, supra..

Recommendation to comply with this factor: Most companies already have data on the number of employees but it would be helpful to note changes in the business environment, indicating complexity, and growth in different business segments.

*Comparison of salaries paid with gross and net income*

The fourth factor is a comparison of salaries paid with gross and net income. If the business is paying out all of its net income as deductible compensation expense, it would not be able to pay any nondeductible dividends. The Sixth Circuit is especially taxpayer-friendly in this area: in *Boca Construction*, the Tax Court found that compensation equal to 30% of gross receipts and 80% of net income to the two shareholders-employees was reasonable.<sup>16</sup> Further, in *Law Offices of Richard Ashare*<sup>17</sup> the corporation had an *unwritten* policy to pay salary to the sole shareholder-employee equal to all fees received during the year, less an amount equal to the sum of the corporate expenses plus any funds retained for the business' future operations. In that same case, the Tax Court held the of compensation expense of \$1,750,000 was reasonable even though the salary expense deviated from the unwritten policy and created a loss of \$1,857,933 that was carried back to generate a \$518,812 tax refund. The Tax Court held that the fact that the business had to borrow over \$900,000 from the sole shareholder-employee in order to pay the salary was irrelevant.

Most of the time the shareholder-employee will be paid both a salary and a bonus, with the bonus being paid as a percentage of sales or net income.<sup>18</sup> The regulations state that amounts paid under a contingent compensation agreement are allowed as a deduction.<sup>19</sup> Whether the contingent compensation agreement is reasonable are the circumstances taken into account when the contingent compensation agreement was made, not when the compensation is questioned by the government.<sup>20</sup> When both the corporation and the

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<sup>16</sup> *Boca Construction Inc*, TC Memo 1995-5.

<sup>17</sup> *Law Offices of Richard Ashare P.C. v Comm.* TC Memo 1999-282

<sup>18</sup> See, for example, *Old Colony Ins. Service, Inc.*, TC Memo 1981-177 and *Plastics Universal Corp., et al*, TC Memo 1979-355.

<sup>19</sup> Reg. 1.162-7(b)(2).

<sup>20</sup> Reg 1.162-7(b)(3).

employee benefit from the incentive compensation agreement, it is likely to be respected by the courts.<sup>21</sup>

As the court stated in *Mayson*,

“[t]he fact that compensation under a contract-bonus scheme and commission basis is larger in a particular successful year than in the immediate preceding years does not make it unreasonable, where the incentive principle of compensation has been fairly entered into between the parties and has been in satisfactory operation over a period of years...”

In general, these incentive compensation contracts will probably never be deemed to be created via an arms-length transaction due to the very structure of closely-held corporations. However, incentive compensation will generate high salaries in good years and lower salaries in less profitable years and this relationship should support the corporation when deducting the compensation in higher profitable years. The court stated in *Machinery Specialties & Engineering Co. v US*:<sup>22</sup> “The compensation agreement entered into between the corporation and Mr. Sherman, even though not an arms-length transaction, was one that was fair when entered into and one that has been consistently adhered to over the years, both lean and fat.”

Recommendation to comply with this factor: A written compensation policy is recommended and should be followed in years in which it produces either lean or large compensation to the shareholder-employee.

#### *Prevailing Economic Conditions*

In analyzing the fifth factor, prevailing economic conditions, the courts usually analyze whether the success of the business is a result of the employee’s efforts, thereby justifying higher compensation. Examples of employees’ efforts which increase sales, and profitability (and therefore bonuses) include making new products when demand for old products is expected to decline,<sup>23</sup> inventing a new product or manufacturing process,<sup>24</sup> reducing expenses,<sup>25</sup> and exhibiting excellent business skill.<sup>26</sup> However, if the

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<sup>21</sup> *Kennedy, Jr. v Comm.*,supra.

<sup>22</sup> 50 AFTR 2 82-5156.

<sup>23</sup> *Bluegrass Plant Foods, Inc.*, TC Memo 1958-53.

<sup>24</sup> *The John Harsch Bronze & Foundry Co*, supra.

<sup>25</sup> *John J. Schiff*, TC Memo 1980-578.

<sup>26</sup> *Drexel Park Pharmacy, Inc., et al*, TC Memo 1979-518.

company experiences growth that is unrelated to the shareholder/employee efforts, like a demand for the product due to war or a higher sales price due to an oil embargo, the growth would not justify higher compensation. Once again, the Sixth Circuit is lenient on this issue: In *Mayson Manufacturing*, the Appeals Court stated that the fortuitous circumstances of a war economy alone would not “establish unreasonableness where the war business has resulted in increased work and responsibility.”

Recommendation to comply with this factor: Similar to the recommendation for Employee Qualifications factor, businesses should keep track of the resourcefulness and business skill of the employee-shareholder and should keep track of the overall economic conditions plus the economic conditions within the company’s market.

#### *Comparison of salaries with distributions to stockholders*

When looking at the sixth factor, comparison of salaries with distributions to stockholders, some courts note the unfavorable factor of never paying any, or only minimal, dividends. As the Tax Court stated in analyzing *Drexel Park Pharmacy’s* \$50 annual dividend: “Drexel’s dividends did not represent any reasonable return on investment. We believe this factor provides the strongest evidence that [the shareholder-employee] was overcompensated.” This factor presents another area where the Sixth Circuit is especially taxpayer-friendly: In one of the last cases decided in the Sixth Circuit on reasonable compensation,<sup>27</sup> the corporation paid out all of its earnings as compensation expense to the sole shareholder for ten straight years (not the years in question) and then liquidated assets and borrowed money from the sole shareholder in order to pay a salary that created a loss so company could carryback an NOL and obtain a full refund of taxes paid in the last carryback year. In general, however, the courts look unfavorably upon high deductible compensation coupled with low or nonexistent nondeductible dividends.<sup>28</sup>

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<sup>27</sup>The Law Offices of Richard Ashare P.C. v Comr., TC Memo 1999-282.

<sup>28</sup> *Alpha Medical, Inc*, supra, where shareholder-employee received \$4.4 million in compensation but only \$1,500 in dividends.

Many owners may be happy without receiving any dividends and instead realizing appreciation in their stock, so this sixth factor has generally been expanded into a comparison of salaries with distributions *and retained earnings*. In *Alpha Medical Inc. v Comr.*, the Appeals Court stated:

“It is true that a closely held corporation may have valid business reasons for not paying dividends; for example, it may choose to retain its earnings to fuel future growth. An individual shareholder may participate in the success of a corporation through the appreciation in the value of the stock brought on by retained earnings and the possibility of a future return. For reasons perfectly acceptable by the tax code, many investors prefer stock appreciation over dividends.<sup>29</sup>”

If the taxpayer is paying out all of its net income as compensation, so that the taxpayer is not paying any dividends or increasing retained earnings, then an independent shareholder would likely deem the compensation expense unreasonable. As such, within this factor is where many courts address the analysis from an independent investor standard – i.e., by looking at the return on equity to determine if the independent investor would be satisfied.<sup>30</sup>

Recommendation to comply with this factor: If the business is profitable, the shareholder-employee should consider paying dividends, especially while the tax rate on qualified dividends is only 15%. Further, bonuses should never be paid in proportion to stock ownership.

#### *Prevailing rates of compensation for comparable positions in comparable concerns*

Expert testimony usually comes into play when analyzing the seventh factor, prevailing rates of compensation for comparable positions in comparable concerns. However, because these cases usually stem from closely-held businesses, which are not required to file compensation documentation with the SEC, it is not easy to find comparable salary data. Further, courts often do not accept the testimony of experts.<sup>31</sup> There are, of course, exceptions where the Tax Court accepted the petitioner’s expert witness

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<sup>29</sup> *Alpha Medical Inc. v Comm.*, supra.

<sup>30</sup> See, for example, *Alpha Medical*, supra.

<sup>31</sup> See for example, *Boca Construction Inc v Comm.*, TC Memo 1995-5 and *Alpha Medical*, supra.

calculation and many of these cases stem from the Sixth Circuit.<sup>32</sup> However, most reasonable compensation cases in the Sixth Circuit do not involve expert witness testimony. See Exhibit 2.

Recommendation to comply with this factor: If the business is in an industry where trade publications indicate average salaries, the shareholder-employee should keep that information in case the compensation amount is questioned by the IRS. However, in the event of a reasonable compensation case going to court, careful consideration should be given to the cost of expert testimony versus the likelihood that the testimony would be accepted by the court.

#### *Salary policy of taxpayer as to all employees*

In considering this factor, courts look to see if the taxpayer pays high salaries to all employees, both shareholders and nonshareholders.<sup>33</sup> Here again, the Sixth Circuit Court of Appeals can be taxpayer-friendly: In a recent case in a business had that had 60 employees and paid over \$6 million in total salaries, the shareholder-employee's compensation was deemed reasonable even when it comprised 73% of the total compensation paid.<sup>34</sup> In an earlier case where the reasonable compensation was not appealed, the Tax Court wasn't so generous. It found that the shareholder-employee's salary was more than twice the combined salaries of the next six highest-paid employees.<sup>35</sup>

The Courts also consider whether compensation increased for all employees when it increased for the shareholder-employee,<sup>36</sup> and look to see if compensation to shareholders is paid in proportion to ownership.<sup>37</sup>

Recommendation to comply with this factor: If the shareholder-employee is paid a high amount of compensation relative to peer organizations, the business should pay higher compensation to all employees. If the shareholder-employee's salary increases due to increased work load, the business

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<sup>32</sup> See for example, *Laure v Commissioner*, 70 TC 1087, *Geraldine C. Medina, et al*, TC Memo 1983-253, and *Acme Construction Co., Inc v Commissioner* TC Memo 1995-6.

<sup>33</sup> *Practical Mechanics, Inc.*, TC Memo 1968-284 and *East Tennessee Motor Co. v US*, 27 AFTR 2d 71-452.

<sup>34</sup> *Alpha Medical*, supra.

<sup>35</sup> *Alma Piston Co.*, TC Memo 1976-107.

<sup>36</sup> *Mayson Manufacturing*, supra.

<sup>37</sup> *Mayson Manufacturing*, supra.

should show that more personnel was hired to cope with the increased workload or that current employee's salaries increases with the shareholder-employee's salary.

*Amount of compensation paid to the employee in prior years*

Finally, for small corporations with a limited number of officers the amount of compensation paid in prior years should be considered. In *Lucas v Ox Fibre*,<sup>38</sup> the Supreme Court mandated that courts must allow a deduction in the current year for prior undercompensation. In order to be allowed a deduction for prior undercompensation, the taxpayer must show that the employee's compensation was low in an earlier year and the amount of the current-year compensation that is intended to compensate for the prior underpayment.<sup>39</sup> This factor is especially useful for new businesses that become successful. In the early years, the shareholder-employee may take little or no compensation in order to build up the business assets.<sup>40</sup> As the business becomes profitable, it will begin compensating the shareholder-employee. Even if the shareholder-employee did not document the undercompensation in the year of the undercompensation, the future payments can be treated as prior compensation as long as the current-year payment is documented as prior compensation.<sup>41</sup>

Recommendation to comply with this factor: If part of the current-year compensation is to be treated as payment for prior undercompensation, that information, along with specific dollar amounts, should be documented by the Board of Directors.

**Intent test**

The regulations under Section 162 state that where a corporation has few shareholders and those shareholders receive salaries "in excess of those ordinarily paid for similar services and the excessive payments correspond or bear a close relationship to the stockholdings of the officers or employees, it

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<sup>38</sup> *Lucas v. Ox Fibre Brush Co.*, 8 AFTR 10901 (1930).

<sup>39</sup> *Alpha Medical*, supra.

<sup>40</sup> *Geraldine C. Medina*, supra.

<sup>41</sup> *Acme Constuction Co., Inc* , TC Memo 1995-6

would seem likely that the salaries are not paid *wholly* for services rendered, but that the excessive payments are a distribution of earnings upon the stock.”<sup>42</sup> (Emphasis added). Accordingly, any payment can be characterized as partly for services and partly as a dividend.

With the multi-factor test, courts have some basis on which to determine reasonableness. Intent, on the other hand, is hard to quantify. Consistent with this sentiment, courts rarely focus on the intent test, mentioning it only as an aside.<sup>43</sup> The exception is where it is obvious that the intent of the payment was to pay out earnings. For example, in *Hudlow* the shareholders-employees would sit down at the end of the year, determine how much profit they had made for that year, and then split those profits in direct proportion to their stock ownership.<sup>44</sup>

Recommendation for this test: All transactions between the corporation and the employee-shareholder should be documented so that intent for each payment is clear. For example, if the shareholder-employee has loans to the corporation, those loans should pay sufficient interest so that compensation payments will not be reclassified as interest payments. With respect to reasonable compensation, paying out dividends to shareholders will indicate that salary payments were not really disguised dividends.

### **Summarized Recommendations**

If your clients compensation deduction is questioned by the government, it is important to provide the courts with convincing evidence regarding the reasonableness of the salary. There are several steps the taxpayer can take to ensure that the compensation amount is upheld.

First, the taxpayer should create, document, and follow a compensation formula.<sup>45</sup> That compensation formula should neither pay out all taxable income as compensation nor pay only to shareholder-employees, at least not in proportion to their stock ownership. The compensation policy should be followed each year, even when it yields low compensation. It should not be changed in a year when it

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<sup>42</sup> Regulation 1.162-7(b)(1).

<sup>43</sup> See, for example, *Laure v Comm.* supra

<sup>44</sup> *W.C. Hudlow, Jr. v Comr.*, TC Memo 1971-218.

<sup>45</sup> *Dexsil Corp. v Comm.*, TC Memo, 1999-155.

would otherwise yield low compensation. However, note that a documented and followed compensation formula won't always save the taxpayer from unreasonable compensation,<sup>46</sup> given that the regulations state that "[i]n any event the allowance for the compensation paid may not exceed what is reasonable under all of the circumstances."<sup>47</sup> Even if the government has previously audited the business and found no faults with the compensation plan, the compensation can still be questioned on the reasonableness issue.<sup>48</sup>

When the salary increases dramatically from one year to the next without a proportionate increase in duties, the increased salary may be denied. As such, if compensation increases dramatically, document increased duties that the shareholder-employee performs. If the shareholder-employee has been paid a lower salary in earlier years, make sure that previous undercompensation and the amount of current make-up compensation has been documented.<sup>49</sup>

If a client owns more than one business and works for each of them, the salary from each business should be adjusted annually in order to reflect the amount of time the shareholder-employee worked for each.<sup>50</sup>

It may be wise to consider paying some dividends if it seems like the taxpayer's compensation may be scrutinized. Almost all cases that examine taxpayers that have not paid any dividends cite the lack of dividends as an unfavorable factor to the taxpayer.

The courts can weigh the testimony of witnesses based upon their credibility. However, courts often do not accept the testimony of experts. There are, of course, exceptions where the Tax Court accepted the petitioner's expert witness calculation. However, when defending a reasonable compensation case, consideration should be given to the cost of the expert witness against the likelihood that the testimony will be accepted.

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<sup>46</sup> Owensby & Kritikos, Inc. v Comm., supra.

<sup>47</sup> Reg 1.162-7(b)(3).

<sup>48</sup> Alpha Medical, Inc., supra

<sup>49</sup> See Alpha Medical, Inc., v Comm., supra, where the president's salary increased from \$400,000 to \$4.4 million was allowed.

<sup>50</sup> Geraldine C. Medina, supra.

Lastly, in almost all of these reasonable compensation cases, the government argues that the deductible compensation expense is too high. However, if the corporation happens to be an S corporation where the incentive is to pay lower wages than average in order to minimize Social Security taxes, the government can argue that salaries are too low.<sup>51</sup>

### **About the Author**

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<sup>51</sup> Joly v Comr., 85 AFTR 2d 2000-1234.

Exhibit 1

Mayson Manufacturing Factors

In 1949, the Appeals Court for the Sixth Circuit listed the following factors that are relevant in determining reasonable compensation:

1. Employee's qualifications
2. Nature, extent, and scope of the employee's work
3. Size and complexity of the business
4. Comparison of salaries paid with the gross income and net income
5. Prevailing general economic conditions
6. Comparison of salaries with distributions to stockholders
7. Prevailing rates of compensation for comparable positions in comparable concerns
8. Salary policy of taxpayer as to all employees
9. Amount of compensation paid to the employee in prior years (for small corporations with a limited number of officers)

No single factor is decisive.

Exhibit 2  
Reasonable Compensation Cases Heard in the Sixth Circuit

<u>Case</u>	<u>Year</u>	<u>Decision</u>	<u>paid</u> <u>div?</u>	<u>Court</u>	<u>Formal</u> <u>Plan</u>	<u>Expert</u> <u>Witness</u> <u>Accepted</u>
Toledo Grain	1932	tp	yes	Appeals	yes	yes
Capital-Barg	1942	tp	yes	Appeals	yes	yes
Van Hooser	1943	tp	no	DC	no	yes
Taylor & Co.	1945	tp	yes	DC	yes	yes
Roth Office Equip	1949	tp	yes	Appeals	yes	yes
Wright-Bernet	1949	tp	no	Appeals	yes	yes
Mayson Mfg.	1949	tp	yes	Appeals	yes	sort of
James McHale	1957	tp		DC	yes	N/A
French Broad Ice Cream	1957	split	no	DC	yes	yes
Bluegrass Plant Food	1958	split	no	TC	sort of	N/A
John Harsch Bronze	1958	tp	yes	TC	yes	N/A
Wilson-Weesener	1958	tp	yes	DC	yes	N/A
Superior Pattern	1959	tp	yes	TC	yes	yes
Mulder Bros, Inc	1967	govt		TC	N/A	N/A
Practical Mechanics	1967	split - tp	no	TC	no	N/A
Dahlem Fdtn	1970	tp	no	TC	no	N/A
East TN Motor Co	1971	govt	one yr	Appeals	not given	both side
Ettle Co Inc	1971	govt split -	no	TC	N/A	N/A
WC Hudlow, Jr	1971	govt	no	TC	no	N/A
Lakewood Mfg	1972	govt	earlier	Appeals	no	no
Andrews Distributing	1972	tp split -	no	TC	yes	N/A
Superior Motors	1974	govt	no	TC	yes	a little
Alma Piston Co	1976	govt	yes!	TC	yes	N/A
Osborne Motors	1976	tp	no	TC	yes	N/A
Knodel-Tygrett	1978	govt	nominal	Appeals	Yes	tp-no govt-yes
Ken Miller Supply	1978	split	nominal	TC	yes	no
Laure	1978	tp	no	TC	yes	yes
Plastics Universal Co (Wells)	1979	split	no	Appeals	yes	N/A
Drexel Park Pharmacy	1979	split-govt	nominal	TC	no	N/A
John J Schiff	1980	tp	nominal	TC	no	N/A
Old Colony Ins	1981	tp	no	TC	bonus - yes, salary, no	N/A
Joseph Proctor	1981	split-govt	N/A	TC	no	N/A
Kennedy	1982	tp	no	Appeals	yes	N/A

Exhibit 2, continued.

Machinery Specialites	1982	tp	nominal	DC	yes set salary,	N/A
Geraldine Medina	1983	tp	yes	TC	no bonus	yes
Boca Construction	1995	tp	small	TC	yes	no
Acme Construction	1995	tp	no	TC	no yes, but	yes
Alpha Medical Law Offices of Richard Ashare	1999	tp	nominal	Appeals	new	no
	1999	tp	no	TC	sort of	N/A