Choice of Entity

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THE CHOICE OF ENTITY: AN IMPORTANT BUSINESS DECISION.

- In order to choose the entity that best meets the needs of the business, and its clients and customers, the business owner must be aware of the advantages and disadvantages in the various entities.
- Some of the most obvious factors include:
  - taxation,
  - management,
  - liability,
  - formalities,
  - financing and transferability of ownership.

Taxation. A primary tax issue is whether the profits and losses of the business will be "passed through" to the owner of the business.

- **Pass through taxation:**
  - profits are not taxed at the business level, but are subject to tax only when realized by the owner(s) of the business.
- **"Double Taxation:"**
  - A business pays taxes when profits are earned by the business and again when profits are recognized by the owner(s).

Pass-Through Entities	Double Taxed Entities
LLC	C corporation
LP	
S corporation	

Management.
Corporations.

- Management of a corporation is governed by the West Virginia Code and the corporation's bylaws.
  - Bylaws set forth the relationship between the owner(s), directors and officers.
  - Corporate officers may include a president, treasurer, and secretary.
  - The same individual may simultaneously hold more than one office in a corporation.
  - A corporation must obtain and document the approval of its shareholders, board of directors, and officers for certain management decisions.

Management.
LLCs & LPs.

- An LLC and an LP can be more simple and flexible.
  - The operating agreement of an LLC and the partnership agreement of an LP explain their management and decision-making processes.
  - A LP has both limited and general partners.
    - Limited partners of an LP are prohibited from any involvement in the management of the operations of the partnership.
    - General partners in an LP are responsible for management decisions, but have unlimited liability for the debts and obligations of the partnership.
  - All members of an LLC may take part in the management of their company.
  - An LP requires at least two owners. An LLC may function with just one owner.

Limited Liability.

Limited liability protection: A company's owner cannot be forced to surrender his/her personal assets to satisfy debts of the company: The owner's liability is limited to his investment in the company.

- Corporations, LPs, and LLCs all provide some level of limited liability protection to the owners.
- Limited liability protection can be forfeited.
  - For example, when a limited partner of an LP exercises management authority or a corporation fails to adhere to legal formalities.

Formalities.

- West Virginia law imposes certain formalities on a corporation that are not imposed on an LLC or an LP. These formalities include:
  - stock issuance,
  - adopt bylaws,
  - owner meetings,
  - organizational and director meetings,
  - election of a board of directors.

  Each of these activities must be documented in a corporate record book maintained by the secretary.
- Neither an LLC, nor an LP is required to issue shares or have meetings of its owners or managers, or to elect directors or officers (unless required by the operating agreement or partnership agreement).

Ownership and Financing.

- The owners of an LLC are referred to as **members**, the owners of an LP are referred to as **partners**, and the owners of a corporation are referred to as **shareholders**.
- A shareholder is often given a stock certificate in exchange for his investment in the corporation. A contribution to, or investment in, an LLC or an LP need not be documented by a certificate of ownership.
  - The corporate form of financing is preferred for companies with a large number of investors or owners, who may have little management involvement.
  - LLCs and LPs are not designed for general investment from the public. An LP has been traditionally used as an investment vehicle for gathering capital from a group of investors who do not wish to participate in management or risk personal liability: "silent investors."

Transferability of Ownership.

- The owners of an LP or an LLC may withdraw their assets at will, but transfers of ownership interests may require unanimous approval of remaining owners depending on the operating or partnership agreements.
- Within a corporation, the majority shareholders may prohibit withdrawal of minority interests' assets.
  - This may promote the stability in a joint venture; however, it would also be a significant disadvantage for a minority shareholder wanting out.
  - Fiduciary Duty of Majority. Tri-State Petroleum Corp v. Kevin P Coyne, 2018 WL 1788535 (April 12, 2018)

Tri-State Petroleum Corp v. Kevin P Coyne

- 3. “While the officers and directors of a business corporation are accorded a rather broad latitude in the conduct of the affairs of the corporation, they occupy a fiduciary relationship toward it and its shareholders. The same fiduciary relationship exists on the part of the majority shareholders of a business corporation toward its minority shareholders.” Syllabus Point 2, Masinter v. WEBCO Co., 164 W. Va. 241, 262 S.E.2d 433 (1980).
- 4. “A violation of the fiduciary relationship may result from oppressive conduct, which is conduct that departs from the standards of good faith and fair dealing which are inherent in the concept of a fiduciary relationship.” Syllabus Point 3, Masinter v. WEBCO Co., 164 W. Va. 241, 262 S.E.2d 433 (1980).
- 5. “An attempt to ‘freeze or squeeze out’ a minority shareholder from deriving any benefit from his investment in a private business corporation, without any legitimate business purpose, may constitute oppressive conduct.” Syllabus Point 4, Masinter v. WEBCO Co., 164 W. Va. 241, 262 S.E.2d 433 (1980).

The “S” Corporation:

- An “S” corporation is a regular business corporation for which the owners elected taxation as a “Subchapter S Small Business Corporation.”
- It is taxed as a pass-through entity.
- An “S” corporation may not have:
  - more than one-hundred shareholders,
  - more than one class of stock,
  - Shareholders other than individuals and some estates or trusts, or
  - nonresident alien shareholder.
- An often unintended results of electing to become an “S” corporation is that corporate earnings are taxed to the owners <u>*whether distributed or not*</u>. This may make it difficult for the business to accumulate capital.

SUMMARY: CHOICE OF ENTITY COMPARISON

	C Corp	S Corp	LLC	LP
Ownership	Shareholders (unlimited)	Shareholders (100 max.)	Members (unlimited)	Partners (unlimited general & limited)
Management	Governed by WV Code & Corporation's Bylaws Less flexibility	Governed by WV Code & Corporation's Bylaws Less flexibility	Governed by operating agreement More flexibility All members participate in management	Governed by partnership agreement More flexibility Limited partners prohibited from managing General partners responsible for management
Liability	Limited liability	Limited Liability	Limited Liability	Limited partners = limited liability General partners = unlimited liability
Formalities	Adopting Bylaws Filing Articles Issuing Stock Shareholder, Owner, and Director meetings Director & Officer Elections Filing annual reports Keeping corporate records	Adopting Bylaws Filing Articles Issuing Stock Shareholder, Owner, and Director meetings Director & Officer Elections Filing annual reports Keeping corporate records	Stipulated in operating agreement No formal record keeping required	Stipulated in partnership agreement No formal record keeping required
Transfers of Ownership	Majority interests may prohibit withdrawal of minority interests' assets	Majority interests may prohibit withdrawal of minority interests' assets	May withdraw assets at will May require approval of remaining owners	May withdraw assets at will May require approval of remaining owners

Taxation Considerations

Governing Tax Rules.

- Subchapter K
  - IRC sections 701 through 761.
  - partnerships and Limited Liability Companies (“LLCs”), electing to be taxed as a partnership.
  - A partnership itself is not a taxable entity; it passes through to the partners their respective shares of income and loss, which are then reported on their returns.
- Subchapter C
  - IRC sections 301 through 385.
  - All corporations are initially formed as C corporations.
  - A C corporation is a separate taxpaying legal entity. Corporate income and losses are computed and taxed at the corporate level. Corporate shareholders are not taxed on corporate income but are taxed on distributions.
- Subchapter S
  - IRC sections 1361 through 1378.
  - The incorporators of a C corporation can elect that the corporation be treated as a subchapter S corporation.
  - Certain subchapter S corporations are taxed much like partnerships, and are governed under subchapter S, I.R.C.
- Rates:
  - C corporations: flat 21%.
  - Individuals: rates begin at 10% and range up to 37% (not including an additional 3.8% tax on net investment income).

LLC taxed as a Partnership under Subchapter K.

- The LLC is a hybrid entity between a partnership and a corporation.
- An LLC has flexibility with respect to distributions and the option for the single-tax, flow-through status of a partnership with the limited liability protection of a corporation.
- An LLC has the option to be taxed as a partnership:
  - May “check the box” not to be taxed as a C corporation.
  - Eliminates double taxation.
  - The LLC is taxed like a partnership with a flow-through tax only at the individual level.

Partnership Basis.

- An owner’s basis in their LLC interest equals the amount of cash and the adjusted basis of any property contributed by the owner to the entity plus the owner’s share of entity debt.
  - Property may be transferred to an LLC in exchange for an interest in the entity without recognition of gain or loss.
  - Recourse debt is allocated to those members who bear the economic risk of loss with respect to the debt. Nonrecourse debt is generally be allocated among the owners in accordance with their percentage interest in the profits of the entity.

Partnership Loss Pass-through.

- One of the primary advantages of a pass-through entity is the ability to pass-through losses to the partners or members. However, three sets of rules limit and defer the ability to recognize those losses:
  - Basis Limitation:
    - The losses that may flow through to a partner are limited to his basis in his interest in the entity.
  - "At Risk" Limitation:
    - A partner may only deduct losses from a partnership to the extent of the amount he has "at risk."
  - Passive Activity Limitation:
    - Losses from passive activities are deductible only to the extent of passive gains.

Single Member LLC (Pass-Through Taxation).

- An LLC with a single owner is disregarded for all federal tax purposes unless the entity elects to be classified as an association taxable as a corporation.
- The planning possibilities for the use of disregarded entities arise from several general categories of SMLLC effects:
  - Intra-Group Transactions
  - Third-Party Transactions
  - Transfer of Ownership Interest
  - Entity Conversion
  - Disregarded Entity and S-Corporations
- FEINs:
  - SMLLCs are to use their owner's taxpayer identification number for federal tax purposes.
  - However, federal EINs are mandatory for federal employment tax returns for which SMLLCs have an obligation to file and pay taxes.
    - Thus, SMLLCs that have employees must obtain a federal EIN.

Taxation of the S-Corporation.

A. Avoidance of Double Taxation.

- An S corporation is a small business corporation that a valid election under section 1362(a) is in effect for the taxable year.
- The S election is made by filing a completed Form 2553, Election by a Small Business Corporation.
- S corporations must file informational returns with the IRS.
- Shareholders of S corporations are taxed on corporate earnings and deduct corporate losses directly.

Taxation of the S-Corporation.

B. Eligibility to Elect S Status.

- S corporations are subject to a number of restrictions as to ownership.
- Under current law, an S corporation must be:
  - a domestic corporation;
  - that does not have more than 100 shareholders;
  - that does not have as a shareholder a person (other than an estate, certain trusts, or charitable or tax-exempt organizations);
  - that does not have a nonresident alien as a shareholder;
  - that does not have more than one class of stock that is issued and outstanding; and
  - is not otherwise an ineligible corporation.
- If an S corporation ceases to satisfy the eligibility requirements, its S status will be terminated.

Taxation of the S-Corporation.

C. One-Class-of-Stock Limitation.

- The Subchapter S rules prohibit the issuance of more than one class of stock; i.e., stock that has a preference on distributions during either the operational or liquidation phase.
  - Differences in common stock voting rights are disregarded.
  - Shareholder covenants contained in buy-sell agreements generally will not result in a second class of stock
- An S corporation that is treated as having more than one class of stock loses its S corporation status on the date the corporation is treated as having more than one class of stock.
  - The S corporation may apply for inadvertent termination relief.

Taxation of the S-Corporation.

D. Tax Year.

- An S corporation's taxable year must be a "permitted year" or a grandfathered fiscal year. Currently, a "permitted year" means the following taxable years:
  - (i) a calendar year,
  - (ii) a section 444 taxable year,
  - (iii) a 52-53-week taxable year ending with reference to a calendar year or to a section 444 taxable year, and
  - (iv) a taxable year for which the corporation establishes a "business purpose" to the satisfaction of the Commissioner under section 442.

Taxation of the S-Corporation.

E. Pass-Through.

- Each shareholder of and S corporation must take into account his or her pro rata share of:
  - (1) separately stated items of income, loss, deduction, and credit, and
  - (2) nonseparately computed income or loss.

  If the shareholder dies, or if the shareholder is an estate or trust that terminates before the end of the S corporation’s taxable year, the shareholder’s pro rata share of these items is taken into account on the shareholder’s final return.

- The character of separately stated items is determined at the corporate level.

Taxation of the S-Corporation.

F. Accumulated Adjustments Account ("AAA").

- In a corporation that has always been an S corporation distributions are tax-free to the extent of a shareholder's stock basis.
- Where an S corporation has Subchapter C accumulated earnings and profits ("AE&P"), the AAA distinguishes S corporation earnings that can be distributed tax-free from AE&P that cannot be distributed without incurring the dividend provisions of section 301.
- The AAA provides a three-tiered approach:
  - The distribution is tax-free to the extent of the AAA.
  - If the distribution exceeds the AAA, it is a section 301 dividend to the extent of AE&P.
  - If the distribution exceeds both the AAA and AE&P, it is tax-free to the extent of stock basis.

Taxation of the S-Corporation.

G. S Corporation Terminations.

- An S election can be terminated by various means:
  - Revocation.
  - By a corporation ceasing to be a small business corporation.
  - Where the passive investment income of the corporation exceeds 25% of the gross receipts of the corporation for three consecutive years.
    - A termination for having excessive passive income is effective on the first day of the first tax year beginning after the third consecutive year in which the S corporation had excess passive investment income.
- Once an S election is terminated, unless the IRS consents, the corporation is unable to elect S corporation status for five tax years.

Medicare Tax On Net Investment Income.

- The Medicare tax on net investment income is an additional 3.8% tax that applies to trade or business income resulting from a passive activity within the meaning of § 469, or the trading in financial instruments or commodities as defined in § 475(e)(2).
- Income received by a taxpayer from a trade or business in which that taxpayer materially participates is not subject to the additional 3.8% tax.
- This exclusion is not available to shareholders of a C corporation (because the passive activity loss rules of § 469 do not apply to C corporations unless they are closely held).
- The exclusion is available to shareholders of S corporations that materially participate in the trade or business of the entity.
  - As a result, S corporation shareholders that are involved in the operations of the entity's trade or business activity on a regular, continuous, and substantial basis are not subject to the additional 3.8% tax on net investment income received as a shareholder of that entity.

Choice of Entity Considerations-New Entities

- Determine for client—
  - To what extent does or will business distribute or retain annual profits?
  - How long does the owner want to own this business? What's the exit strategy?
  - If operating as C corp, could C corp deduct expenses shareholder could not (SALT, investment related expenses) that owner could not deduct as pass through?
  - Does business operate in multiple jurisdictions? C corp may simplify filings
  - Would entity qualify as small business stock (section 1202 stock) if entity were C corp?
  - If entity operated as a pass through entity, would pass through income qualify as qualified business income under Section 199A?

Choice of Entity Considerations-New Entities

- C Corporation
  - New 21% corporate rate
  - Same issues as before with respect to double taxation if retained earnings distributed later
  - Personal holding company tax still applicable; accumulated earnings tax applicable if not personal holding company
  - Possible double taxation if assets sold later
  - But—consider advantages of Section 1202 election

Choice of Entity Considerations-New Entities

- C Corporation
  - Section 1202 election allows C corporations (from the outset; no corps that have converted from S corps qualify) who so elect to exclude gain from sales of stock
  - However, this is a very limited option, not available to all C corps as have to be not on the list of excluded entities (similar to those not available to receive Section 199A relief); only qualified trades or businesses
  - Not many stock sales done in reality; asset sale puts a C corp at a disadvantage due to double taxation inherent
  - Section 1202 qualification requires holding stock for >5 years, limits on gain exclusion, limitation on gross revenues and the qualified trade or business requirement

Choice of Entity Considerations-New Entities

- Limited Liability Companies (LLCs)
  - Qualify for Section 199A deduction of specified trade or business
  - No wage income to owners, but if active in operations then all subject to FICA tax
  - Flexibility to classify as S corporation (more on this later)
  - Start up losses likely deductible to owners
  - Income taxed at individual tax rates
  - Governance might be less restrictive for LLCs (annual meetings of managers or members; restricting member’s rights to records)
  - LLC owner active likely avoid 3.8% NII tax
  - No double tax on sale of entity or assets

Choice of Entity Considerations-New Entities

- Limited Liability Companies (LLCs)
  - LLCs Elected to be Taxed as S corps—CAVEAT
    - LLC can elect to be taxed as S corp from onset or convert
    - Advantages
      - Not all income subject to FICA; only reasonable compensation to owners
      - Flexibility in entity governance

Choice of Entity Considerations-New Entities

- Limited Liability Companies (LLCs)
  - LLCs Elected to be Taxed as S corps—CAVEAT
    - Disadvantages
      - All too often, not done with an appropriate operating agreement
      - If an S corp for tax purposes, but an LLC for state law purposes, absolutely NO concept of capital accounts can exist (violation of prohibition of second class of stock rule easy to occur) in operating agreement
      - RECOMMEND properly drafted operating agreement; don't rely on state law
      - MODIFY operating agreement to remove any semblance of non-pro rata distributions
      - NO capital accounts
      - NO non-pro rata distributions on liquidation

Choice of Entity Considerations-New Entities

- S Corporation
  - Limitations on number and type of shareholders
  - Flexibility on determination of wage payments and distributions to shareholders
  - Must pay “reasonable compensation” to owner/employee
  - Reasonable compensation concept applicable under Section 199A
  - Must not violate no second class of stock rule (except for voting rights)
  - Pass through taxation

Choice of Entity Considerations-New Entities

- S Corporation
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Section 199A. Overview.

- With the enactment of legislation known as the Tax Cuts and Jobs Act (the Act) on Dec. 22, 2017, a new provision of the Internal Revenue Code was born: § 199A, which permits owners of sole proprietorships, S corporations, or partnerships to deduct up to 20% of the income earned by the business.
- The motivation for the new deduction is clear: to allow these business owners to keep pace with the significant corporate tax cut also provided by the Act.

“Check the Box” Income Tax Regulations.

- The federal rules governing the classification of a business enterprise for federal tax purposes are often referred to as the check-the-box regulations, but often entities can elect-out of these default rules by checking a box on their return.
  - For example, An organization that has a single owner can choose to be recognized or disregarded as an entity separate from its owner.
- Certain default rules are provided in the regulations.
  - A multi-member entity will be classified as a partnership, unless it makes an affirmative election to be classified as a corporation;
  - A single-member entity will be disregarded, unless it makes an affirmative election to be treated as a corporation.
  - A corporation is always classified as a corporation for federal tax purposes.

Converting to an LLC: LP or GP to LLC.

- The West Virginia Uniform Limited Liability Company Act provides a fairly simple procedure for partnership and limited partnership to convert to LLCs.
- For federal tax purposes, the conversion of a general partnership into an LLC is treated as a contribution by the partners of their general partnership interests to the LLC in exchange for interests in the LLC.
- This deemed contribution does not result in gain recognition to a contributing partner except to the extent such exchange results in a deemed distribution from the partnership in excess of the partner's basis in his or her partnership interest.
- Rev. Rul. 95-37 provides that the conversion is generally tax-free under Section 721 (rather than a sale or exchange) and provides that there is no termination of the partnership, and that it retains its EIN

Converting to an LLC: Corporation to LLC.

- The tax cost of merging or converting a corporation with appreciated assets into an LLC will often be so high that it will prevent such merger or conversion.
- PLR 9701029 – The conversion of a C corporation to an LLC is taxable. The conversion is treated as a taxable corporate liquidation, which results in a corporate level tax and a shareholder level tax.
  - The liquidation is treated as a sale of all the stock for the assets of the corporation, which requires the recognition of gain on the appreciated value of assets.
  - This results in a tax to the shareholders on the distributed assets.
- The conversion of an existing corporation into an LLC may be accomplished by a variety of techniques:
  - (1) a sale or contribution of assets;
  - (2) merger; or
  - (3) conversion.

These structures are generally treated, for tax purposes, in the same manner, with the corporate entity being deemed to be dissolved and distributing all of its assets out to its owners, followed by a contribution of the assets to the newly formed limited liability company.

Converting a C corporation to an S corporation.

- S corp to C corp
  - Simple to convert; unanimous revocation of S election
  - Can occur inadvertently also
  - No tax consequences immediately upon termination
  - Distributions following conversion for about a year still made as if still an S corp under Section 1377; distribute cash first year—distribute note?
  - Cannot re-elect S corp for 5 years
  - No eligibility for Section 199A deduction

Converting a C corporation to an S corporation.

- C corp to S corp
  - Built in gain rules apply for 5 years after the conversion
  - Excess passive investment income an issue if accumulated E&P in C corp at conversion
  - LIFO recapture applies if inventory material
  - Qualifies after conversion for Section 199A to owners if specified trade or business
  - But must pay reasonable compensation to owner/employee—whatever that means

Converting a C corporation to an S corporation.

- The conversion of a C corporation to an S corporation is not taxed as a liquidation, actual or deemed. The corporation continues with a different federal tax status, but otherwise generally keeps its tax attributes.
- A corporation with a prior C history has several potential issues when it makes the S election:
  - The first possible issue is the tax on net recognized built-in gains ("the BIG tax"), which requires significant planning for the S corporation with a prior C history.
  - Next, an electing C corporation that used the LIFO inventory method must recapture its LIFO reserve as income at the end of its last C year.
  - The S corporation with a prior C history is also subject to a tax on its excessive "passive investment income" (if any) in every S year in which it has accumulated E&P at the end of the year.

Converting a C corporation to an S corporation.

A. Built-in gains tax.

- The BIG is imposed on potential gain attributable to C years that is recognized in the first five years of S corporation status (the "recognition period").
- The built-in gains (BIG) tax applies to the extent the fair market value of the corporation's assets on the date the conversion occurs exceeds the corporation's basis in its assets on the conversion date.
- The BIG tax also applies to any asset sales occurring in the ten-years following the day the corporation becomes an S corporation or acquires an asset and the basis of such asset is determined with reference to the basis of the asset in the hands of a C corporation.
- Due to the reduction in corporate tax rates made by the Tax Cuts and Jobs Act, gain subject to the BIG tax is currently taxed at 21%. The good news is that shareholder income is reduced by the corporate tax paid.

Converting a C corporation to an S corporation.

B. Passive Activity Income.

- A second potential tax involves income arising from passive activities. The passive income subject to this tax is generally defined as income from :
  - Interest.
  - Dividends.
  - Rents, unless substantial services are rendered or substantial costs are incurred in earning the rental income.
  - Royalties.
  - Annuities.
  - Gains from the sale of stock or securities.
- Excessive passive investment income creates two possible problems for the S corporation, but only if the corporation has accumulated earnings and profits from its C corporation years.
  - To the extent passive investment income exceeds 25% of gross receipts; the S corporation owes a corporate level tax on the excess net passive investment income.
  - The bigger issue presented by the S corporation passive income rules is that the S election will terminate automatically if the corporation has three consecutive years with passive investment income in excess of 25% of gross receipts.
- Once the accumulated earnings and profits are distributed, neither of these items can become an issue again as long as the S corporate election remains in effect

Converting a C corporation to an S corporation.

C. LIFO Reserve Recapture.

- A C corporation converting to S status must also recapture the LIFO reserve over the four-year period commencing with the final year the corporation is a C corporation.
- Mechanically, the LIFO reserve is included in the corporation's income for its last year as a C corporation, with the tax paid equally over the last C corporate year and the first three S years.
- There is a question of whether suspended passive losses can be offset against S corporation income.

Converting a C corporation to an S corporation.

D. Summary of Considerations:

- Make sure all individual shareholders are qualified to own S corporation stock.
- Be certain the election is timely filed.
- Obtain valuations of all assets or otherwise document the value assigned to all assets.
- Compute accumulated earnings and profits as of the end of the C corporation status.
- Determine whether the new S corporation will have passive income.
- Consider whether it makes sense to distribute all earnings and profits to the shareholders.
- Determine whether the LIFO recapture tax applies.

Converting a C corporation to an S corporation.

E. Accumulated Earnings & Personal Holding Company Taxes.

- The S corporation can be used as a means of avoiding accumulated earnings tax problems because it is not subject to the accumulated earning tax.
- A C corporation that elects S status may wish to distribute accumulated earnings and profits (from prior subchapter C existence) during the first 2½ months of its initial S year to obtain a dividends-paid deduction, and thus limit or avoid the accumulated earnings tax for its final C year.
- Distributions from an S corporation generally are not dividends.
  - Therefore, they do not qualify for the dividends-paid deduction. To overcome this problem, an election to treat distributions for a particular year as first coming out of accumulated earnings and profits can be made so that the distributions will be regarded as dividends.

Converting a C corporation to an S corporation.

F. Time for Filing.

- An S election can be made at any time during the immediately preceding taxable year for which the election is to be effective or within the first two months and 15 days of the election year.
  - If an otherwise valid election is made for a taxable year but is made during the period beginning after the 15th day of the third month of the taxable year, the election is treated as made for the following taxable year.
- A timely election made during the taxable year for which it is intended to be effective is nonetheless treated as made for the following taxable year if:
  - (1) the corporation is not a small business corporation during the entire portion of the taxable year that occurs before the date the election is made; or
  - (2) any person who held stock in the corporation at any time during the portion of the taxable year that occurs before the time the election is made, and who does not hold stock at the time the election is made, does not consent to the election.

Choice of Entity Considerations—Entity Selection and Conversions

Final points for consideration

- 21% corporate rate attractive; but if want to take out cash remember taxation rules like now
- C corps still double taxation on sale of assets
- With Section 199A, pass through entities have the edge for now
- While Section 199A will sunset in 2025, still advantages to utilizing S corp or LLC form
- If utilizing S corp form, form a corporation and elect—relying on LLC electing to be taxed as S corp has peril without appropriate documentation
- Estate planning considerations—until clarifications about Section 199A and application to multiple trusts hold off until more clarity

The End

Thank you