

The Tax Reform Act – Where Are We Now?

Federal Tax Update

27th Annual LLCs, LPs and Partnerships

**Austin, Texas
July 12, 2018**

William H. Hornberger
Jackson Walker L.L.P.
2323 Ross Avenue, Ste. 600
Dallas, TX 75201
214.953.5857
whornberger@jw.com

Brady J. Cox
Jackson Walker L.L.P.
2323 Ross Avenue, Ste. 600
Dallas, TX 75201
214.953.5831
bcox@jw.com

© 2018 William H. Hornberger, Jason Freeman & Brady J. Cox (except as noted on slide entitled "Selected Partnership Structural Considerations Arising from Tax Reform Process")

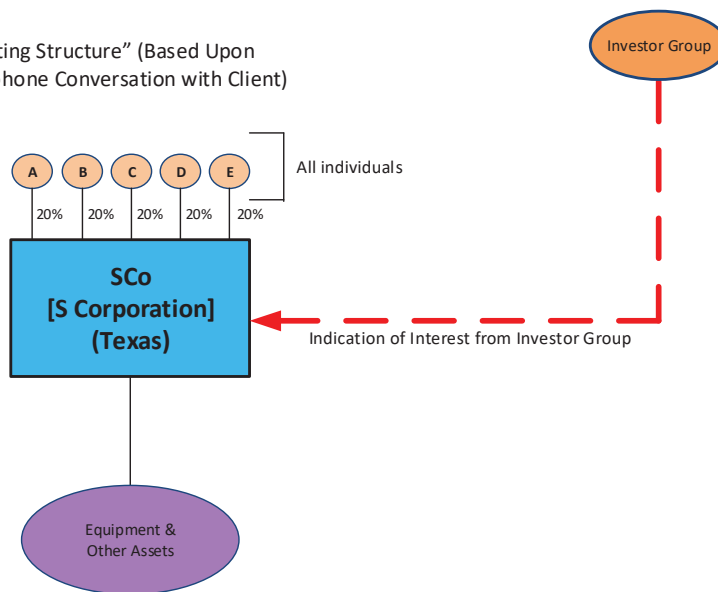
BASIC FACT PATTERN

S corporation is considering dropping most of its assets down to a new LLC, either before new investors come in or in connection with a transaction in which the new investors put their investment in the new LLC while the founders continue to own all of the existing S-corporation. Alternatively, if the founders want to take some cash out of the business now, the drop down could be partially in exchange for units in the LLC and partly in cash, which the S-corporation parent could then distribute to its shareholders.

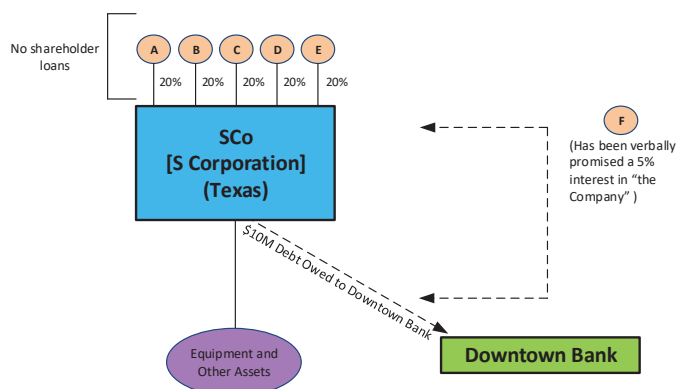
© 2018 Byron F. Egan

Base Case – Based Upon Telephone Conversation with Client

“Existing Structure” (Based Upon Telephone Conversation with Client)



Pre-Transaction Due Diligence Review of Structure and Organizational Documents



Due Diligence Fact Sheet

1. Date of Formation of SCo: SCo formed in Texas on 1/1/2005.

2. Debts: SCo is the primary obligor on a \$10M loan from Downtown Bank.

3. Promise to Key Employee F: Sometime in 2015, President of SCo verbally promised key employee F a "5% interest in the Company." The promise was never memorialized in writing.

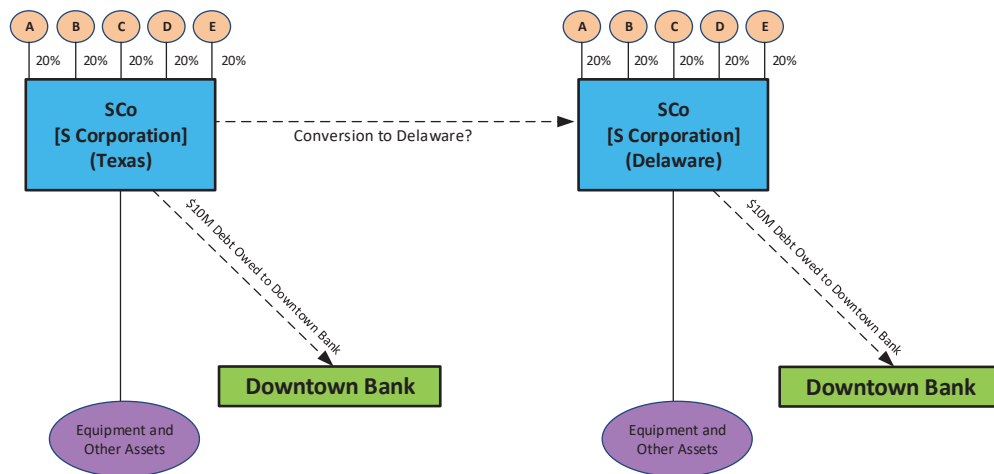
4. Tax Returns: SCo has timely filed all U.S. federal income tax returns.

5. State Taxes:

a. Texas: SCo has timely filed all margin tax reports in Texas.

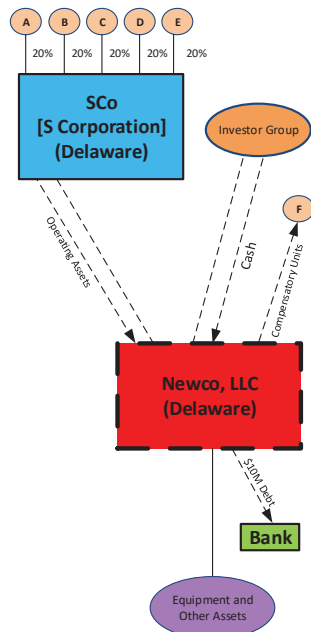
b. Other States: The President of SCo indicates that SCo may be doing business in several states, but has not qualified to do business in those states and has not filed tax returns in those states.

Conversion Considerations



Proposed Investment Structure (with Compensatory Units)

Limited Liability Company Model (with Compensatory Units)



Proposed Transactional Steps

1. Step 1: SCo and Investor Group jointly form a Limited Liability Company
2. The following would occur simultaneously:
 - a. Step 2(a) : SCo would contribute 100% of its operating assets to Newco LLC in exchange for LLC
 - b. Step 2(b): Investor Group would contribute cash to Newco LLC in exchange for LLC Units.
3. Newco LLC would grant a profits interest [with a back end allocation] to F.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: The Tax Reform Act - Where Are We Now?

Also available as part of the eCourse

[Answer Bar: LLCs and Partnerships Formation](#)

First appeared as part of the conference materials for the
27th Annual LLCs, LPs and Partnerships session

"Federal Tax Update"