

Choosing Business Entities for Operations, Acquisitions, and Dispositions: Clearing the Fog After TCJA 2017

15th Biennial Parker C. Fielder Oil and Gas Tax Conference

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What We Will Cover

- Entity Primer
- How did the TCJA change things?
- Factors to consider - which way do they cut?
- Case study: Domestic Upstream E&P
- Case study: Domestic Midstream JV
- Case study: International E&P
- Summary
- Appendix (calculations)

Business Entities - Corporations

- Legal entity organized pursuant to state law
 - Certificate of formation – Texas Form 201
 - Company name
 - Registered agent and registered office
 - Directors – minimum of 1
 - Authorized number of shares of stock
 - Corporate purpose – usually very broad

Business Entities - Corporations

- By-laws can override state law
 - Shareholder meetings
 - Matters reserved for shareholder vote
 - Quorum and required percentage vote
 - Board of Directors
 - Appointment and term
 - Meetings – regular and special
 - Quorum and required vote for all matters other than those reserved for shareholder vote
 - Officers and their duties
 - Shares of stock
 - Usually certificated
 - Par value or no par
- Liability of shareholders limited to equity capital contributions
 - Piercing the corporate veil
- Classified as a corporation for federal income tax purposes
 - Income taxed at the corporate level and dividends paid taxed at the shareholder level, subject to certain dividends received deductions

Business Entities – Limited Liability Companies

- Legal entity organized pursuant to state law
 - Certificate of formation - Texas Form 205
 - Company name
 - Registered agent and registered office
 - Governing authority – two alternatives
 - Member-managed – authority reserved to the members
 - Manager-managed – authority delegated to the designated managers
 - Purpose
 - Supplemental provisions

Business Entities – Limited Liability Companies

- Company operating agreement can override state law
 - Member capital contributions - initial and additional capital calls
 - Capital accounts maintained for each member
 - Admission of new members
 - Restrictions on transferability
 - Governance
 - Quorum and voting
 - Matters reserved to members in a manager – managed LLC
 - Distributions – discretionary or mandatory
 - Termination and liquidation
- Liability of shareholders limited to equity capital contributions
 - Piercing the LLC veil
- Single member LLC can be classified as a disregarded entity (“DE”) or an association taxable as a corporation for federal income tax purposes
- LLC with two or more members classified as a partnership or an association taxable as a corporation for federal income tax purposes
- Income from DEs and LLCs classified as partnerships taxed only to the owner/members

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