

S Corporations: Opportunities & Pitfalls

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Prerequisites

- ⦿ Domestic
- ⦿ ≤ 100 shareholders
- ⦿ Allowable shareholders
 - Individuals, certain trusts, estates
 - Not partnerships, corporations or NRAs
- ⦿ One class of stock
- ⦿ No ineligible corporations
 - Financial institutions, insurance companies, domestic international sales organizations

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Number of Shareholders

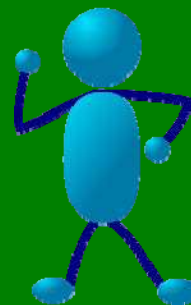
- ◎ Shareholder = Members of a Family
 - Husband and wife (and their estates)
 - Family members (and their estates)
 - Common ancestor
 - Spouse or former spouse
 - Up to 6 generations removed
 - Legally adopted children
 - Eligible foster children
 - Former spouses and their family members



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“Individuals” Only

- ◎ But not just “people”
- ◎ IRC Sec. 1361(b)(1)(B)
 - Individual’s estate
 - Title 11 bankruptcy estate
- ◎ IRC Sec. 1361(c)(2)
 - Certain domestic trusts
- ◎ IRC Sec. 1361(c)(6)
 - Certain exempt organizations



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Pitfalls in Ownership

- ⦿ No nonresident aliens
- ⦿ E.g. US shareholder's spouse marries a nonresident alien in a community property interest
- ⦿ Potential solution: Pre-nuptial separation of property agreement

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One Class of Stock

- ⦿ Pitfall: S corp with common stock adding preferred stock could lose eligibility
- ⦿ Opportunity: IRS considers only outstanding stock – authorized but unissued Treasury stock may not default the election

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[S Corporation Opportunities and Pitfalls](#)

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