

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

15<sup>th</sup> 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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## Title search: Choosing Business Entities for Operations, Acquisitions and Dispositions: Clearing the Fog after TCJA 2017

Also available as part of the eCourse

[Choosing Business Entities for Operations, Acquisitions and Dispositions: Clearing the Fog after TCJA 2017](#)

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