THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Dan G. Baucum
Ferguson Braswell Fraser Kubasta PC
Plano, Texas
469.206.9439 Direct
dbaucum@fbfk.law

33rd Annual LLCs, LPs and Partnerships
July 11, 2024

Breaking Up is Hard to Do: S Corp, LLC and Partnership Divisions

William D. Elliott
Attorney & Counselor
Dallas, Texas
214.922.9393 Direct
bill@wdelliottlaw.com

Of Counsel:
Elliott, Thomason & Gibson, LLP
Attorneys and Counselors

Introduction: Spin Offs or Split Ups

Modern Realities

- Business strategies trend toward decentralizing company assets.
  - Minimizing company assets to only operating assets.
  - Separating intellectual property & real estate.
  - Isolating company assets from business risks.
- Companies contain non-essential assets.

S Corps compared with C Corps

- Sub-S corporations differ from C Corporations.
  - No entity level tax.
  - Tax on S-Corp's income is at individual tax rates (37% for its ordinary income; 20% for capital gains.
  - No double taxation of earnings distributed to shareholders.
  - No double taxation when business is sold, with some exceptions.

S Corps compared to Partnerships or LLCs

- Sub-S are similar to partnership and LLCs – all 3 are pass-through entities for federal tax purposes.
- There are differences, some of which are:
  - S Corps have single class of stock with proportionate sharing of income, gains, losses, and distributions.
  - S Corps have arbitrary rules limiting number and identity of shareholders.
  - S Corp is a corporation.
  - Partnership and LLC liabilities affect owners' basis in their partnership or LLC interests.

S Corps are Corporations for Division Purposes

- Sub-S are corporations for many federal tax purposes, such as splitting up and reorganizations.
- Corp rules guard against avoiding double taxation.
- Must follow corporate division rules, which are complex.
- S Corps don't have to worry about earnings bailouts

Partnerships and LLCs

- Partnerships and LLCs taxed as partnerships follow a different division regime from S Corps.
- A partnership division takes place if
  - partnership splits-up into two resulting partnerships, and
  - both partnerships have at least two members from the divided partnership.
- The resulting partnership whose members owned more than 50% of the prior partnership is a continuing partnership.
- The partnership that continues whose members owned the largest percentage of the prior partnership is the surviving partnership (a/k/a "divided partnership").
- Only continuing partnerships are ensured a tax-free division.

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)](utcle.org/elibrary)

Title search: “Breaking Up is Hard to Do”: S Corp, LLC and Partnership Divisions

Also available as part of the eCourse
2024 LLCs, LPs and Partnerships eConference

First appeared as part of the conference materials for the
33rd Annual LLCs, LPs and Partnerships session
"“Breaking Up is Hard to Do”: S Corp, LLC and Partnership Divisions"