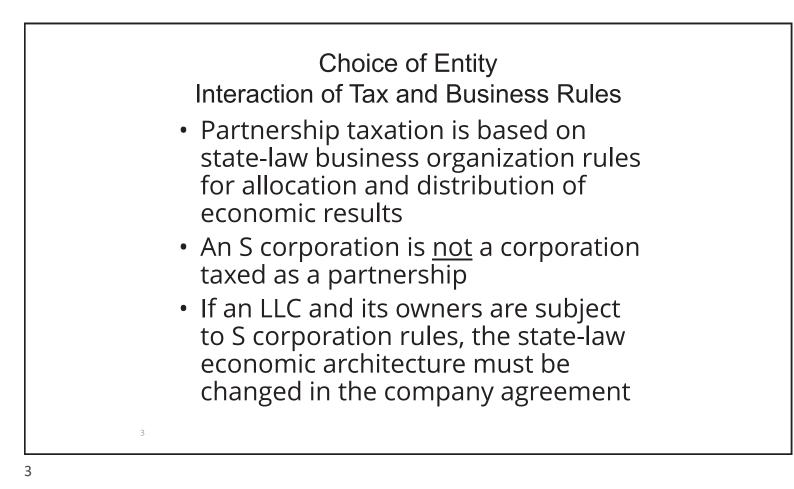
S corporations: A Cautionary Tale about Squaring the Circle

LLCs, LPs and Partnerships Thursday July 14, 2023

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Faculty

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Sub K v. Sub S	
Non-Compensatory Distinctio	ns

Characteristic	Sub K	Sub S
Flexibility in economic sharing of non-compensatory results and distributions (IRC §§ 704 v 1366(a)(1))	Yes	No
Built-in gain on contributed property allocated to contributor (IRC §§ $704(c) \vee 1366(a)(1) \& 1366(f)(2)$)	Yes	No
Default to Subchapter C rules (IRC §1371(a))	No	Yes
Concern with debt/equity rules (IRC §385, Treas. Reg. §§1.1361-1(I)(4) and (5))	No	Yes
Inadvertent conversion to C corporation (Treas. Reg. §301.7701-3 v IRC §1362)	No	Yes
Limitation on amount payable on dissociation (Treas. Reg. §1.1361-1(I)(5))	No	Yes
Restriction on number and eligibility of owners	No	Yes
Reporting of owner basis (Forms 1065 sched M v 7203)	Yes	Yes
Ordinary loss on sale of interest (IRC §§ 741 v 1244)	No	Yes
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Sub K v. Sub S Compensatory Distinctions

Characteristic	Sub K	Sub S
Owners to be employees for tax purposes (Rev. Rul. 69- 184)	No	Yes
Ability of individual owners to avoid Medicare HI tax or NIIT (except under IRC §1402(a)(13))	No	Yes
Requirement for reasonable compensation of service providing owners (<i>Radke</i> 895 F2d 1196 (7 th Cir 1990))	No	Yes
Treatment of unvested interests (IRC §83(b))	?	Yes
Compensatory options to acquire interests (Notice 2000- 29 and 68 FR 2930 v IRC §83(b))	?	Yes
Ability to grant profits interests (Rev. Procs. 93-27 and 2004-43, IRC §1062)	Yes	No

DRE (individual) v. Sub S				
Characteristic	DRE	Sub S		
Flexibility in economic sharing of non-compensatory results	<u>N/A</u>	<u>N/A</u>		
Ability for owners to be tax employees	No	Yes		
Ability of individual owners to avoid Medicare HI tax or NII	<u>No</u>	Yes		
Requirement for reasonable compensation of service providing owners	No	Yes		
Default to Subchapter C rules	No	Yes		
Concern with debt/equity rules	No	Yes		
Inadvertent conversion to C corporation	No	Yes		
Limitation on amount payable on dissociation	<u>N/A</u>	Yes		
Restriction on eligibility of owners	No	Yes		
Ordinary loss on sale of interest	No	Yes		
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First appeared as part of the conference materials for the 31st Annual LLCs, LPs and Partnerships session "S corporations: A Cautionary Tale about Squaring the Circle"