

Estate Planning Council of St. Louis

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Business Succession for S Corporation Owners

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DISCLAIMER

The materials contained in this slide show, the presentation itself and any handouts are intended for educational and informational purposes only, and may not be relied upon as legal advice for any specific matter.

Well, you expected that, but I feel better mentioning...

About the Presentation

Planning for the disposition of S corporation stock is one of the more challenging aspects of estate planning. In addition to the usual issues associated with the disposition of any closely held business, S corporation rules impose limitations on the types of equity as well as the persons or entities who might otherwise be owners. These rules can limit the scope of estate tax and other planning vehicles, and hence flexibility. Therefore, the planner must be prepared to address whether other tax or practical considerations override the desirability of maintaining S status after the death or incapacity of an owner, and if not, learn techniques for handling associated tax and family issues.

Learning Objectives

After the program, the participant should be able to:

1. Identify the limitations of S corporation equity and ownership;
2. Identify the tax, family and practical issues associated with the disposition of S corporation stock;
3. Identify traditional planning methods for S corporation owners;
4. Discuss options to maintain S corporation status *post-mortem*;
5. Identify alternative considerations which might override S corporation status.

PART I

Practical Considerations

A. Overview of S-Corporation Succession Issues

1. Basic S corporation requirements—Why choose the S corporation?
2. Planning (or lack thereof) for death or incapacity of key owner/employee
3. Closely held business marketability issues
4. Family considerations—non-participating heirs and equalizing estate; conflicts, deadlocks, etc.
5. Estate taxes and other liquidity events
6. Maintaining key employees, customers and vendors
7. Minority shareholders

PART I (continued)

B. Specific Issues, Opportunities and Considerations

1. Eligible corporation IRC 1361(b)(1) and (2)
2. Single class stock IRC §1361(b)(1)(D) and IRC 1361(c)(4)
3. Types of owners IRC §1361(b)(1)(B) and (C) including trusts IRC 1361(c)(2)
4. Limit on number of owners IRC §1361(b)(1)(A)

PART I (continued)

5. Corporate merger opportunities, IRC 368, especially IRC §368(a)(1)(F) and LLC
6. Asset v. equity sale
7. “S corp. squeeze” minority shareholders, IRC §1366 and unreasonable comp issues for majority shareholders
8. Termination/reinstatement IRC §1362 and Rev. Proc. 2022-19
9. Basis at death, IRC §1014 and valuation for estate tax, IRC §2031 and IRC §2703

PART II Traditional Planning Solutions

A. Basic solutions

1. Buy-sell or shareholder agreements
2. Sale to defective grantor trust
3. Life insurance including life insurance trusts for liquidity and other purposes
4. Alternatives to “S” status for entity choice, e.g., C corp or partnership
5. Unequal or nearly equal division of estate/setting expectations and no-contest or “*in terrorem*” clauses

Part II (continued)

6. Favorable tax and other uses of trusts including QSST, grantor and ESBT for S corporations; QTIP considerations
7. Third party sale solutions including asset and equity sales; mergers and other tax-free reorgs
8. Pre-planning succession before bad events including planning with third party (unrelated) owners
9. Family business therapists
10. Proper choice of successor fiduciaries
11. Tax distribution clauses for shareholder taxes

Part II (continued)

B. Planning post-*Connelly v. United States*, 602 US 257 (2024)

1. Overview of case
2. S-corporation buy-sell agreements and second class of stock, Treas. Reg. §1.1361-1(l)(2)(iii)
3. Redemption vs. cross-purchase agreements
4. Alternatives

PART III CLOSING

For additional information/questions:

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