Table of Contents

Introduction 1

Factors to Consider 2

Default Tax Form 2

Owner Liability 2

IRS Form to Establish 2

Income Taxed to Entity 3

Self-Employment Tax 3

State Organization Forms Required 3

Written Operating Agreement Required 3

Annual Board and Shareholder Meetings 4

Double Tax Issues 4

Profit or Distribution Maximum Tax Rate 4

Excluded Owners 4

Range of Numbers of Owners 4

Duration of Existence 4

Year Ends 5

20% 199A Flow Through Deduction 5

Minor Child Wage Benefit Available 5

IRC Section 106 Owner Health Insurance for Owner Treatment 6

IRC 105 Health Reimbursement Arrangements 7

Home Office Deduction 7

Table: Factors to Consider in Choosing a Business Form 8

Comments on Entity Choice as Related to the 20% Flow Through Deduction 11

A QUICK COMPARISON GUIDE OF ENTITIES 12

General Rules of thumb 12

Electing “C” corporation tax status-New LLC-Some Notes 12

Electing “C” Corporation Status-Existing LLC taxed as 1065 or 1120S 12

Electing “C” Corporation Status-New Corporation 12

Converting an existing S corporation back to a C Corporation-initial issues 13

Converting (or Electing) a 1065 filer to be taxed as an S Corporation-initial issues 13

Is the C Corporation the Best Choice? 14

Table 1-Capital Gains Planning-2023 Amounts 15

Client Worksheet # 1-Capital Gains Planning 17

Disadvantages 18

Entity Choice Issues-Summary Overview 22

Sole Proprietors and 1-Owner Default LLCs 22

LLC 22

S Corporations 22

Using Multiple Entities 23

Basic format 23

Moderately complex format 23

Other Advising Issues 26

Common Paymaster 26

When Are Two Or More Corporations “Related”? 26

Buy-sell agreements 28

Captive Insurance Company 28

Stock Acquisition Issues 29

Stock acquisitions 29

When a New Employer ID number is required 30

Asset Acquisition Issues 31

Filing the Form 31

Sales/Purchase Price Allocation 32

Summary of Buyer/Seller Allocation Motivating Factors 32

Form 8594 34

Allocation of Sales Price under IRC Section 1060 35

Making the S Election 36

Legal Issues 37

Operating Issues 37

When to make the election 39

Special LLC Issues 41

Who should sign the election? 42

Where to File the election 42

IRS Acceptance and Notification 42

Terminating the S Election 43

Corporate Statement of Revocation of S Election under IRC Sec 1362(a) 45

Shareholder Consent to Revocation of S Corporation 45

Post Termination Transition Period 47