BUSINESS ENTITY CHOICES

Corporation
  “C” or “S” corporate tax status
Partnership - General or limited
Limited Liability Company (LLC)
Trust or Estate (available?)
Sole Proprietorship
Disregarded Entity (DRE)
Definition of “Corporation”
Code §7701(a)(3)

Choices of business entities:
1. Regular corporation
2. S corporation
3. Foreign corporation
4. Limited liability company - LLC
5. Limited partnership, including “MLP”
6. General partnership
7. Sole proprietorship (& the “tax nothing”)

Prior Entity Classification
Criteria -Tax Regulations

1) associates
2) business objective
3) continuity of life
4) centralization of management
5) limited liability for debts of entity
6) free transferability of interests - but buy-sell agreement not limiting transferability.
Regs. had bias towards partnership status.
“Check the Box” Regulations

Premise: Regulations make the choice of entity optional to the taxpayer.

1) Automatic classification of certain entities as corporations - *per se* treatment; including enumerated foreign corporations.
2) Default partnership status - an "eligible entity" may elect to the contrary (not in the foreign context, where one party must have unlimited liability; or both must consent).

Additional Entity Classification Issues

1) The “tax nothing” or disregarded entity
2) What tax effect of a change in the number of members of an entity?
3) What income tax effect of elective changes in tax classification of the entity?
   a) Partnership to corporation?
   b) Corporation to partnership?
The “Publicly Traded Partnership” or “PTP”

Corporate treatment of a “publicly traded partnership”? IRC §7704.
What is “publicly traded”?
Purpose of the exception from corporate status where 90% of more of entity’s income is “passive”, including income from natural resource activities?

Corporations vs. Partnerships vs. Trusts

Reg. §301.7701-4 - purpose of a trust is to “protect or conserve” property, but not to conduct business. If so, partnership status.
Types of trusts:
- personal wealth investment and management
- oil royalty trusts
- equipment leasing trusts
Trust Income Taxation

1) Grantor trusts: Subchapter J, Subpart E, § 671 et. seq.
   - income taxation to the grantor

2) Nongrantor trusts: Subparts A-D
   taxation of (a) trust (if no distribution) or (b) beneficiaries to the extent of actual
distributions (or required distributions).

Recognition of the Corporate Entity

I.e., is the corporation treated as an
entity separate from its shareholders?

Bollinger: corporation holding title to
real property as an agent for the
shareholders of the corporation.

Held: Agency status: losses were
allowable to the individuals -
(shareholders of the corporate agency).
National Carbide Factors

1) Corporation operates in the name and for the account of the principal;
2) Corporation binds the principal;
3) Transmits money to the principal;
4) Income attributable to services of the employees of the principal?

continued

National Carbide, cont.

5) Relations with the principal must not be dependent upon the fact that it is owned by the principal;
   (see Bollinger case discussion) and,
6) Business purpose must be the carrying on of the normal duties of an agent.