

2010
TAX FORUM
IRS Nationwide

Pitfalls of S Corporations

Presented by:

National Society of Accountants

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Popularity of S Corps

- Remain Most Popular Tax Entity
 - Many LLCs select S Status
 - Number of S Corps Increasing Fastest
- Tax Attributes Attract Entrepreneurs
- More Small Businesses Forming Than Ever Before
 - Unemployment Driven
 - Technology Driven
- Actually One of Most Complicated Tax Entities

Failure to Elect Status

- 15th Day of 3rd Month Deadline
 - New Corps
 - Existing C Corps
- Signed by Officer of Corp
- Consent by All Shareholders
- Rev Proc 2007-62
 - For Corporation Late Election
 - For Combined Entity & S Election

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Failure to Keep Minutes

- Bank Accounts
- S Election
- Loans To and From Shareholders
- Compensation
- Distributions
- Any Material Matter

Failure to Separate Personal Assets

- Corporate Veil
- Requirements of Law
 - Banking
 - State Statute
- Corporation Not a Personal Checkbook
- Validity of Corp Items Paid from Shareholder Funds

Shareholder Loans

- Separate into Due From and Due To
- Must Be Documented
- Must Bear Interest
 - Exceptions
 - Treatment if Not Properly Substantiated
- Create a Payment Plan

Lack of Basis

- Inside & Outside Basis
 - Inside Maintained on Books of Entity
 - Outside Maintained by Taxpayer
- Limitations on Deductibility of Losses
- Loan Guarantees Do Not Create Basis
 - Restructuring Not Retroactive
 - Need for Pre Year End Planning

Shareholder Compensation

- Salary Must Be For Services Provided
- Salary Must Be Adequate
 - Compensation vs. Salary
 - Determination of Adequate
- Should Be Actually Paid
 - Subject to Payroll Taxes
 - Subject to Payroll Reporting

Shareholder Benefits

- Employee Driven
- Health Insurance
 - Reported on W-2
 - Not Subject to Employment Taxes
- HSA Plans
- Retirement Plans
- Other

Failure to Renew Corp

- Dissolution & Re-instatement
 - S Status Not Terminated
 - No New 2553 Required
 - No New FEIN Required
- Without Re-instatement
 - Not as Clear
 - Taxation Determined Under Federal Law

Distributions

- Generally Not Taxable to Shareholder
- If in Excess of Basis - Taxed as Capital Transaction
 - Must Consider Inside & Outside Basis
 - May Need to Reconstruct Prior Years
- Shareholders Not Automatically Entitled to Distributions

Disproportionate Distributions

- Second Class of Stock Prohibition
 - Governing Provisions & Laws
 - Effects on Liquidation Proceeds
- Inadvertent & Corrective Action
- Non Employee Benefits
- Loans by Shareholders Treated as Second Class of Stock

Inadvertent Termination

- Excessive Number of Shareholders
- Nonresident Alien Shareholder
- Corporation or Partnership Shareholder
- Merger Into C Corporation

Office In Home Issues

- Form 2106
 - Not Schedule E Item
 - Includes Out of Pocket Expenses
 - Available to Shareholder Employees
 - Subject to 2% Limitation
 - All 2106 Rules Apply
- Limitations On Items To Be Deducted

For More Information: National Society of Accountants (NSA)

More information is available including
clickable links to research materials,
information about a 2 hour Webinar on this
topic and much more at

Booth _____ in Vendor Hall

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