

# Hot Tax Planning Tips and Strategies – Choice of Entity

January 6, 2004

Association of Valley CPAs

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*This presentation should be viewed only as a summary of the law and not as a substitute for tax or legal consultation in a particular case. Your comments and questions are always welcome.*

# Choice of Entity -1

Situation: Existing corp (C or S) has operating business and other appreciated assets (maybe real estate, art, a second or third business) in the corporation.

Concern: A claim against the operating business can be satisfied with the other valuable assets.

Tip: Create a holding company structure to isolate the operating business from the valuable assets.

# Old Structure

Shareholders

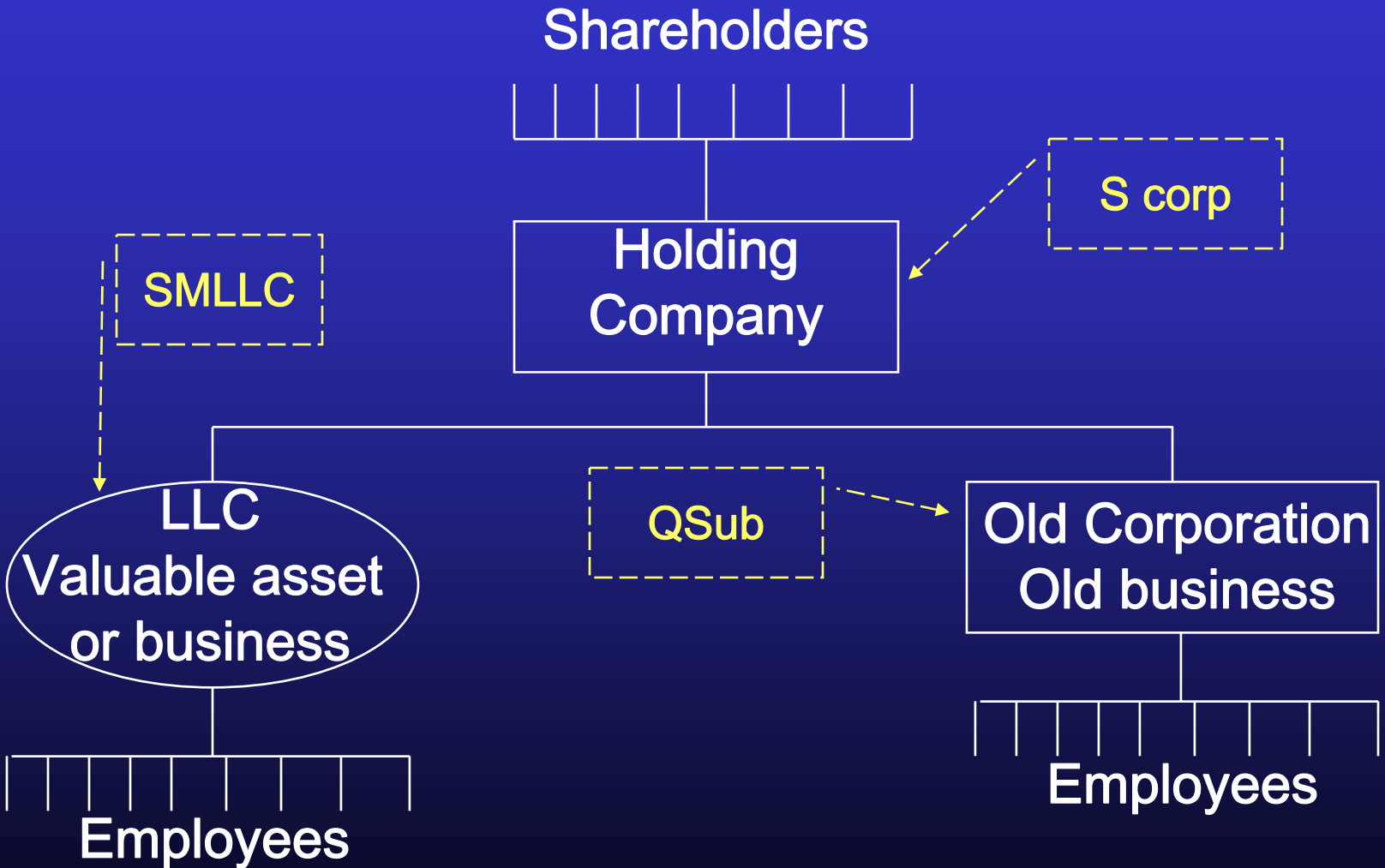


Employees

Other Asset  
or business



# New structure



# Choice of Entity - 2

Situation: It's time to create a subsidiary of an S corp.

Choice: Use a QSub or an SMLLC?

Tip: Use a SMLLC if there is no California licensing problem.

Why: When the QSub terminates it can trigger gain recognition for some (357(c)) or all (failed Section 351) of its assets.

And the QSub defaults to a C corp.

# Choice of Entity - 3

Situation: It's time to organize an entity for a business that could grow rapidly and have a public offering.

Choice: Use a corporation or an LLC?

Tip: Use a corporation. First S, then C when it ceases to qualify as an S.

LLCs are cool, but ...

# Choice of Entity - 3

Why use a corp for an IPO candidate?

- LLCs don't go public, corps do
- The conversion of the LLC to the corp is an opportunity for haggling, hold-outs and litigation
- LLC can't have ISO plans
- LLCs can't do tax-free stock swaps



## Choice of Entity - 4

Situation: Client wants to loan money to an LLC, or to enter into a contract with an LLC. The LLC looks like it has substantial assets to back its promises.

Issue: Are all the assets of the LLC available to satisfy your client's claim against the LLC?

# Choice of Entity - 4

## Series LLC

Tip: Not if it's a "series" LLC. If so, each "series" is like a separate SMLLC within the master LLC.

How to tell? Get the articles of organization or certificate of formation.

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and Strategies, check out  
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