

Forming an SBIR Eligible Company: Choosing an Entity

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SBIR/STTR Requirements for an Eligible “Small Business”

- Organized for profit business
- At least 51% owned and controlled by individuals that are U.S. citizens, permanent residents
- Located in the U.S.
- 500 or fewer employees

Forms of Business Entities

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Corporation
 - C corporation
 - S corporation
- LLC

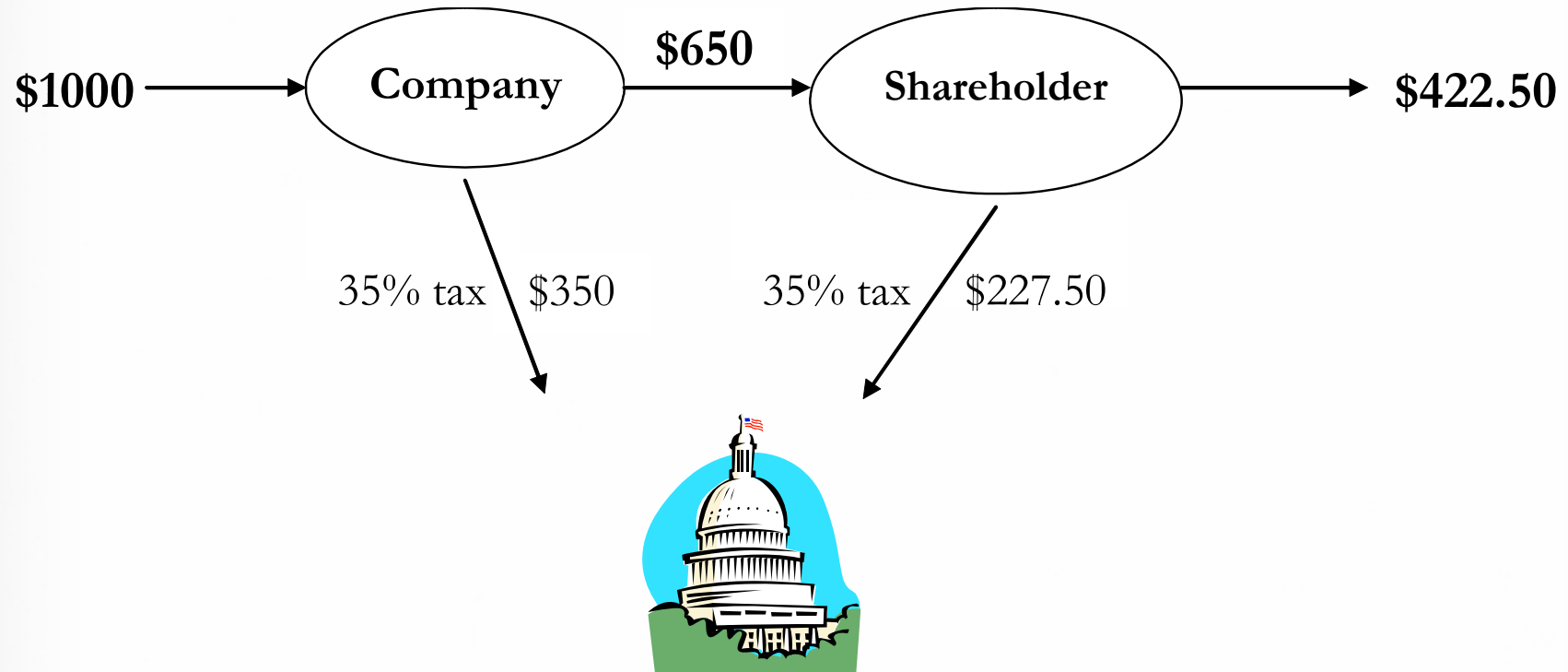
Factors to Consider In Choosing a Form of Entity

- Personal liability exposure/protection
- Tax/economic effects
- Management structure/organization
- Need for outside investment/ownership
- Continuity of the business
- Transferability of ownership

Corporation

- Shields owners from liability
- Regimented organizational/management structure
 - Articles of Incorporation/Bylaws
 - Shareholders/Directors/Officers
- Flexible capital structure and transferability of ownership
- State of incorporation
 - North Carolina
 - Delaware
- Tax treatment:
 - S corp: Pass-through tax treatment
 - C corp: Double taxation

What is double taxation?



Comparison of S and C Corporations:

	C corp	S corp
Tax Treatment	Subject to tax at corporate and shareholder level	Pass-through (no corporate tax) Some limits on ability to provide benefits to shareholder employees
Ownership Limitations	Virtually no limits	≤ 100 shareholders Only individuals, certain trusts, and other S corps (may preclude investment)
Capital Structure (Stock Rights/Preferences)	Flexible – can have multiple classes with differing voting and economic rights	Only one class of stock (though can have voting and non-voting stock)

S automatically converts to C when disqualified

Limited Liability Companies

- Shields owners from liability (like corporation)
- Management/organizational/economic structure more flexible than corporations
 - More direct control retained by owners
 - Members/Managers
- Pass-through entity for tax purposes

Which Choice is Right for Me?

- Since liability protection is similar, often comes down to:
 - Desired tax treatment
 - Type of business
 - “Lifestyle” business?
 - Owner involvement – active or passive?
 - Growth and/or exit strategy
 - Growth business? Internally or externally funded?
 - Income stream?
 - IPO/sale of the company?
- Consult with advisors and other interested parties

Which Choice is Right for Me? (Part II)

Each situation is unique, but generally...

- If require significant outside money for growth – C corp
- If small, income generating venture – S corp or LLC
- If university is to take an equity interest – C corp

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