



StartUp Bootcamp

What is the best corporate structure for my business?

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An illustration of a person in a business suit with large, grey, mechanical wings attached to their back. The person is standing on a wooden floor. There are red lightning bolt symbols on the floor near the wings. The background is a plain tan wall with a few small clouds drawn on it.

Agenda

- Business Organizations
- Basic Formation Requirements
- Tax Structure of each entity
- Asset Protection

An illustration of a tablet computer. On the screen is a small easel with a blackboard that has the word 'AGENDA' written on it in white. A white pen is standing next to the tablet.




Business Entities Covered

- Corporations (Chapter-C and Chapter-S)
- General Partnership
- Limited Partnership / Limited Liability
Limited Partnership
- Limited Liability Company (LLC)

Entity Selection Considerations

The driving forces behind business entity selection often includes:

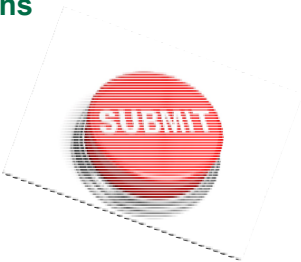
- The number and relationship of principals
- The nature of the business to be conducted
- Present size of and anticipated/potential growth of the business
- The intended present ownership of the entity and the desired management structure



Business Organizations

Corporations

- Organization and formation
 - Formation Formalities
 - Annual Formalities
 - Perpetual formalities





Business Organizations

Corporations

- Liability of Owner-Shareholders
- Limited liability from debts and claims of the corporation, regardless of participation in management of business

Business Organizations

Corporations

- **Restrictions on transferability of stock**
 - For C and S-corps, depends on restrictions in governing agreements
 - Will also need to consider inadvertently terminating the S-Election





Business Organizations

Corporations (C and S Corp)

- **Major differences between C-Corps and S-Corps**
 - NOT a state law difference, only a tax classification
 - Double taxation vs. Pass-Through Taxation

Business Organizations

Corporations (C and S Corp)

- Making an S-Election
 - Complete and file IRS Form 2553
- Events Defeating the S Election
 - Ineligible individuals or entities become shareholders
 - If the Corporation has more than 100 shareholders
 - Second class of stock
 - Passive Income



Business Organizations

Corporations (S Corp)

- Pass-through taxation
 - Avoids most "double taxation" issues
 - S-Corp shareholders are taxed directly on distributed corporate profits
 - Income and/or losses are passed through to the shareholders
 - Each shareholder's tax return will report their pro-rata share of company income and deductions (some items treated at corporate, rather than shareholder level, rules can be complex)



Business Organizations

Types of Partnerships
to be Discussed

- General Partnerships
- Limited Partnerships
- Limited Liability Partnerships



General Partnerships

- Organization and formation
 - An association of two or more persons (or entities) to carry on as co-owners of a business for profit, **whether or not the persons intended to form a partnership**
 - No requirement of a formal filing to form, but applications/filings may be needed depending on nature of business (i.e., licensed occupations, trades, or professions)



General Partnerships

Liability of Partners



- Outside Liability
 - No liability protection; partners are jointly and severally liable for all partnership obligations
 - Creditors of a partner can essentially shut down and dissolve the business
 - Incoming partners are not liable for pre-existing partnership debts
- Inside Liability
 - Partnership can issue a capital call, requiring partners to contribute additional capital or equal devaluation of interest in partnership

General Partnerships

Pros of General Partnership Form

- Pros
 - No formal or annual filings required (excluding tax, licensing, etc.)
 - No perpetual formalities
 - Decreased expenses overall
 - Pass-through Taxation
 - Partners owe each other and partnership fiduciary duties of loyalty and care



General Partnerships

Cons of General Partnership Form

• Cons

- Can create a General Partnership by accident
- Unlimited joint and several liability for Partnership obligations
- Partners have equal rights in management and conduct of business
- If no Partnership Agreement, can result in a deadlock if even number of partners
- Other partners can create liability against partners' wishes under principles of Agency law



Limited Partnerships

• Organization and formation

- Must have two or more persons (or entities) to form
- Must designate at least one partner as a "general partner" and remaining partners will be "limited partners"
 - Often structured so the GP is a limited liability vehicle (i.e., an LLC or corporation)

○ Formalities for formation must be followed

- Must file Certificate of Limited Partnership with the FL. Dept. of State

Limited Partnerships

Liability of Partners

• Outside Liability of General Partners

- No liability protection for general partners
- Debts of partnership are debts of the general partners

• Outside Liability of Limited Partners

- Limited partners have limited liability for company debts
- Sole relief of a charging order has no impact on other partners and may even discourage creditor from attempting to secure charging order

Limited Partnerships

Liability of Partners (cont.)

- **Inside Liability of General Partners**
 - Liable to partnership if GP consents to improper distributions
 - Liable to partnership for improper distributions received
- **Inside Liability of Limited Partners**
 - Liable to partnership for improper distributions received
 - Some states do not recognize LLP/LLLP status and if the entity is going to conduct business in those states there may be exposure with respect to limited liability



Limited Partnerships

Pros and Cons of Limited Partnership Form

- **Pros**
 - Single level of taxation – all items of income and expense flow through to individual taxpayer-partner's tax return
 - Eligible for TCJA's 20% pass-thru deduction of QBI under new Section 199A
 - Increased flexibility in structuring agreement as between partners
- **Cons**
 - Higher formational and annual costs



Partnerships

General/Limited/LLP


- **Transferability of interest**
 - A transfer will not automatically cause dissolution of partnership
 - Unless partnership agreement provides otherwise, a transferee is only an assignee unless membership in partnership is consented to by all other partners
 - If mere assignee, no right of assignee to participate in management of business



Limited Liability Companies

- **Most common entity type today**
- **Organization and Formation**
 - Formalities must be followed:
 - Must file Articles of Organization with the Florida Department of State
 - Obtain a Federal Employer Identification Number ("EIN") from the IRS
- **Organizational documents**
 - Operating Agreement
 - Must have at least one member to form; no restrictions on who (including other entities) may be a member
 - May have unlimited duration





Limited Liability Companies

Liability Protection

- **Inside Liability of Members**
 - Limited liability, essentially on a par with a corporation
 - All 50 states recognize LLCs - can operate in "foreign" (i.e., non-Florida) jurisdictions without exposure to additional liability

Limited Liability Companies

Liability Protection

- **Outside Liability of Members**
 - Not great for single-member LLC; creditor of member can foreclose and dissolve business if they are able to establish to a court that charging order will not be sufficient to satisfy their judgment/claim
 - Much better for multi-member LLC; sole relief of a charging order has no impact on other members and may even discourage creditor from attempting to secure charging order
 - Piercing of veil where LLC organized or used to mislead or defraud creditors

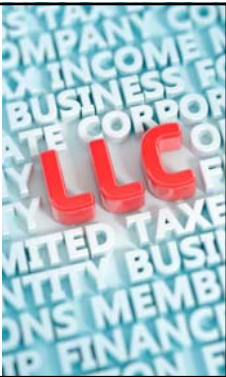
Limited Liability Companies

- **Transferability of interest**
 - Governed by operating agreement - can range from little restriction to complicated
 - If operating agreement is silent, default rule under Florida law is that transferee is a mere assignee of right to distributions (no management) unless other members consent to their admission
 - Not the case for a single-member LLC
 - Transfer of interest in LLC does not cause dissolution

Limited Liability Companies

Flexibility of Taxation

- **LLCs may elect to be taxed as:**
 - A disregarded entity (Default for Single-Member LLCs)
 - A partnership (Default for Multi-Member LLCs)
 - C-Corp (Single-Member LLCs & Multi-Member LLCs)
 - S-Corp* (Single-Member LLCs & Multi-Member LLCs)
 - Depending on how LLC elects to be taxed, may be eligible for TCJA's 20% pass-thru deduction of QBI under new 199A



Limited Liability Companies

Pros and Cons of LLC Form

- **Pros**
 - Simplified documentation and administration for most business types
 - Flexible Management Structure
 - Can be modeled after Sole-proprietorship, Corporate, or Partnership structures
- **Increased flexibility in structuring agreement as between members**
 - Statutory scheme is a "default" scheme, meaning most rules can be changed by agreement of members choice of tax structure while maintaining limited liability protection
 - Beneficial tax treatment for real estate ventures
 - Potential use in Estate Planning
- **Cons**
 - Professional and Small Businesses

Overview of Entities Discussed

	LLC	C-Corp	S-Corp	GP	LP	LLP
FL Formation Fees	\$125.00	\$70.00	-	N/A	\$1,000.00	\$1,000.00
Annual Fees	\$138.75	\$150.00	\$150.00	N/A	\$500.00	\$500.00
Taxation	Pass-thru	Two Levels*	Pass-thru	Pass-thru	Pass-thru	Pass-thru
Tax Rate	Varies based on income*	Maximum of 21%	Graduated rate up to 37%	Varies based on income*	Varies based on income*	Varies based on income*
Liability of Owners	Limited to investment	Limited to investment	Limited to investment	Unlimited	Limited to investment	Limited to investment
Asset Protection	Substantial	Substantial	Substantial	Minimal	Subst. for LPs; Minimal for GP	Subst. for LPs; Some for GPs
Deductions	Flow-through	Entity-level	Flow-through	Flow-through	Flow-through	Flow-through
199A Eligible	If not taxed as C-Corp	No	Yes	Yes	Yes	Yes
Ease of Exit-ability	Simple to Complex	Easy	Medium	Simple to Complex	Simple to Complex	Simple to Complex

Tax Rate Note: The tax rate for persons holding an interest in an LLC, GP, LP, or LLP will vary depending on the federal income tax rate applicable to the interest-holder.



Thank you!



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