

BUSINESS FORMATIONS

VS

LLC's-Corporations

Question	C-Corporation	LLC	S-Corporation
Type of Ownership	Stock, there are different classes.	Membership units and different classes of membership.	Stock, but only one class, however, voting and non-voting is allowed.
Eligible Owners	No restrictions.	No restrictions	100-Shareholder limitation. Non-Individual and Non-Resident Alien shareholders are not allowed.
Management	Managed by Director(s) and Officer(s).	Managed by all members or a designated manager.	Directors and Officers.
Allocation of Ownership	No Dividends –Must be paid upon stock ownership.	Permitted if the allocations have substantial economic effect.	Income, gain and losses pass through to the shareholders of record based on percentage of shares owned.
Liability of Owner	There is limited liability for shareholders, officers, and directors.	There is a limited liability for Owner(s) and Manager(s).	There is limited liability for shareholders, officers, and directors.
Duration	Indefinitely.	Dissolves at the time specified in the Operating Agreement or upon the loss of a member, unless the other members vote to continue.	Indefinitely.

Transfer of Ownership	Shares freely transferable,	Restrictions under certain state laws and jurisdictions.	Shares can be transferred only to eligible S-Corporation shareholders.
Tax Rate	One tax rate of 21% applies to taxable income. Personal Service Corporations are taxed at 35% on all income.	No tax to the LLC on income as it is a pass-through entity and taxed to the member individually based on ownership units held.	No taxes due except in two limited circumstances. 1. Recognized gains and 2. Excess passive income.
Pass Through Losses	Losses not passed through.	Losses pass-through to members subject to certain restrictions.	Losses pass through to shareholders, subject to certain restrictions.
Fiscal Year	May use any fiscal period. Personal Service Corporation must use calendar year, subject to certain exceptions.	Must use a tax year of members having a majority interest in the LLC or the tax year of all principal members if there is no majority.	Must use calendar year, subject to certain exceptions defined in the code.
Liabilities and Basis	Not increased.	Increased	Not increased.
Fringe Benefits	Shareholders-Employees are eligible for most benefits.	Members are eligible for certain benefits in the tax code.	2% shareholders are ineligible for certain benefits.
Tax Upon Sale	Potential double taxation. Corporations are taxed on sale of assets, while Shareholders are taxed on dividends or capital gains.	Single tax at member level upon sale of appreciated assets. Generally there is no tax on distribution of appreciated assets.	Single tax at membership level. Potential built-in gains are taxed if Corporation had appreciated property at time of S-Corporation election.

LLC-FOOTNOTES

If you are looking for state tax savings, an LLC passes the profits and losses through to its members. So if they reside in a non-tax state they will automatically be exempt from state taxes by law. You also can allocate the way you want the profits to be distributed, notwithstanding ownership percentages. For example, if two members own equal units 50/50, one is a non-participating investor and wants to protect their investment by controlling 50% of the company, while the other is a participating non-investor desiring more than 50% of the profits due to the workload. To solve this dilemma, they can write a separate agreement that gives the working member 75% of the profits, even though they own 50% of the company. This agreement is not time-sensitive and can be done at any time, in any desired incremental percentages.

S-CORPORATION-FOOTNOTES

S-Corporation shareholders could pay themselves a salary to receive an additional tax advantage. If they pay themselves a reasonable salary they can take the balance as income, lowering the amount of self-employment taxes. However, if you live in a non-tax state there is no need to form an S-Corporation. When filing for S-Corporation status use form 2553 to take the election within 75 days of formation or by March 15th of any given tax year.