

Choosing A Corporate Structure

The chart below sets forth the primary differences between a C-corporation, S-corporation and LLC so that a business owner can make an informed decision and choose the best corporate structure for his business.

	C-corporation	S-corporation	LLC
Definition	An organization formed under state law. An artificial entity separate from its owners.	An organization structured legally like a corporation but taxed like a partnership.	An entity that can be taxed like a partnership or a corporation but has limited liability like a corporation.
Owner(s)	Shareholders	Shareholders	Members
Type of Ownership	Stock. There may be different classes of Stock, usually common stock and preferred stock.	Only one class of stock, but there can be both voting and non-voting classes of stock.	Membership interests, of which there can be multiple different classes, including non-voting profit sharing interests.
Personal Liability for Debts of the Business	No personal liability for shareholders, unless the corporate veil is pierced, except to the extent they have any personally guaranteed business debts or committed a personal tort. Only the amount of their investment is at risk.	No personal liability for shareholders, unless the corporate veil is pierced, except to the extent they have any personally guaranteed business debts or committed a personal tort. Only the amount of their investment is at risk.	No personal liability for members, unless the corporate veil is pierced, except to the extent they have any personally guaranteed business debts or committed a personal tort. Only the amount of their investment is at risk.
Eligible Owners	No restrictions.	100 shareholder limit. No non-individual or non-US resident shareholders, except eligible trusts and an S-corporation can own 100% of another S-corporation (a qualified subchapter S subsidiary).	No restrictions.
Management	Managed by director(s), who are elected by shareholders. Director(s) elect officer(s).	Managed by director(s), who are elected by shareholders. Director(s) elect officer(s).	All or a group of members, a designated managing member(s) or one or more designated managers.
Formation/Corporate Formalities	File Articles or Certificate of Incorporation with the Secretary of State. Prepare By-Laws, annual meetings, minutes and other corporate formalities.	File Articles or Certificate of Incorporation with the Secretary of State. Prepare By-Laws, annual meetings, minutes and other corporate formalities. All shareholders must sign and file Form 2553 to elect S- corporation tax status with the IRS within 75 days of date before the beginning of the tax year in which the election is to take effect.	File Articles of Organization with the Secretary of State, execute an Operating Agreement, prepare minutes, and comply with publication requirements. Entity name must indicate that it is an LLC (such as "LLC" or "Limited Liability Company"). Election to be taxed like a corporation can be made on IRS form 8832 at any time, effective at any time, at the taxpayer's option, between 75 days before filing and 12 months after filing.
Income Tax	Double Taxation of profits, which are taxed on the corporate level and then again on shareholder dividends. Income that would be taxed on the corporate level can be paid as compensation to employee shareholders to the extent that the amounts are reasonable, creating a tax deduction for the business.	Flow-Through Taxation. There is no tax on the corporate level. Income or loss is passed through to the shareholders. All profits are taxed even if not distributed. Taxes are paid on profits, whether or not distributed as dividends.	If taxed as a partnership, there is no tax at the entity level; income or loss is passed through to the members like in an S- corporation or a partnership. Taxes are paid by each member based on their allocated share of profits, whether or not distributed. Losses are deductible only to the extent of amounts invested. To elect partnership taxation, an LLC must file Form 1065 (other tax forms may need to be filed depending on selected classification).
Withholding and Social Security Taxes	No self-employment tax on principals' wages or profits. Usual FICA and Medicare taxes on wages.	No self-employment tax on principals' wages or profits. Usual FICA and Medicare taxes on wages.	Principals must pay self-employment tax and higher FICA taxes.
Employee Benefits Plans	Subject to ERISA to the extent applicable. ERISA does not apply to companies owned by a sole shareholder or a sole shareholder and their spouse.	Subject to ERISA to the extent applicable. ERISA does not apply to companies owned by a sole shareholder or a sole shareholder and their spouse.	ERISA also applies to LLCs in most cases. ERISA does not apply to companies owned by a sole member and their spouse.
Federal Tax Rates	21%	Up to 37% (individual tax rates apply).	Up to 37% (individual tax rates apply).
Duration	Perpetual unless otherwise specified in the certificate of incorporation.	Perpetual unless otherwise specified in the certificate of incorporation.	Can be Perpetual or any duration specified in the Operating Agreement.
Distribution of Funds	Dividends must be paid to shareholders based on the proportion of their ownership of each class of stock. Dividends can vary among multiple classes of stock.	Dividends must be paid to shareholders based on the proportion of their stock ownership, which cannot vary because only one class of stock is permitted.	Profits can be distributed any way the Operating Agreement specifies, and do not have to be based upon the member's percentage of ownership. However, owners must be careful to comply with IRS regulations regarding partnership income/loss allocation and distributions.
Raising Capital	Sell shares. Can incur debt.	Sell shares. Can incur debt.	Sell LLC membership interests, subject to the terms of the Operating Agreement. Can incur debt.
Most Suitable For	Preferred corporate structure of venture capitalists, other investors, public companies and corporate subsidiaries.	Owners who want individual tax rates to apply to their business income. Preferred by smaller businesses that expect losses during the initial years of operation and for businesses that do not plan on going public.	Owners can decide what type of taxation they want for the business. Particularly beneficial for distributing profits in a disproportionate method to the capital contributed. Often used in small businesses and for real estate investments.
Securities Laws	The issuance or transfer of stock is subject to federal and state securities laws.	The issuance of stock is subject to federal and state securities laws.	The issuance or transfer of membership interest is subject to federal and state securities laws.
Costs	Filing fee with the Secretary of State, annual franchise taxes, agent for service of process annual fee.	Filing fee with the Secretary of State, annual franchise taxes, agent for service of process annual fee.	Filing fee, publication requirement costs, annual franchise tax, agent for service of process annual fee.
Cannabis-specific issues	Corporate purposes must be carefully tailored. Tax liabilities (exacerbated by IRC Section 280E) contained at corporate level rather than passed through to stockholders. Corporate tax rate (21%) is lower than individual tax rate (37%).	Corporate purposes must be carefully tailored. Tax liabilities (exacerbated by IRC Section 280E) are borne personally by shareholders at individual tax rates (37%).	Corporate purposes must be carefully tailored. Tax impact depends on whether the LLC is taxed as a partnership or a corporation.

Legal Disclaimer: Information provided in this chart is intended for general informational purposes only and does not constitute legal advice or a legal opinion. You should not act upon this information without consulting us or other professional advisors.

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