

COMPARISON OF C-CORPORATIONS, S-CORPORATIONS AND LLC'S

| FEATURE | Subchapter C-CORPORATION | Subchapter S-CORPORATION (after Small Business Job Protection Act) | LLC (after finalization of Check-the-Box Regulations) |
|---|--|--|---|
| Number of owners? | Unlimited | No more than 75 | Unlimited |
| Restrictions on ownership? | Generally none | Numerous restriction including prohibitions on ownership by non-residents, corporations and certain trusts. | None |
| Flexibility in owning subsidiaries. | None | Cannot be owned by a C corp. Cannot be owned by a S corporation unless as a 100% subsidiary. | Unlimited |
| Flexibility of financial structure. | Unlimited | Limited to one class of stock but can have voting and non-voting | Unlimited |
| Chance of inadvertent termination of S status or partnership tax status | N/A | Problem. Several events can result in loss of status. | None unless an election is filed. |
| Flexibility of tax allocations? | None | Distributive share must be pro-rated to stock ownership. | Must pass the substantial economic effect under sec. 704(d) |
| Tax of gains on contribution to entity | No gain recognized. | Must meet 80% ownership requirements of sec. 351. Gain is recognized under sec. 357 if debt exceeds basis of property. | No gain recognized under sec. 721. |
| Basis adjustment if shareholder/member guarantees debt. | No basis increase unless the guarantor actually makes payment. | No basis increase unless the guarantor actually makes payment. | Guarantee increases basis so long as member does not have right of reimbursement. |

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| Distribution of appreciated assets. | Corporation recognizes gain on distribution. Sec.311(b)(1) | Corporation recognizes gain on distribution. Sec.311(b)(1) | Generally, no gain is recognized by either LLC or members. |
| Step-up of basis on purchase | Shareholder takes cost basis of shares purchased. Corp.'s basis remains unchanged. | Shareholder takes cost basis of shares purchased. Corp.'s basis remains unchanged. | New member takes cost basis of interest purchased. LLC may elect to step up basis of assets. |
| Step-up of basis on death. | Basis of stock is stepped-up, however basis of assets in corporation are not. | Basis of stock is stepped-up, however basis of assets in corporation are not. | Basis of interest is stepped-up. Co. may elect to also step up basis in assets. |
| Creditor protection. | None, stock may be seized by stockholder's creditor. Shareholder generally is not personally liable for corp. debt. | None, stock may be seized by stockholder's creditor. Shareholder generally is not personally liable for corp. debt. | None, interest may be seized by member's creditor. Operating agreement may limit creditor rights to become a member. Member is generally not personally liable for co. debts. |
| Employment taxes. | Dividends are not subject to employment taxes. | Distributive share is generally not subject to self-employment taxes. | Distributions are generally subject to self-employment taxes except for passive members of an LLC with centralized management. |