

**COMPARISON OF LLC WITH PARTNERSHIPS, S CORPORATIONS AND C CORPORATIONS**

**BUSINESS ASPECTS**

<b>Issue</b>	<b>LLC</b>	<b>Limited Partnership</b>	<b>S Corporation</b>	<b>C Corporation</b>
1. Limited Liability	Limited liability for members even if they participate in management.	Limited liability only for limited partners who do not take too active a role in management; general partner has unlimited liability.	Same as C corporation.	Limited liability for shareholders even if they participate in management.
2. Management	By all members, unless manager(s) appointed.	By general partner.	By Board of Directors (who may be shareholders).	By Board of Directors (who may be shareholders).
3. Continuity of life (Perpetual Duration)	Permitted, but must still avoid at least two (2) other "corporate" characteristics	Permitted, but must still avoid at least two (2) other "corporate" characteristics.	Permitted	Permitted
4. Free transferability of interests	Permitted, but must still avoid at least two (2) other "corporate" characteristics.	Permitted, but must still avoid at least two (2) other "corporate" characteristics.	Permitted	Permitted
5. Types of owners	No restrictions	No restriction	No corporations, pension plans, nonresident aliens, trusts (except S corporation trusts) - e.g., cannot be a member of an affiliated group.	No restrictions
6. Number of owners	No maximum, can have as few as 1	No maximum, but requires at least two.	Maximum of 75	No maximum
7. Different classes of Owners	Permitted	Permitted	Except for differing voting rights, only one class of stock permitted.	Permitted
8. Limited liability in all states	Uncertain	Yes, to the extent noted above.	Yes	Yes

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9.	Operational Formalities	Few	Few	Corporate formalities must be observed.	Corporate formalities must be observed.
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**TAX ASPECTS**

1.	Taxability of income	No tax at entity level, if it qualifies as a nonpublicly traded partnership.	No tax at entity level, if it qualifies as a nonpublicly traded partnership.	No tax at entity level, except on certain passive income, capital gains and built-in gains.	Entity-level tax imposed.
2.	Certainty of tax classification	Risk of reclassification as an association taxable as a corporation if not properly maintained.	Risk of reclassification as an association taxable as a corporation if not properly maintained.	Risk of loss of "S" Status; relief available if technical violation of certain rules.	Yes
3.	Contributions	Generally, transfers of property to an LLC in exchange for a membership interest do not result in income being recognized to the contributing member.	Generally, transfers of property to a partnership in exchange for a partnership interest do not result in income being recognized to the contributing member.	Contributions of appreciated property to a S corporation are taxable unless the contributing shareholders are in "control" of the S corporation immediately after the transfer.	Contributions of appreciated property to a C corporation are taxable unless the contributing shareholders are in "control" of the corporation immediately after the transfer.
4.	Basis/Liabilities	A member can increase the basis of his interest in the LLC by his share of the LLC's liabilities and thereby receive distributions of refinancing proceeds tax-free and, subject to the "at-risk" limitations in Section 465, deduct losses attributable to the borrowed funds, to the extent such amounts do not exceed the basis of his interest in the LLC.	A partner can increase the basis of his partnership interest by his share of partnership liabilities and thereby receive distributions of refinancing proceeds tax-free and, subject to the "at-risk" limitations in Section 465, deduct losses attributable to the borrowed funds, to the extent such amounts do not exceed the basis of his partnership interest.	Shareholders of S corporations receive no basis increase for the corporation's debts unless the shareholder is the lender.	C Corporation shareholders receive no basis increase for the corporation's debts.
5.	Basis Adjustments	Basis adjustment available to entity assets upon death and sale of interest of a member (Code § 754).	Basis adjustment available to entity assets upon death and sale of interests of a partner (Code § 754).	None	None

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6.	Distributions-Generally	Generally not taxable, unless a guaranteed payment ( § 707).	Generally not taxable, unless a guaranteed payment ( § 707).	Payment of salaries deductible by corporation and taxable to recipient; distributions generally not taxable.	Payment of salaries deductible by corporation and taxable to recipient; payment of dividends not deductible and generally taxable to shareholders.
7.	Distributions-Appreciated Property	Except as provided in § § 7707, 736 and 737, a distribution of appreciated property generally does not trigger gain at the LLC level or at the member level (assuming they have sufficient basis).	Except as provided in § § 707, 736 and 737, a distribution of appreciated property generally does not trigger gain at the partnership level or at the partner level (assuming they have sufficient basis).	Distributions of appreciated property will trigger gain at corporate level (that flows through to the shareholders) and may trigger gain at shareholder level as a result of inability to include corporate debt in basis.	Distributions of appreciated property trigger gain at both corporate and shareholder level.
8.	Special allocations	Permitted, subject to Code § 704(b)	Permitted, subject to Code § 704(b)	One class of stock required	Permitted
9.	Built-in gains and losses	Built-in gain or loss in property contributed by a member to the LLC is allocated back to the contributing member ( § 704(c)).	Built-in gain or loss in property contributed by a partner to the partnership is allocated back to the contributing partner ( § 704(c)).	Built-in gain or loss in contributed property is allocated to all shareholders and will increase or decrease the adjusted basis of their stock.	Built-in gain or loss in contributed property is allocated is recognized only at the corporate level.
10.	Deductibility of losses	Subject to at-risk and passive activity rules, members may deduct their allocable share of the LLC's losses only to the extent of their tax basis in their LLC interest, which includes their allocable share of LLC debt.	Subject to at-risk and passive activity rules, partners may deduct their allocable share of the partnership's losses to the extent of their tax basis in their tax based in their partnership interest, which includes their allocable share of partnership debt.	Subject to at-risk and passive activity rules, shareholders may deduct their allocable share of the S corporation's losses only to the extent of their tax basis in their tax basis in the S corporation shares and their loans to the S corporation.	Not applicable.

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11.	Accounting method	Cash or accrual, but LLC with C corporate partners (and which have more than \$5 million in gross receipts) and "tax shelters" may not use cash method.	Cash or accrual, but partnership with C corporate partners (and which have more than \$5 million in gross receipts) and "tax shelters" may not use cash method.	Cash or accrual	Accrual, but cash available to C corporations with \$5 million or less gross receipts.
12.	Insolvency exception to discharge of indebtedness	Determined at the member level.	Determined at the partner level.	Determined at Entity level.	Determined at the entity level.
13.	Taxable year	Can elect fiscal year in certain circumstances	Can elect fiscal year in certain circumstances.	Can elect fiscal year in certain circumstances.	Any year permissible upon adoption; changes require business purposes.