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The Difference Between a C-Corp, S-Corp and LLC

C-Corporation (C-Corp)

A C-Corporation is the traditional and most common type of corporation. Forming a C-Corporation allows the company to have an unlimited number of shareholders. This is beneficial to companies which will require many investors, as well as companies who envision offering stock publicly. An inherent benefit of all Corporations and LLCs is that they shield their shareholders from personal liability arising from business debts and business lawsuits.

- **Ease of Transfer**

A favorable aspect of the C-Corporation is the simplicity by which its stock can be sold or otherwise transferred. Transfers of C-Corporation stock have very few limitations. Furthermore, if a company will offer stock publicly, the C-Corporation is the only option. S-Corporations and LLCs are not permitted to offer ownership through public offerings.

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- **Familiarity**

Familiarity with the C-Corporation often drives business owners to choose the corporation over the LLC. While an LLC is a relatively new form, the C-corporation is the traditional business type with which most business owners have previously dealt with on some level. This familiarity often leads owners to make the comfortable choice, and stick with what they know.

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- **Low Cost**

A further consideration is the state filing fee. In most states, the fee to form a corporation is slightly less than the fee to form an LLC. Use our "Quick Quote" tool to see the fees charged by your chosen state.

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- **Disadvantage**

The primary disadvantage of the C-Corporation is that it is subject to "double taxation." This means that the company's profits are initially taxed at the corporate level, and then taxed again at the individual level when distributions are made to the shareholders.

S-Corporation

Since its creation, the S-Corporation has increasingly become the preferred form for many small businesses. The S-Corporation is similar in structure to that of a C-Corporation, but must meet a few further requirements. In fact, an S-Corporation is initially formed as a C-Corporation by filing the articles of incorporation with the Secretary of State. The C-Corporation can then become an S-Corporation when an extra step is taken by filing with the IRS.

- **Avoid "Double Tax"**

The primary benefit of an S-Corporation is that it allows the shareholders to receive profits free of taxation at the corporate level. The profits will only be taxed at the individual level, thereby avoiding the "double tax" that C-Corporation shareholders are subject to. (C-Corporations are taxed at the corporate and individual level).

However, not all C-Corporations are able to take advantage of the S-Corporation status. A corporation is only eligible for the S-Corporation election if it meets the following list of ownership requirements:

1. The company must have no more than 100 shareholders (a husband and wife qualify as one shareholder).
2. All shareholders in the company must be individuals and not other corporations or LLCs (estates, some exempt organizations and certain trusts qualify as shareholders).
3. No shareholders can be non-resident aliens.
4. There can only be one class of stock in the company (this limitation disregards differences in voting rights).
5. The company making the election cannot be a bank or thrift institution, an insurance company, or a domestic international sales corporation (DISC).
6. Each shareholder must consent to the S-Corporation tax status (as explained in column K of IRS form 2553).
7. No more than 25% of the company's gross corporate income may be derived from passive income.

Limited Liability Company (LLC) - with comparison of LLC to S-Corporation

Today, many businesses are forming as a Limited Liability Company (LLC) and are finding that an LLC offers the "best of both worlds" of corporate forms. An LLC allows for pass-through taxation (see "Tax Advantage" below), thereby avoiding the "double tax" of a C-Corporation, yet also affords its owners the personal liability protection of a corporation.

- **Tax Advantage**

The popularity of the LLC is primarily based on the Tax Advantage. An LLC operates in most ways as a corporation, yet the distributions to its "members" (shareholders) are not subject to taxation at the corporate level. Instead, the distributions are "passed through" the corporate level and are taxed only at the individual level. Therefore, the LLC avoids "double taxation."

- **Personal Liability Protection**

Corporations and LLCs are separate entities from their owners. Since the two are separate, the personal assets of the owners (such as their personal residences, and personal bank accounts) are not reachable by business creditors.

- **LLC or S-Corporation?**

As mentioned above, a C-Corporation that satisfies certain requirements can choose to file as an S-Corporation. The primary benefit of an S-Corporation is that it allows the shareholders to receive profits without taxation at the corporate level. Instead, the profits will only be taxed at the individual level, thereby avoiding the “double tax” that shareholders are usually subject to.

- **If an S-Corporation is also not subject to the "double tax," are there situations where an LLC is still preferable?**

An advantage of an LLC is that the formation and ownership requirements are less stringent. Usually, an S-Corporation can issue only one class of stock, while an LLC may offer a variety of classes. The S-Corporation also limits the number of shareholders to one hundred or less, and prohibits non-resident aliens from possessing ownership in the company. Further, S-Corporation shareholders cannot be other corporations, LLCs, or partnerships. An LLC has no such limits to ownership.

The LLC also offers an advantage in management flexibility. The LLC can be "member-managed," meaning that it would be managed directly by the shareholders. Or the owners of the LLC can agree to have the business “manager-managed,” meaning that the management can be structured and delegated from the owners to managers.

- **Why Not Choose an LLC?**

Although the LLC form is preferable in many ways, a C-corp or S-corp may still be the best form in many circumstances. The primary reason that a C-corp or S-corp may still be preferable is the simplicity by which the stock can be sold or otherwise transferred. A sale of an ownership interest in an LLC must meet certain requirements, while a sale of corporate stock virtually has no limitations. As mentioned above, other favorable aspects of the corporation include the public's familiarity with the form and lower state filing fees. Finally, the "pass through" tax advantage may be less beneficial to businesses that are small enough to take advantage of the 15% and 25% tax rates.

Note that although every state allows corporations to have a single shareholder, a small minority of states require that an LLC have more than one Member. The rest of the states allow a single Member LLC.