

ORGANIZATIONAL ENTITIES

- A. Sole proprietorship
- B. General partnership
- C. Corporation (C corporation or S corporation)
 - PC** UCA 16-11-6.
- D. Limited Liability Company ("LLC")
 - LLP** UCA 48-2c-1503. Rendering Professional Services.
48-2c-1505.

INDIVIDUAL FEATURES OF ENTITIES.

Sole Proprietorship.

A sole proprietorship is a business owned directly by one individual.

Tax

A proprietorship, including a single member LLC electing to be treated as a “disregarded entity” is not a separate entity for income tax purposes.

General Partnership.

Two or more sole proprietors.

Liability.

A general partner's personal liability for the debts of the business and professional errors and omissions of any partner of the business is unlimited.

Tax.

A general partnership is not a separate taxpaying entity for income tax purposes.

A partnership is required to file Federal Form 1065 and Utah TC-65 and to notify the partners of their distributive shares of the items reflected on those returns.

Corporation.

Utah Revised Business Corporation Act. UCA §§ 16-10a-101 et. seq.

Liability.

Neither the shareholders nor the members of the board of directors are personally liable for the corporation's debts or obligations, unless the corporate veil is pierced.

An S corporation generally is not subject to tax as an entity.

Professional Corporation

A professional corporation shareholder providing professional services through the corporation is still personally liable with respect to such services, but is not liable for the professional services rendered by a fellow shareholder, except to the extent the shareholder participated in the services which gave rise to the liability claim. A liability claimant can, however, reach all assets of the corporation.

UCA 16-11-6. **Purpose of professional corporation -- Power to own property and invest funds.**

A **professional corporation** may be organized pursuant to the provisions of this act only for

the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service which it was organized to render and services ancillary thereto; provided, however, that a **professional corporation** may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments.

Limited Liability Company.

A limited liability company is an organization that is formed pursuant to Utah Revised Limited Liability Company Act. UCA §§ 48-2c101 et. seq.

A limited liability company may be organized in Utah with a single member.

Liability.

Neither the members nor the managers are personally liable for the company's debts or obligations.

A member providing professional services is still personally liable with respect to such services but is not liable for the professional services rendered by a fellow member, except to the extent the member participated in the rendering of the professional services giving rise to the liability claim. A liability claimant can, however, reach all assets of the company.

Disregarded Entities.

Pursuant to the Check the Box Regulations any individual or legal entity may form a single member LLC which will be treated as a "Disregarded Entity" for federal income tax purposes.

48-2c-1503. Rendering Professional Services.

48-2c-1505. Name limitations.

(1) The name of a domestic professional services company and of a foreign professional services company authorized to transact business in this state, in addition to satisfying the requirements of Sections [48-2c-106](#), [48-2c-1602](#), and [48-2c-1606](#):

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by its articles of organization or by Section [48-2c-1503](#);

(b) must conform with any rule promulgated by the regulating board having jurisdiction over a professional service described in the company's articles of organization; and

(c) must contain, in its articles of organization and in all reports and documents filed with the division, the words "**professional limited liability company**" or the abbreviations "P.L.L.C." or "PLLC" in lieu of the requirements of Subsection [48-2c-106](#)(1)(a).

(2) Notwithstanding the provisions of Subsection (1)(c), a professional services company may hold itself out to the public under a name that does not contain the words "**professional limited liability company**" or the abbreviations "P.L.L.C." or "PLLC" so long as that name meets the requirements of Subsection [48-2c-106](#)(1)(a).

(3) Sections [48-2c-106](#), [48-2c-1607](#), and [48-2c-1608](#) do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of an individual member or individual former member of the professional services company or the name of an individual who was associated with a predecessor of the professional services company.

COMPARISON ISSUES.

Accounting

A C corporation will generally not be allowed to use the cash receipts and disbursements method of accounting.

Management and Control.

A sole proprietor has complete control over her business.

A general partner in a partnership has an equal voice in the management of the partnership unless otherwise specified in the partnership agreement.

An LLC may be either manager-managed (the managers serving similar to a board of directors) or member-managed (the members acting similar to general partners).

While the S or C corporation is governed by its board of directors, in most closely-held businesses all the shareholders will generally be directors, particularly if they are all active in the business.

Limitation of Liability.

A sole proprietor is not insulated from liability, either tort, professional or contractual, arising from the operation of her business, unless she operated in a single member LLC treated as a disregarded entity.

A general partner is not insulated from liability, either tort, professional or contractual, arising from the operation of the business.

A member in an LLC is insulated from non-professional liability, both tort and contractual, whether or not she engages actively in business.

A shareholder in an S or C corporation is insulated from non-professional liability, both tort and contractual.

A member of an LLC and shareholder of an S or C corporation will still be liable for personally guaranteed obligations of the entity and, possibly, for tort claims she is personally responsible for or participates in (including professional liability claims) and may be liable for certain trust fund taxes of the entity. See Code § 6672.

Simplicity

A sole proprietorship is simple and inexpensive to operate, but, because of the lack of any formalities, it may also present problems with the transfer of the business, either during lifetime or at death.

A general partnership can be operated very simply, inexpensively, and with little formality. However, a general partnership can become rather complex if special allocations or other special arrangements among partners are desired.

An LLC, LLP can be operated as a simply structured general partnership or as a complex entity with multiple classes of equity interests. Expense will depend on complexity. Articles of organization and annual reports must be filed.

Operating as a PC, S or C corporation will involve more formalities than operating as a sole proprietorship, as a general partnership, or as an LLC. Corporate formalities must be followed to maintain liability integrity of corporation.

Flexibility.

A sole proprietorship offers significant flexibility during lifetime in terms of buying,

selling and disposing of assets without other-than-normal tax consequences. Flexibility at death in terms of continued operation of business can be complicated because of transfer of ownership and liability issues.

General partnerships and LLCs offer significant flexibility during life and after death in terms of sharing of profits, the buying and selling of assets and disposition and distribution of assets without other-than-normal tax consequences. (Distributions of appreciated assets can usually be accomplished without tax consequences.)

Organizational or operating documents can also provide flexibility in terms of continued operation of business after death.

Corporations are usually less flexible from tax standpoint than other entities.

Distributions of appreciable assets will result in immediate tax consequences. Flexibility at death of S corporation shareholder may be limited because of restrictions on who can be shareholder of S corporation.

Transferability.

A sole proprietor can sell the assets of the business whenever he or she wishes.

A general partner or member in an LLC may not transfer his or her full ownership interest without the consent of the other partners or members unless otherwise specified in the partnership or operating agreement.

While a shareholder in an S or C corporation may transfer his or her stock at any time absent an agreement stating otherwise (except to a non-professional in the case of a professional corporation), it is unusual in a closely-held corporation not to have such a shareholder agreement.

Entity as Taxpayer.

Partnerships, LLCs and generally, S corporations, are not separate taxpayers for income tax purposes; rather, income, gain and loss flow through such entities to their owners.

A C corporation is a separate taxpayer for income tax purposes. Shareholders of the C corporation are subject to a dual tax on income taxed at the corporate level and then distributed to the shareholders and upon the sale or liquidation of the corporation. Losses incurred by the C corporation are not available for deduction by the shareholders.

Fringe Benefits.

An owner/employee of a C corporation is generally entitled to participate in the following fringe benefits with no adverse tax consequences:

health and accident insurance or reimbursement;

premiums paid by the corporation for disability insurance;

benefits under a cafeteria plan;

the first \$50,000 of group-term life insurance;

lump-sum death benefit exclusions; and

meals and lodging furnished for the convenience of the employer.

availability of loans from qualified retirement plan.

Owner/employees of partnerships, LLCs and S corporations (2 % of stock or greater) are not eligible for such benefits.

Selection of Tax Year. Only a C corporation that is not a personal service corporation is unrestricted in choice of a taxable year. Partners, LLCs, and S corporations generally must use the calendar year.

SPECIFIC COMPARISONS.

Corporation vs. LLC.

In general, an LLC will enjoy more favorable income tax treatment than an S corporation. However, an aggressive position regarding the payment of reduced compensation to S corporation shareholders may result in lower FICA taxes.

An S corporation usually is not a taxable entity as well as a partnership or an LLC. In all three entities, income, gain, loss, deduction and credit pass through to the shareholders, partners or members.

Distributions. Distributions of cash or other property to shareholders of an S corporation or to a member of an LLC should be nontaxable to the extent of the basis in the stock of the S corporation or the interest in the LLC. An S corporation will recognize gain or loss upon the distribution of appreciated property to a shareholder. On the other hand, a distribution of appreciated property by an LLC to a member will generally not result in immediate tax consequences.