

## TAX

### THE LIMITED LIABILITY COMPANY AS A CHOICE OF BUSINESS ENTITY

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The Limited Liability Company (LLC) business entity has become well established in New Jersey since the enabling legislation was passed. An LLC is a form of ownership that combines the best features of both a corporation and a partnership. The owners or members of an LLC, like those of a corporation, are not responsible for the debts, obligations or liabilities of the company beyond their investment in the LLC. Further, single-member LLCs are permitted in New Jersey.

Moreover, unlike a "C" Corporation, an LLC does not pay taxes on the corporate level. Instead, the profits flow through to the individual LLC members free from any corporate level taxes.

Furthermore, unlike the typical "S" corporation, an LLC can have an unlimited number of members, several classes of ownership and can be owned by both foreign and corporate investors.

#### LLC vs. Other Entities: A Comparative Analysis

##### Subchapter C Corporations

In a Subchapter C Corporation, profits are taxed at the corporate level and then again when they are distributed to the shareholders. In contrast to that, the LLC as an entity is not subject to corporate tax.

##### Subchapter S Corporations

A Subchapter S Corporation is spared from federal taxes, but remains subject to certain New Jersey taxes. Also, Subchapter S Corporations have restrictions on ownership.

- An LLC can have any capital structure desired, while a Subchapter S Corporation may issue only one class of stock.
- An LLC may have an unlimited number of members, while a Subchapter S Corporation may have no more than 75 shareholders.
- An LLC may have any type of U.S. or foreign person or organization as a member, while a Subchapter S Corporation's shareholders are generally limited to only U.S. individuals, estates and certain qualified trusts.
- An LLC has a minimum of filing requirements while a Subchapter S Corporation must file timely election and other tax forms with the IRS and New Jersey in order to comply with regulations.

##### Partnerships

Partnerships are taxed in the same manner as LLCs. However, members of a partnership may have greater exposure to the liabilities of the partnership. The members of a general partnership and the general partner(s) of a limited partnership are fully liable for the debts and obligations of the partnership. The liability of the members of an LLC for the debts and obligations of the entity is limited to their investment in the LLC. Yet,

the members can play an active role in management without sacrificing this limitation on liability.

	Limited Liability Company	Sole Proprietorship	General Partnership	Limited Partnership	S Corporation	C Corporation
Limited Liability	Yes	No	No	Yes	Yes	Yes
Transfer Interest	Limited	Limited	Limited	Limited	Free	Free
Operating Cost	Less costly	Less costly	Less costly	More costly	More costly	More costly
# of Owners	1 or more	1	2 or more	2 or more	75 or less	1 or more
Level of Taxation	Single	Single	Single	Usually single	Single	Double
Fiscal Year	Same as members	Same as owner	Same as partners	Same as partners	Generally calendar	Less restrictions
Federal vs. NJ Tax Law	Same	Same	Same	Same	2% State tax	Same

### Is an LLC Something to Consider?

With such features as pass-through taxation, relatively unrestricted structure, and limited liability, LLCs provide a combination of advantages not offered by alternative organizational entities. An important question here is, would you benefit from operating as an LLC? *If any of the factors below describe or define your business objectives, then the answer is "yes":*

- (1) Limited liability
- (2) Lower operating costs
- (3) Flexibility in membership
- (4) Simplified taxation
- (5) Foreign investors
- (6) Control of ownership
- (7) Active or passive investing

(8) Flexibility of equity ownership

(9) Minimum tax impact.

COMPARISON OF THE TAX CONSEQUENCES (Hypothetical Case)	
<p><b>C CORPORATION</b></p> <p>Taxable Income: \$10,000,000.00</p> <p>Combined Corporate</p> <p>Federal and State Tax: <u>\$-3,994,000.00</u></p> <p>(highest effective rate: 39.940%)</p> <p>\$6,006,000.00</p> <p>Combined Individual</p> <p>Federal and State Tax: <u>\$-2,619,637.00</u></p> <p>(highest effective rate: 43.61%)</p> <p><b>Net Income:</b> \$3,386,363.00</p>	<p><b>LIMITED LIABILITY COMPANY</b></p> <p>Taxable Income: \$10,000,000.00</p> <p>Combined Individual</p> <p>Federal and State: <u>\$-4,361,700.00</u></p> <p>(highest effective rate: 43.61%)</p> <p><b>Net Income:</b> \$5,638,300.00</p>
	<p>LLC nets an additional \$2,251,937.00</p> <p>(or 22.52%)</p>

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