

	Sole Proprietorship	Limited Liability Co. (LLC)	C-Corp	S-Corp
Estimated Ease of Formation	Fairly Easy	Fairly Easy	Fairly Easy	Moderately Difficult
Formation Procedure	No Filing Required	<ol style="list-style-type: none"> 1. File certificate of Formation 2. NYS Only: Meet publishing requirement 	<ol style="list-style-type: none"> 1. File of Certificate of Formation 	<ol style="list-style-type: none"> 2. File certificate of formation 3. File federal and state S-Corp Tax treatment election
Key Documents for Formation	-DBA Filing (Give the business a name other than the owner's name.)	-Articles of Organization -Operating Agreement	-Articles of Incorporation -Bylaws -Organizational Board Resolutions -Articles of Incorporation -Stock Certificates -Stock Ledger	-Articles of Incorporation -Bylaws -Organizational Board Resolutions -Articles of Incorporation -Stock Certificates -Stock Ledger -IRS & State S Corporation election
Legal Status	Same entity as owner	Entity is separate from owner	Entity is separate from owner	Entity is separate from owner
# of Owners	Single Owner	Unlimited number of members allowed; requires two or more members to be taxed as partnership.	Unlimited number of shareholders allowed; no limit on stock classes	Up to 100 shareholders allowed; only one basic class of stock allowed
Ownership Instrument	Not Applicable	Membership Interests	Shares of Stock	Shares of Stock
Management	Ultimate flexibility (by sole proprietor)	Managers, managing members, or members (dictated by articles of organization.)	Directors (delegate to officers)	Directors (delegate to officers)
Management Document	Not Applicable	Operating Agreement	Bylaws	Bylaws
Owner Liability	Unlimited	Very Limited	Very Limited	Very Limited

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Piercing the Corporate Veil (Court imposes liability on owners despite limited liability.)	No "veil" exists	Not Easy	Not easy, if formalities are respected	Not easy, if formalities are respected
Separate Taxable Entity from Owner	No	Depends on tax status as sole proprietorship, partnership, or corporation	Yes	No
"Pass-Through" Entity? (Owners pay income tax rather than business.)	Yes	Yes	No	Yes (but might be subject to double taxation at city level)
Tax Flexibility	Not a taxable entity	Special allocations okay	Not flexible	Not flexible
Annual Meetings	Not applicable	Not required by law, but recommended as a useful tool	Required	Required
Duration of Existence	Dependent on sole proprietor survival; terminates at death	Can be perpetual or time limited; dictated by articles of organization	Perpetual	Perpetual
Charging Order Protection	No	No	No	No
Combination	Can be used as GP of LPs	LLCs are good as general partners of LPs and owners of other entities	Good only to hold ownership interests in other entities	Can be used as GP of LPs
Series	No	No	No	No
Fiduciary Duties	N/A	LLC managers (including managing members) have fiduciary duties of care and loyalty.	Directors have fiduciary duties of care and loyalty.	Directors have fiduciary duties of care and loyalty.
Transferability of Ownership	Only by sale of entire business or creation of a different entity	Per articles of organization; commonly has some limitations	Can sell all or a portion of stock	Can sell all or a portion of stock

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Ability to Raise Capital	Limited to owner's assets and borrowing ability	Limited to owners' contributions and LLC's borrowing abilities; can sell interests to raise capital	Limited to owners' contributions and corporation borrowing abilities; can sell interests to raise capital	Limited to owners' contributions and corporation borrowing abilities; can sell interests to raise capital
Tax Year	Same as owner	Depends on tax status as sole proprietorship, partnership, or corporation	Calendar or fiscal year	Calendar year; §444 election; or business purpose demonstrated
Allocation of Income	100% of income to owner	Depends on tax status as sole proprietorship, partnership, or corporation	100% of income to corporation	Normally pro-rata based on per share/per day rule
Tax on Formation (in control)	No gain or loss	Depends on tax status as sole proprietorship, partnership, or corporation	No gain if debt relief does not exceed basis of property transferred and no other assets received by transferee	No gain if debt relief does not exceed basis of property transferred and no other assets received by transferee
Tax on Formation (not in control)	Not applicable since always in control	Depends on tax status as sole proprietorship, partnership, or corporation	Gain or loss as if sold property transferred for the FMV of the stock received	Gain or loss as if sold property transferred for the FMV of the stock received
Original Basis of Stock (not in control)	Not applicable since always in control	Depends on tax status as sole proprietorship, partnership, or corporation	FMV of stock received	FMV of stock received
Basis Increases from Operation	Additional purchases/cash invested	Depends on tax status as sole proprietorship, partnership, or corporation	Increased by additional investments	Increased by profits and additional contributions
Basis Decreases from Operation	Normal basis adjustments; depreciation, amortization, etc.	Depends on tax status as sole proprietorship, partnership, or corporation	Decreased by nontaxable return of capital, if any	Decreased by losses, deductions, and distributions
Deductibility of Losses	Normal limitations, at-risk, passive	Depends on tax status as sole proprietorship, partnership, or corporation	Stay at corporate level, not passed through to shareholders	Passed through to shareholders, normal limitations apply, basis, at risk, passive

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Non-liquidating Distributions	100% belongs to owner	Pro-rata among shares if a corporation; 100% if a sole proprietorship; or based on partnership agreement if a partnership	Pro-rata among shares	Rights must be pro-rata among shares
Liquidating Distributions - Owner Level	Not a separate entity; therefore all reported as part of owner's return	Depends on tax status as sole proprietorship, partnership, or corporation	Sold stock for value of cash and property received	Sold stock for value of cash and property received
Worthlessness of Investment	Already has written off or capitalized all investments; loss sale of assets if sold	Depends on tax status as sole proprietorship, partnership, or corporation	Capital loss of remainder of basis; may qualify for §1244 ordinary loss treatment	Capital loss of remainder of basis; may qualify for §1244 ordinary loss treatment
Charitable Contributions	Generally 50% limitation	Depends on tax status as sole proprietorship, partnership, or corporation	Generally 10% limitation	Generally 50% limitation at shareholder level
Death - Basis Adjustments	Basis of assets is generally FMV on the date of death	Depends on tax status as sole proprietorship, partnership, or corporation	Basis of stock is generally FMV on the date of death	Basis of stock is generally FMV on the date of death
Self-employment Tax	Yes	Depends on tax status as sole proprietorship, partnership, or corporation	No, since payment for services is in the form of wages	No, since payment for services is in the form of wages
Salaries Paid to Family Members	Exempt from FICA for wages paid to children of owner who are under the age of 18; spouse and parents exempt from FUTA	Depends on tax status as sole proprietorship, partnership, or corporation	No exemption for any family member	No exemption for any family member

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Accounting Method	Any method is appropriate that clearly reflects income	Depends on tax status as sole proprietorship, partnership, or corporation	Any applicable method; cannot use cash if it's a tax shelter, required to use inventories, or has annual gross receipts over certain limits	Any applicable method; cannot use cash if it's a tax shelter, required to use inventories, or has annual gross receipts over certain limits
Fringe Benefits - Entity Level	Most are nondeductible; may be able to deduct 100% of qualifying health insurance premiums	Depends on tax status as sole proprietorship, partnership, or corporation	Most are deductible	Most are nondeductible; shareholder may be able to deduct 100% of qualifying health insurance premiums
Fringe Benefits - Owner Level	Most are nondeductible; may be able to deduct 100% of qualifying health insurance premiums	Depends on tax status as sole proprietorship, partnership, or corporation	Most are tax free	Most are taxable, although may be exempt from FICA if they are nondiscriminatory
Capital Losses	Deductible by the owner up to capital gains plus \$3,000; excess is carried over until death	Depends on tax status as sole proprietorship, partnership, or corporation	Allowed only to the extent of capital gains. Any net capital loss for the year is carried back three tax years as short-term capital loss then forward five years	Passed through to shareholders with normal limitations applying at shareholder level
Income Characterization	Treatment depends on income; ordinary income, capital gains/losses, investment income, passive, etc.	Depends on tax status as sole proprietorship, partnership, or corporation	Dividend income when reported to shareholder	Passed through to shareholders, character is the same as if shareholder received it directly
Exempt Income (i.e., municipal bond interest)	Exempt	Depends on tax status as sole proprietorship, partnership, or corporation	Remains exempt for income tax, may be subject to AMT	Passed through to shareholders; retains character as exempt
Retirement Plans	Any retirement plan, including SEPs, SIMPLEs, Keoghs, solo-401(k)	Depends on tax status as sole proprietorship, partnership, or corporation	Any retirement plan except Keogh; deductible at corporate level	Any retirement plan except Keogh; deductible at corporate level

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Other Notable Strengths	N/A	<p>Has the benefits of a partnership regarding management, less record keeping requirements, and option for pass-through tax benefits, and also the limited liability benefits of a corporation.</p> <p>LLCs do not require any special tax election to pass income through to its owners.</p> <p>LLCs generally have no restrictions on the type of entities who can own LLC interests. (S Corporations limit who can own stock.)</p> <p>LLCs have no restrictions on the number of its owners.</p> <p>LLCs can have different classes of owners.</p> <p>LLCs have much more ability to allocate income, gains and losses.</p> <p>LLCs have the opportunity for stepped up basis rules under Section 754.</p> <p>LLCs have more liberal contribution and distribution rules.</p>	<p>Regulators, financial institutions, and employees are most familiar with this form.</p> <p>There is a well-developed body of corporate case law and statutes that provides greater certainty, but less flexibility than other entity forms.</p>	<p>There is a well-developed body of corporate case law and statutes that provides greater certainty, but less flexibility than other entity forms.</p> <p>A New York corporation that is a federal S-corporation may elect to be a New York S-corporation if it meets certain New York State requirements.</p> <p>S-Corps do not have to allocate pre-contribution gains under IRC Section 704(c).</p> <p>S-Corps can calculate discharge of business indebtedness income at the corporation level.</p> <p>Shareholders are employees for tax purposes, receiving a W-2 form for salary paid, reducing the necessity of quarterly estimated tax payments.</p> <p>Retirement plan calculations are more</p>

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		<p>LLCs can include debt for which they are liable to their basis for deduction purposes.</p>		<p>easily calculated than LLC members.</p>
<p>Other Notable Weaknesses</p>	<p>N/A</p>	<p>Regulators, financial institutions, and employees are less familiar with this form, although this is changing.</p> <p>Case law is less developed than corporation and partnership law. This provides more freedom, but less certainty, although this is changing.</p>	<p>More regulated and more record keeping requirements than LLCs or partnerships.</p>	<p>There are limitations on the availability of the S-corp. election (only US entities can make the election, no more than 100 shareholders, only specific types of shareholders, and only one class of stock).</p> <p>More regulated and more record keeping requirements than LLCs or partnerships.</p> <p>Certain entities are ineligible to be New York S-corporations.</p> <p>New York City does not recognize federal or New York State S-corporation status. New York and foreign S-corporations are subject to the New York City General Corporation Tax (GCT) if they conduct certain activities in New York City.</p>