

FORMS OF DOING BUSINESS

I. INTRODUCTION

A. SOLE PROPRIETORSHIP

1. LIABILITY → UNLIMITED: IF THE OWNER IS LIABLE, HIS PERSONAL ASSETS CAN BE USED TO SATISFY THE JUDGMENT.
2. ECONOMICS/TAXATION → ONE LAYER: JUST LIKE YOUR SALARY, IT IS ONLY TAXED ONCE. IT GOES ON A SCHEDULE C.
3. CONTROL → TOTAL FOR OWNER
4. COST → BASICALLY ZERO, YOU MAY NEED TO OBTAIN A D/B/A CERTIFICATE OR A PRIVILEGE LICENSE FROM THE CITY.

B. PARTNERSHIP

1. GENERAL: TWO OR MORE PERSONS CARRYING ON AN ACTIVITY FOR PROFIT.
 - a) LIABILITY → JOINT AND SEVERAL UNLIMITED LIABILITY: A CREDITOR CAN PURSUE RECOVERY AGAINST BOTH PARTNERS OR AGAINST EITHER PARTNER INDIVIDUALLY, REGARDLESS OF WHOM CREATED THE LIABILITY.
 - b) ECONOMICS/TAXATION → ONE LAYER: PARTNERSHIP IS NOT TAXED, THERE IS A FLOWTHRU. PARTNERSHIP ALLOCATES BY CAPITAL.
 - c) COST → YOU WRITE A PARTNERSHIP AGREEMENT TO OPT OUT OF THE PARTNERSHIP ACT, WHICH INVOLVES AN EXPENSE. FILE A D/B/A AS WELL.
 - d) CONTROL → JOINT AND SEVERAL: ANY PARTNER CAN BIND THE PARTNERSHIP.
2. LIMITED: YOU HAVE A GENERAL PARTNER AND A LIMITED PARTNER.
 - a) LIABILITY: LIMITED PARTNER'S LIABILITY IS LIMITED TO CAPITAL CONTRIBUTION, GENERAL PARTNERS ARE JOINTLY AND SEVERALLY LIABLE.
 - b) CONTROL → GENERAL PARTNERS CONTROL THE PARTNERSHIP. LIMITED PARTNER MAY HAVE NEGATIVE CONTROL: "ANY EXPENDITURE BEYOND \$100K REQUIRES APPROVAL BY THE LIMITEDS."

1. NOTE: THE GENERAL PARTNER CAN BE A CORPORATION, AND THE LIMITED'S CAN BE CORPORATION.

C. CORPORATIONS (C CORP) → EVERY STATE HAS A CORPORATION STATUTE

1. LIABILITY → SHAREHOLDERS GET LIMITED LIABILITY
2. ECONOMICS/TAXATION → TWO LAYERS OF TAX, THE CORP. IS TAXED AND SHAREHOLDERS
 - a) AN S CORP HAS ONLY ONE LAYER OF TAX, ALTHOUGH THE TAX ACCRUES WHEN THE INCOME IS EARNED. NO MORE THAN 75 SHAREHOLDERS, MUST BE PEOPLE, ETC.
3. CONTROL → SHAREHOLDERS HAVE CONTROL BECAUSE THEY ELECT DIRECTORS.

D. LLC'S → TRY TO GIVE YOU ALL THE BENEFITS OF BOTH

1. LIMITED LIABILITY WITH ONE LAYER OF TAX
2. CONCERN: LIMITED LAW AVAILABLE ON ENTITY ATTRIBUTES TO OFFER CERTAINTY.

E. SWITCHING

1. CAN BE EASY FROM A PARTNERSHIP TO A LIMITED PARTNERSHIP.
2. BUT, IF AN S CORP SELLS STOCK TO A VENTURE CAPITAL FIRM, IT WILL DESTROY THE S CORP STATUS AND YOU'LL HAVE TO CONVERT.
3. YOU CAN'T FLIP FLOP, THERE ARE PENALTIES.

F. NOTES

1. PASSIVE LOSSES → THEY CAN ONLY BE USED TO OFFSET AGAINST ACTIVE GAINS. REGULATIONS OF THE IRS, SUCH AS THIS, COMPLICATE AND LIMIT THE TERMS OF A PARTNERSHIP AGREEMENT.
2. BASIS → THE AMOUNT YOU INVESTED ORIGINALLY, AND THE AMOUNT THAT IS SUBTRACTED FROM YOUR INVESTMENT PROCEEDS TO DETERMINE YOUR TAX LIABILITY.