

## **STARTING A BUSINESS ? – S-CORP. or L.L.C.?**

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Determining the type of legal structure for a new business can be daunting for people who are considering venturing out on their own. Corporations and limited liability companies (“LLCs”) are preferred business structures because, unlike sole proprietorships and partnerships, both offer liability protection. This means that in most situations, business owners cannot be held personally responsible for the company’s debts. The personal assets of an owner are usually shielded from liabilities of a corporation or LLC.

Subchapter S Corporations (“S-Corps”) and LLCs are similar in that they are both “pass-through” entities for tax purposes; the income of these companies are passed through to their owners and reported on the owners’ individual income tax returns, thereby eliminating the double taxation sometimes incurred by shareholders of a standard corporation (“C-Corp.”).

### ***So what are some of the major differences between S-Corps and LLCs?***

There are restrictions on who can be owners (called “shareholders”) of an S-Corporation. An S-Corp. can have no more than 100 shareholders. None of the shareholders can be nonresident aliens, other corporations or LLCs.

The directors or officers of an S-Corp. manage the company. An S-Corp has no flexibility in how profits are split up amongst its owners. The profits must be distributed according to the ratio of stock ownership, even if the owners may otherwise feel it is more equitable to distribute the profits differently.

LLCs offer greater flexibility in ownership and ease of operation. Owners of an LLC are usually referred to as members. There are no restrictions on the number of members, and nonresident aliens, other corporations, and other LLCs can all be members of an LLC. LLCs can be member-managed, meaning that the members run the company; or it can be manager-managed, with responsibility delegated to managers who may or may not be members of the LLC. Members of an LLC can distribute profits in the manner they see fit.

For tax purposes, there is no LLC designation. To file and pay taxes for an LLC, the business owner(s) must submit a tax return as a sole proprietor, a partnership or an S-Corp. LLC owners are also required to pay self-employment taxes on profits, which generally result in higher tax bills. On the other side, S-Corp owners are considered employees when it comes to taxes. They are supposed to take reasonable salaries and pay federal and state payroll taxes on those wages, as opposed to paying those taxes on all of the profits.

### ***Which structure is right for you?***

The answer depends on your own specific situation. If operational ease and flexibility are important to you, an LLC is probably the way to go. If you plan on actively managing your business and looking to save on self employment taxes, an S-Corporation may be the better option.

In New York State and New York City, there are State publication requirements for new LLCs and City corporate tax rules that also have a significant impact on new entity selection. It is recommended you seek advice from a local attorney or a C.P.A. to decide which business entity will fit your needs.