

Law Office Of Inna Fershteyn

LLC
v
S-CORP.
WHICH IS BETTER?

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5 DIFFERENCES BETWEEN LLC & S-CORP

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1

MEMBERSHIP

LLCs can have any number of members; S corps must have 100 shareholders or fewer.



2

CITIZENSHIP/RESIDENCY

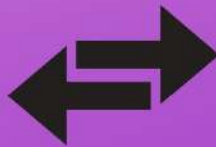
LLC members don't have to be US citizens or residents. S Corp shareholders must be citizens or residents.



3

SELF-EMPLOYMENT TAXES

Corp owners can be considered employees and paid "a reasonable salary." FICA taxes are taken out and paid on the amount of the salary. Corporate earnings after salary may be able to be treated as unearned income that will not be subject to self-employment taxes.



4

TRANSFERRING OWNERSHIP

There are no restrictions on an S-corp shareholder selling their shares. However, LLC operating agreements often require consent from other members before one member can sell their ownership interest in the business.



5

RECORD KEEPING OBLIGATIONS

Corporations have more mandatory reporting requirements than LLCs. For instance, corporations must publish an annual report, issue stock certificates, adopt bylaws, and hold regular shareholder and director meetings. At most, LLCs might have to file an annual report.

WHAT IS LLC/S-CORPORATION?

What is an LLC?

A limited liability company, also known as a LLC, is a United States-specific form of a private company. It is a business structure that combines the pass-through taxation of a partnership or sole proprietorship with the limited liability aspect of a corporation.

What is an S-Corporation?

An S-Corp is a closely held corporation that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code. It is a special feature of business ownership within the United States that allows for a corporation to avoid double taxation because it is not required to pay corporate income taxes on the profits of the company. In an S-Corp, all profits and losses are directly passed on to the shareholders of the company.



PROS OF

LLC

Some pros of an LLC are that:

- It provides liability protection for members and managers; it protects the owner's assets from facing personal lawsuits from clients or customers with whom he's done business.
- LLCs generally require less paperwork and lower ling costs. In an LLC, all external business-related lawsuits will be held against the company rather than the individual owner.
- LLCs are also easier to maintain since they allow easier maneuver of income to business members while avoiding unnecessary taxes. For example, if you were to start a record label and sign an artist, you have been getting paid \$1,500.00 instead and wants to le legal action.
- An LLC would protect all income made from that time period and all assets you have outside of the contract. Also, at any point an LLC may choose to be taxed as an S-Corp or a C-Corp (another type of company) by ling a document called an election with the IRS.

S-CORP

Some pros of an S-Corp are that:

- As with LLCs, owners of S-Corps are protected from legal liability.
- An S-Corp also can sell stock as well as the option to purchase stock at a fixed price.
- Additionally, opening an S-Corp allows the owner(s) of the business to write off any eligible start-up losses from their chargeable taxes.

CONS OF

LLC

Some cons of an LLC are that:

- The renewal fees or publication requirements can be pricey, and even if you are a member of your own company, you cannot pay yourself any wages.
- LLCs are subject to franchise and capital values taxes in select states, as well as ownership of the LLC needing to be distributed among all company members (which can also be a pro). In keeping with the record label example, you would not be able to pay yourself as a manager. The \$1,000.00 you make is the artists' payment to you, however you would not be able to claim any other money from her.
- All your income comes from your employees.

S-CORP

Some cons of S-Corp are that:

- For one, S-Corp are highly scrutinized by the IRS since tax policy changes with the way payments are distributed to employees (salaries or dividends).
- Additionally, ownership of an S-Corp is capped at 100 shareholders, and owners run the risk of losing S-Corp status if the IRS learns that there is a greater number of people running the company.



LLC VS. S-CORPORATION IN COURT

In the case of Naples vs. Keystone Building Development Corp, a family entered a contract with Keystone to have a new home built for \$600,000, and discovered major problems with the property shortly after moving in. While Keystone did send multiple crews to make repairs, the problems persisted. The Naples led a lawsuit asking for over \$100,000.00 in repairs, but being that Keystone was an LLC, their assets remained protected and the court only awarded the Naples family a total of \$57,000, half of the alleged damages, after the trial. With regard to this case, an LLC and an S-Corp would have served the same legal purpose as both offer limited liability protection.



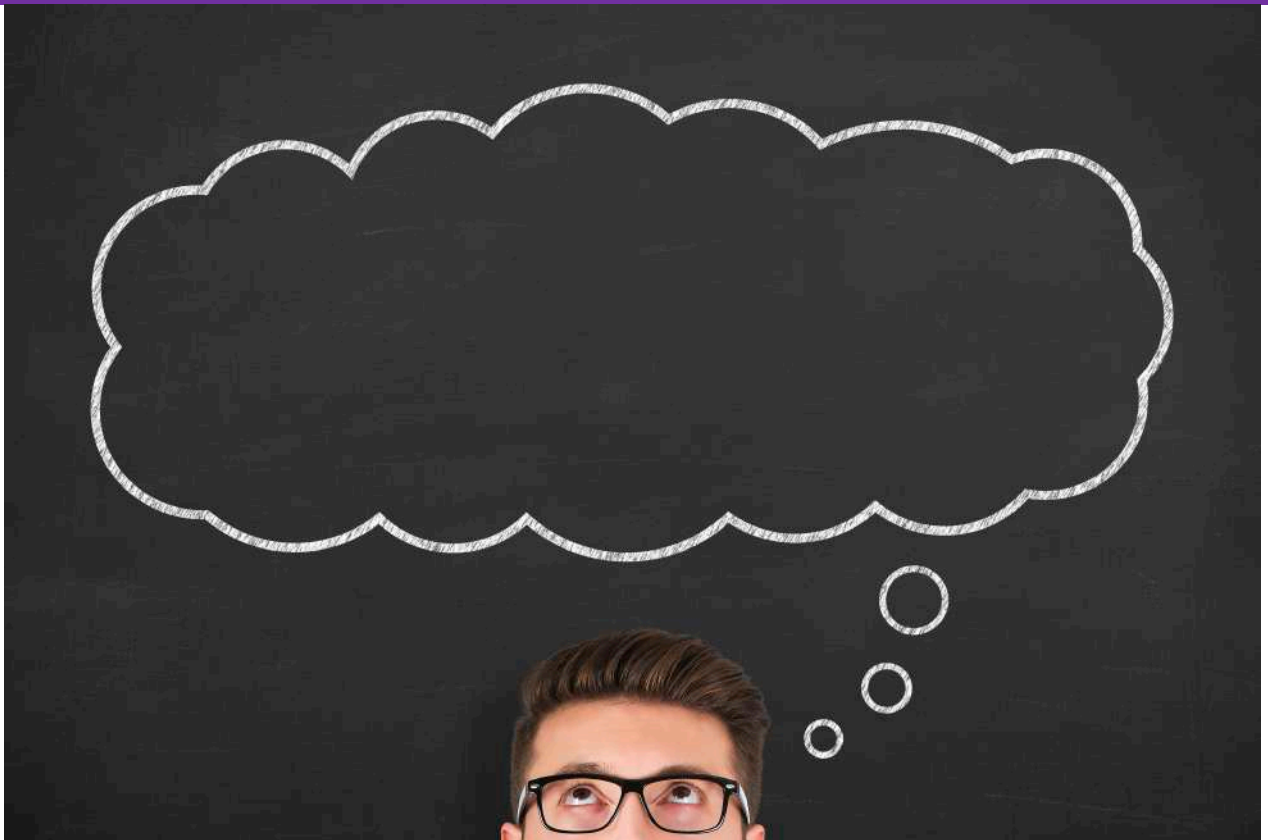
DOES THE IRS TREAT S-CORP AS AN LLC?

It is important to note that, in the eyes of the IRS, the terms LLC and S-Corp essentially refer to the way in which a company is taxed. A multi-owner LLC is taxed like a business partnership by default, though LLCs can choose to be taxed as S-Corps after filing an election. Though an LLC can technically choose to be taxed as an S-Corp, the two business structures are inherently incongruent. One such incongruence is that LLCs are known to be less expensive and require less paperwork while S-Corps tend to be trickier to legally form.



CAN AN S-CORP BE A MEMBER IN AN LLC?

This is where it gets interesting. An S-Corp may own up to 100% of an LLC, however, LLCs are not permitted to have any ownership stake in S-Corporations. Single owner LLCs, called “disregarded entities” by the IRS, are the only known exception regarding the ownership of S-Corp stock by LLCs and can own and receive profits from S-Corps in which they hold a position.



WHAT TYPE OF COMPANY SHOULD I OPEN?

As mentioned earlier, LLC's and S-Corp are great tools for asset protection. They both provide protection for your personal assets and come with multiple tax advantages. Before settling on one option for your business, make sure to consult with a licensed asset protection attorney who can help guide you along the path of deciding which type of company will benefit you in the long run.



HIRE AN ATTORNEY

Attorney Inna Fershteyn and her team of dedicated NYC business attorneys work closely with financial advisors and accountants to help both start-up companies and existing ventures and to create the best financial and tax structure for their entity. As an experienced NY corporate lawyer, Inna Fershteyn provides advice on selecting appropriate legal business entities such as sole proprietorship, corporation, limited liability company, and partnership. She also aids with corporate governance and updating and preparing corporate records. To book a consultation with Inna Fershteyn, call 718-333-2394



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