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Every new business upon commencement must determine its form of operation: Sole Proprietorship, General or Limited Partnership, Limited Liability Company, or Corporation (“C” or “S” corporation”). There are a variety of tax and non-tax considerations that impact this decision.

Sole Proprietorship:

- Not a separate legal entity.
- No formation requirements are necessary.
- Income (less expenses) is taxed directly to the owner.
- The owner is liable for all of its debts.
- The owner will have complete control over the operations of the enterprise.

General and Limited Partnership:

- Treated as a separate entity even though its income is taxable to the partners.
- A partner is taxed annually on partnership income, regardless of whether any cash is distributed. This income increases the basis of a partner in his or her partnership interest.
- General partners have unlimited joint and several liability for partnership obligations.
- A limited partner is liable only to the extent of his or her contributed capital and any agreement to contribute capital.
- In a general partnership, each general partner is an agent of the partnership and therefore generally binds the partnership and the other partners.
- In a limited partnership, each general partner has the authority to carry on the ordinary course of business of the limited partnership. A limited partner is not liable for his or her actions unless they participate in the control of the business.

Limited Liability Company (“LLC”):

- Neither its member’s or managers are liable for its debts.
- Can be either: Member-managed or Manager-managed.

- Management may be exercised by one or more managers who need not be members or by one or more of the members.
- The types and number of members is unrestricted.

Single Member:

- May elect to have the entity disregarded for tax purposes or to be taxed as a corporation

Multi-Member:

- May elect to be taxed either as a corporation or a partnership (income is taxed directly to the members).

C - Corporation:

- Subject to tax as a separate legal entity.
- Dividends (distributions out of earnings and profits) are subject to tax at the shareholder level.
- Shareholders are not personally liable (unless they issue a guarantee) for corporate obligations.
- Managed and controlled by its officers and directors.

S – Corporation:

- A pass-through legal entity with no corporate level tax.
- Shareholders report and pay tax on their pro rata share of income, losses, deductions, etc.
- Shareholders are subject to tax on net recognized built-in gain during a 10-year recognition period after S corporation status takes effect.
- May only have one class of stock (Nonvoting stock is not deemed a second class of stock).
- Special Shareholder Rules: (i) not more than 100 shareholders; and (ii) every shareholder must be an individual (other than a nonresident alien), an estate, an eligible trust, or certain tax-exempt organizations. A husband and wife and all lineal descendants and their spouses are treated as a single shareholder.
- S-Status: Must be elected by all shareholders during the taxable on or before the 15th day of the third month thereof or any time during the preceding taxable year. The election may be revoked only with consent of shareholders owning more than half of the corporation's stock on the day of the revocation.
- Shareholders are not personally liable for corporate liabilities.
- Tax Return: Files IRS Form 1120S and reports on the Schedule K-1 the amount of income, loss, deduction, etc. allocated to the shareholders.