RURAL LAW INITIATIVE

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ALBANY LAW SCHOOL GOVERNMENT LAW CENTER

<table>
<tr><th colspan="2"></th><th>Ownership/Control</th><th>Capital</th><th>Liability</th><th>Taxation</th><th>Pros</th><th>Cons</th></tr>
<tr><td colspan="2">Sole Proprietorship</td><td>Owned and controlled by Individual/Self

Existence ends with death of owner, or until dissolution</td><td>Self, friends, family

Loans</td><td>Full liability.
Owner is 100% responsible for all business debts. Business and personal assets are at risk.</td><td>Pass through.
Owner reports business income on individual tax return.

No annual franchise tax</td><td>• Easy to form
• Formation inexpensive
• Minimal administrative requirements
• Pass through taxation</td><td>• Weakest liability protection
• Limited capital options
• Existence ends with owner’s life</td></tr>
<tr><td rowspan="2">Partnerships</td><td>General Partnership</td><td>Divided among partners or as written in Partnership Agreement (PA)

Existence ends with death of partner or per terms of PA</td><td rowspan="2">Partners

Loans</td><td>All partners are jointly and severally liable for all partnership debts</td><td rowspan="2">Pass through.
Partnership’s income passes through to each partner’s personal income (schedule K)

NYS Annual Tax Form IT-204</td><td>• Flexible governance: determined by partnership agreement
• Minimal administrative requirements</td><td>• Liability protections are still weak (partners are jointly and severally liable)
• Existence not independent of partners (difficulties with buying/selling interests in partnership)</td></tr>
<tr><td>Limited Partnership</td><td>Same as above, except: General partners have more control then limited partners</td><td>General partner personally liable. Limited partners liable only up to capital they invested in partnership.</td><td>• Same as above, plus:
• Offers limited liability for limited partners.</td><td>• More expensive to form (publication requirement)</td></tr>
<tr><td colspan="2">Limited Liability Company (LLC)</td><td>Owners are the member(s)

Controlled by members or managers as set in Operating Agreement (OA)

Exists indefinitely unless otherwise specified in OA</td><td>Capital contributions of members, friends, family

Loans</td><td>Limited Liability

Liability limited to amount of capital contributed by member(s) unless acting as guarantor of LLC’s debt.</td><td>Taxation depends on what LLC elects to do: double taxation or pass through.

NYS Annual Tax Form IT-204</td><td>• Strong liability protection
• Governance is flexible; determined by OA
• Ownership options: you can have multiple classes of interests and LLC is transferable
• Flexible taxation options</td><td>• More expensive to form (publication fees)
• More administrative requirements: less than Corp but good record keeping is a must
• Not investor friendly.</td></tr>
<tr><td colspan="2">Non-Profit Corporation</td><td>No owners; organization “belongs” to the public-at-large.

Controlled by Directors/Officers voted by the Board Members to manage the non-profit.

Perpetual existence</td><td>Donations from the public and corporations; tax exempt if 501(c)3

Grants, foundations (private + public)</td><td>Limited liability for Directors, Officers and Board Members

Caveat: corporate veil doctrine</td><td>Exempt from federal taxes.
<u>Exception</u>: taxes collected on unrelated business activities

Exempt from annual NYS franchise tax (must file Form CT-247)</td><td>• Access to capital only available to non-profits
• Incentivizes public donations by offering tax exemptions
• Favorable tax treatment
• Non-pecuniary, mission-driven business for the public good.</td><td>• Time consuming and expensive to create and manage
• A lot of corporate formalities
• Difficult to dissolve
• Director/Officer compensation must be “reasonable”
• Cannot engage in substantial lobbying or electioneering</td></tr>
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		Ownership/Control	Capital	Liability	Taxation	Pros	Cons
Corporations (Corp.)	**C-Corp**	Owners are share holders Control is with elected board of Directors/Officers; shareholders vote on major corporate decisions and corporate bylaws may influence management Perpetual existence	Sale of shares Loans	Limited Liability: Liability limited to capital contributed unless acting as guarantor of corporate debt. *Caveat*: corporate veil doctrine	Double Taxation: 1. Corp pays tax on business income at corporate tax rate 2. Profits paid to shareholders are taxed at personal income tax rate NYS Annual franchise tax based on corp. profits	• Strong liability protection • Investor friendly – can offer different stock options; easy to transfer interests	• Strict corporate formalities • More administrative requirements • Compliance burdens with SEC
	B-Corp		Same as above *plus* select grants and foundations that distribute to benefit corps		B-Corp can choose to be taxed like C-Corp or like S-Corp	Same as C-Corp above, *and* • Public benefit goals. Mission driven + profit driven. • Flexible taxation options	• Same as C-Corp, *plus* • Compliance burden with third party auditor for public benefit requirements.
	S-Corp	Same as above, *and* Only ≤ 100 shareholders allowed; only one class of stock. Shareholders must be US citizens or legal permanent residents. Cannot be a Corp, LLC, etc.	Same as C-Corp.		Pass through. Corporate income not taxed. Income of S-Corp distributed to shareholders and is taxed at personal income tax rates.	Same as C-Corp above, *and* • Pass through taxation	Same as C-Corp above, *plus*: • Less investor friendly then C-Corp: one class of stock, ≤100 shareholders • Extra steps to make S-Corp tax election; file additional forms with IRS and NYS Tax Dept.
	Close Corp	Corp with only a few shareholders. They must own all the stock and management positions in the Corp.	Same as C-Corp No public trading of shares.		Close Corp can choose to be taxed like C-Corp or like S-Corp.	• Limited liability • Flexible taxation options • Easier to manage, fewer administrative and compliance requirements	• Not investor friendly – cannot sell shares to people outside management of corp.
Cooperatives		Owners are coop members. Must have at least 5 members. Coop can be stocked or non-stocked. Elected Board of Directors/Officers run the cooperative but regular members have voting power to control direction of the coop. One member, one vote rule.	Capital from members; Sale of stock (to members only). Transaction fees (per unit sold); hrly withholdings (worker coops) Loans; Gov't and private grants and foundations that fund coops.	Limited Liability: Liability is limited to capital contributed. Caveat: Corporate veil doctrine	Taxation depends on type of coop (member, worker, agricultural etc.) May receive pass through treatment Special deductions and tax computations (Subchapter T)	• Coop run for "mutual help" and benefit of all members; profit not primary goal. • For *Ag. Coops*: better bargaining power as collective; resource sharing, reduced costs, better products etc. • Funding opportunities unique to coops. • Special IRS tax exemptions	• More complex and less flexible to manage • Slower decision making due to democratic nature of coop • Difficult to transfer interests • Not investor friendly.