



What Type of Corporate Entity (C Corp vs. S Corp) Should I Choose?

By Jeremy C. Johnson

When starting a business, one of the first critical decisions you make is what type of entity you wish to use as your operational structure. The most common choices include: C Corp, S Corp, LLC, Partnership and Sole Proprietor. Each structure can provide various positive benefits and negative obstacles to the operation of your business, depending on various factors. This article will discuss the difference between C Corps and S Corps. We will not discuss LLC's or Partnerships in any great detail; but, rather leave the discussion of these entities for another edition of our newsletter.

Creation and Maintenance Under State Law

A C Corp is a corporate entity established by filings made with the state in which you organize the business. In Virginia, this state authority is the State Corporation Commission. On a state law level, there is not a great deal of difference between a C Corp and S Corp (discussed below), structurally. Both types of corporate entities require regular corporate maintenance, at least on an annual basis. Many people will create a corporate entity to separate their personal liability from the business liability. However, if you choose to be lax on the corporate maintenance for your corporate entity, the protection you seek will most likely disappear at the moment you find yourself the subject of a legal action. As such, it is critical that you stay vigilant on the requirements and filings of your corporate maintenance to prevent a suit from piercing your corporate veil. The Attorneys of JGB can assist you with your corporate maintenance requirements.

Upcoming Seminars

Please attend our upcoming seminars –
Better still, invite a friend!

July 6 @ 3 pm – Williamsburg

July 15 @ 3 pm – Williamsburg

July 19 @ 2 pm – Richmond

July 19 @ 6:30 pm – Richmond

To register, please visit:

<http://www.JGBLLP.com/workshop-registration.htm>



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Structure and Ownership

Both have a Board of Directors, Executive Officers (President, Vice President, etc.) and shareholders. Any well established corporate entity should have the appropriate corporate documents to define the scope of its governance and operation (Articles of Organization, Bylaws, Minutes, Resolutions, etc.). However, on a federal level, there is a great deal of difference between a C Corp and an S Corp. C Corps generally do not have any restrictions on ownership; as such, almost anyone or anything can be a shareholder of a C Corp. In addition, they can also have multiple classes of stock with various rights pertaining to each class. Conversely, an S Corp can only have one class of stock, can only be owned by individuals (must not be non-resident aliens) and some trusts/estates, cannot be owned by corporations/partnerships/LLC's, and there can only be 100 or less shareholders. As such, another corporation is prevented from being a shareholder of an S Corp; while an S Corp (and another C Corp for that matter) can be a shareholder of a C Corp.

Publicly Held vs. Privately Held

Due to the restrictions on ownership described above, S Corp status is typically relegated to closely held business, that are not traded on a public stock exchange. As such, if you plan on going to the public market fairly early in your corporate existence to raise capital for your business venture, you will typically start your business as a C Corp. Most major American corporations that are publicly traded on the various stock exchanges are C Corps for this very reason. Privately held S Corps are not subject to any of the federal SEC filing, disclosure, auditing and federal corporate maintenance requirements to which publicly traded C Corps must adhere.

COMMUNITY NOTE:

The town of Lanexa, New Kent County, is trying to raise funds for a fire-rescue station. A Golf Tournament has been scheduled to help raise the funds.

LANEXA STATION 4 AUXILIARY

GOLF TOURNAMENT @
VINITERRA, NEW KENT
COUNTY

SEPT 24, 2010

\$75 Per Golfer/ \$300 Per Team -
12:30 Shotgun Start

Includes: 18 Holes of Golf, Cart,
Range, Prizes, BBQ Meal!

Mulligans at \$20 Per Team

Sign up and prepays to:

LanexaStation4Auxiliary@wildlue.net OR
Lanexa Station 4 Auxiliary; PO Box
21; Lanexa, VA 23089

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Differences in Taxation

C Corps are subject to ‘double taxation,’ as the income derived from a C Corp is taxed both at the corporate level and at the shareholder level. Because of this perceived (and in many cases actual) negative tax treatment of C Corps, many business owners choose to organize their businesses as S Corps for ‘pass through’ income taxation to the shareholders (generally, no income taxation at the corporate level). However, the double taxation of a C Corp is not always a disadvantage. The IRS allows certain deductions at the corporate level for C Corps that would not be allowed to pass through to the shareholders in an S Corp. These may include deductions for cafeteria plans, etc.

Conclusion

There is no one right or wrong answer for everyone regarding the choice presented between C Corps and S Corps as an operating business structure. As this choice of operating entity is critically important to how your business will function, we suggest you acquire the appropriate legal and tax counsel before you make any decisions on electing either C Corp or S Corp status. Remember, it is relatively easy to make your tax/corporate election at the outset; however, it is exceedingly difficult to unwind that election/structure should you discover that you made the wrong initial choice. The Attorneys of JGB can help you create, organize and maintain your corporate structure as your General Counsel and Registered Agent.

*To add another e-mail address,
or to unsubscribe,
please e-mail Lauren at lkn@JGBLLP.com*

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