

True-False Quiz

- An LLC is a form of corporation.
- Co-ops are non-profit companies.
- An LLC can be governed by one-member, one-vote, with profits distributed back to owners in proportion to patronage.

What business form is appropriate for your business?

Factors to consider

- Control
- Liability
- Continuity
- Taxation
- Complexity

Your Choices

- **Sole Proprietor**
- **Partnership**
- **Stock For-Profit Corporation**
 - C corp
 - S corp: an IRS classification
- **Limited Liability Company (LLC)**
- **Cooperative Corporation**
- **“New Generation Co-op”**
- **“Wyoming Co-op”**

Issues to Consider

- **Number of owners**
 - LLCs are a good fit for a small, stable number of owners, but can also be structured to accommodate a large group with high ownership mobility.
- **Liability**
 - Only the Partnership lacks liability protection

Issues to Consider

- **Legal Costs**
 - “Filing fees” are generally not a big issue (\$15 - \$170, unless you’re a big stock co-op)
 - Scale and complexity are the issue
- **Governance**
 - Corporations must have boards of directors
 - LLCs may have boards of directors

Issues to Consider

- **Voting Power**
 - Co-ops: 1-member, 1-vote (by law)
 - Other forms: typically more \$ (shares), more votes
- **Ownership Limitations**
 - Co-ops limit membership to “patrons”
 - S corp limits to 75 “human” owners; single class of stock

Issues to Consider

- **Distribution of Profits**
 - Cooperatives
 - 8% limit on dividends to nonmember investors
 - Incentives to allocate profits to members
- **Raising Capital**
 - Co-ops limitations discourage outside investors

Issues to Consider

- **Taxation**
 - Income tax (single v. double), deductions, basis adjustments, conversion costs
 - LLC offers most advantages
 - S corp and co-op offers single taxation if you meet their various conditions
- **Get legal advice**

Business structures may vary significantly from state to state.

Nonprofit Association

- State Statute Chapter 184
- Appears to be an option.
- Provides a legal entity, separate from its members
- Appears to provide some limitation on personal liability of members.

Nonprofit Association

- Cheapest filing costs (\$15)
- Downsides:
 - Chapter 184 provides very little “structure”
 - Can an association be licensed, bonded, or insured to do business?
 - Will other businesses take it seriously?
 - Will the state & IRS consider you “nonprofit”

Nonstock Corporation

- State Statute Chapter 181
- Filing fee: \$35
- A legal corporate entity with limited liability.
- Form instructions: "Do not use this form for organizing a for-profit business corporation."

Partnership

- Not associated with a state statute.
- Unlimited liability.

Stock For-Profit Corporation

- State Statute Chapter 180
- Filing fee: \$100
- Limited liability.
- **C corporation: Double taxation.**
- **S corporation: Single taxation but limited to 75 members, single class of stock.**

Limited Liability Company

- State Statute Chapter 183
- Filing fee: \$130 - \$170
- Limited liability.
- Single taxation.
- **VERY FLEXIBLE**
 - For a cost, a good lawyer can structure it to be just about whatever you want– including "cooperative"

Cooperative Corporation

- State Statute Chapter 185
- Filing fee: \$25 (plus \$1.25 per \$1,000 shares)
- Can elect to be stock or non-stock.
- Limited liability.
- Single taxation IF profits passed to members.
- Discourages outside investment.
- 1-member, 1-vote protects members interests.

New Co-op Models

- "New Generation Co-op"
 - Ties up-front investment to delivery contracts.
 - Ironically, many of these are actually LLCs.
- "Wyoming Co-op"
 - A hybrid of co-op and LLC
 - Allows outside investment with 51% member control and limits on distribution to non-members
 - Probably coming to Wisconsin as Ch. 185-B

Summary Recommendations

- If you want:
 - 1-member, 1-vote...
 - Profits returned to members based on patronage...
 - Non-stock or "small stock" company...
 - A well-known, easily adapted structure...
 - Modest legal start-up costs...
 - The co-op "label"...
- Form a Chapter 185 Cooperative

Summary Recommendations

- If you:
 - Expect to need outside capital...
 - Require maximum tax advantages
 - Are willing to pay a bit more for legal and accounting expertise...
 - Want to avoid high filing fees associated with a Corporation
- Form an LLC

Summary Recommendations

- In your case, it probably doesn't make a huge difference either way.
- Other issues probably deserve greater attention (business plan, good management, member recruitment, book-keeping, etc.)
- Hire good legal counsel.