

Consideration	C Corporation	S Corporation	General Partnership	Limited Partnership	Limited Liability Company
Alternative minimum tax (AMT)	AMT is payable to extent it exceeds regular tax liability; AMT tax equals 20% of amount by which alternative minimum tax income (AMTI) exceeds the \$40,000 exemption amount (which phases out at certain levels of income). ¹	Entity is not subject to AMT, but owners must compute personal AMT based on their share of entity AMT items of tax preference and adjustments; maximum exemption of \$30,000 for individual owners. Tax preference items and adjustments passed through to shareholders. However, the adjustments for book income in excess of taxable income do not apply to an S corporation or its shareholders.	Same as Limited Liability Company.	Same as Limited Liability Company.	The AMT does not apply at entity level. Tax preference items and adjustments are passed through to members.

¹ AMTI is generally equal to taxable income increased by various preference items and adjusted to eliminate certain timing benefits (e.g. accelerated cost recovery and installment sale treatment). Among other adjustments, a special adjustment applicable to C corporations, but not other entities, is an increase to alternative minimum taxable income for a percentage of the value of certain items considered income for book purposes, but not for tax purposes. One example of this is life insurance payable to the corporation. IRC §§ 55, 56, 57 and 58. For taxable years beginning after December 31, 1997, certain small business corporations with gross receipts of less than \$5,000,000.00 are exempt from AMT.

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Limitations on Type of Income	Generally none. ²	Generally none.	None	None	None
Timing of Taxation of Income to Owner	When distributions received.	In year in which S corporation's year ends, whether paid or not.	Same as Limited Liability Company	Same as Limited Liability Company	In year in which LLC's year ends, whether paid or not. ³
Limitations on Character of Income	If corporation has too much passive income, the personal holding company tax may be imposed. ⁴ If corporation retains earnings and profits in excess of the reasonable needs of business, the accumulated earnings tax may be imposed. ⁵	S status terminates if passive income exceeds 25% of gross receipts for 3 consecutive years and entity has C corporation "earnings and profits" accrued before S election. ⁶	None	None	None

²If 5 or fewer individuals own more than 50% of the stock of the corporation and 60% or more of the income is from dividends, interest, rents, etc., it may be classified as a personal holding company (PHC) and subject to a PHC tax of 39.6% on undistributed PHC income. IRC §541.

³¹ For taxable years ending after December 31, 1997, the death of a partner will terminate the partnership's tax year with respect to that partner. IRC §706(c)(2)(A).

³² IRC §541.

Flexibility of Special Allocations of Income and Distributions	Income and loss may only be specially allocated if there are multiple classes of stock.	None as income and distributions must be allocated in accordance with stock ownership.	Same as Limited Liability Company	Same as Limited Liability Company	Flexible as long as allocations have substantial economic effect under §704(b).
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Retroactive Changes to Allocations in Operating Agreement	No	No	Same as Limited Liability Company	Same as Limited Liability Company	Yes ⁷
Income Taxed to Someone Other Than Owner	Entity income will not generally be taxed to a non-stock owner, unless the IRS uses IRC §385 or IRC §482 to reallocate income among related parties.	Income passed through to certain trust shareholders is taxed to a party other than the trust. Under various tax rules set forth in the regulations or adopted by the courts, income can be reallocated to “real owners” or to service or capital providers.	Same as Limited Liability Company	Same as Limited Liability Company	In addition to generally applicable tax rules (e.g., the assignment of income doctrine) that can cause entity income to be taxed to a non-owner, the family partnership rules may apply to reallocate partnership income. ⁸

³³ IRC §531.

³⁴ In the interim, net passive income would subject to corporate tax to the extent that it exceeds 25% of corporation’s gross receipts in any year.

³⁵ A partnership or LLC agreement may be modified with respect to a particular taxable year subsequent to the close of such taxable year up until the due date of the return, not including extensions. Reg. §1.761-1(C).

³⁶ Under the family partnership rules, income may be reallocated to the donor/seller in the case of entity interests that have been directly or indirectly gifted or sold by one family member to another. They may also apply to reallocate income if the “real owner” is different from the nominal owner. In addition, pre-contribution gain and loss with respect to assets held in a partnership is allocated to the contributing partner/member.

Capital Gains	Taxed at regular corporate ordinary income rates.	Flow-through to shareholders. ⁹	Same as Limited Liability Company	Same as Limited Liability Company	Flow-through to members.
Capital Losses	Can only offset capital gains.	Flow-through to shareholders. Available as offset against capital gain plus \$3,000.	Same as Limited Liability Company	Same as Limited Liability Company	Flow-through to members. Available as offset against capital gain plus \$3,000.
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Section 1202 Capital Gain Exclusion for Qualified Small Business Stock (QSBS) ¹⁰	Only a C corporation can qualify as a “qualified small business”, but a corporate owner is not eligible for the gain exclusion. IRC §1202(a).	Not qualify	Same as Limited Liability Company	Same as Limited Liability Company	If a noncorporate entity owns QSBS, that entity or its pass-through owners are eligible for the gain exclusion. IRC §1202(a).
Section 1045 Eligibility for Rollover of Gain From QSBS to Another QSBS ¹¹	Corporate owner of QSBS is not eligible for IRC §1045 treatment.	Not qualify	Eligible	Eligible	Eligible
Protection of Investor Status	Yes	Yes	Possible	Very likely for limited partner	Possible

⁹For an S corporation that converts from a C corporation, tax is imposed on any built-in gains on the sale of the property within 10 years. IRC §1374.

³⁸ Section 1202 provides that 50 percent of any gain from the sale or exchange of “qualified small business stock” will be excluded from gross income.

³⁹ Section 1045 provides that if a non-corporate taxpayer sells QSBS which it held for greater than 6 months, and elects §1045 treatment, there will be recognition of gain only to extent that the amount realized on such sale exceeds the net cost of any QSBS purchased by the taxpayer within 60 days from the date of sale.

Deductibility of Losses	Deducted at corporate level.	Deducted by shareholder to the extent of basis in stock and loans to corporation.	Same as Limited Liability Company	Same as Limited Liability Company	Deducted by partners to extent of basis.
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Limitations on the Accumulation of Income	Generally, the corporation may not accumulate funds beyond the reasonable needs of the business. ¹²	None	None	None	None
Contribution of Property	Generally tax-free if contributed by members of 80% controlled group. ¹³ §351(a).	Same as C corporation.	Same as Limited Liability Company	Same as Limited Liability Company	Tax-free, except in limited situations. ¹⁴

¹²If there is an unreasonable accumulation, the corporation will be subject to an accumulated earnings tax of 39.6% in addition to its regular tax. IRC § 531.

¹³Gain can occur if the liability contributed exceeds the tax basis of the property contributed. IRC §357(c). Also, contributions to an investment company resulting in the diversification of the shareholders' investment portfolios will be treated as a sale by the contributing shareholder to the corporation.

⁴² The limited situations include: (1) contributions to an investment partnership resulting in the diversification of the partners' investment portfolios; (2)

Disguised Sales	N/A	N/A	Same as Limited Liability Company.	Same as Limited Liability Company.	Where contribution and distribution appear to be related, the two transactions will be recharacterized as a sale; regulations presume that transactions occurring within two years are related. IRC § 707(a)(2); Prop. Reg. §1.707-3.
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Availability of Tax-Free Contribution to Capital Provision by Non-Owner Under §118 ¹⁵	Yes	Yes	No	No	No
Interest Acquired for Services	Yes, unless IRC § 83 defers recognition.	Yes, unless IRC 83 defers recognition of profits interest.	Same as Limited Liability Company	Same as Limited Liability Company	Yes, but can structure partnership.

contributions of assets that are subject to liability in excess of basis; (3) contributions of assets in exchange for an assumption of a liability of the contributor which exceeds the basis of the contributed assets; or (4) contributions that are recharacterized as disguised sales.

¹⁵Code §118 allows a corporation to exclude from income contributions from non-owners. This provision is often used by corporate tenants who receive cash allowances for tenant improvements from landlords as support to exclude such allowances from income. See The May Department Stores, TC Memo 1974-253, aff'd 8th Cir., Federated Department Stores, 51 TC 500 (1968), aff'd 6th Cir., and Elder-Beerman Stores Corp., Case No. 95-33643, Bankr. S.D. Ohio (3/20/97). But see IRS ISP Coordinated Issue Paper for the Retail Industry, 96 TNT 199-13 (10/7/96).

