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|--|---|--|--|-----------------------------------|--|
| Attributes of Entity Attributable to Owner <sup>1</sup>                            | No  | No   | Possibly   | Possibly                          | Possibly   |
| Election Available to Treat as Undivided Interest Owned by the Entity <sup>2</sup> | No  | No   | Possibly   | Possibly                          | Possibly   |
| Transfers of Interests Causing Problems  | Generally no. However, NOL carryforwards and certain built-in losses may be reduced or eliminated. §382 and §384. | S election could terminate if stock transferred to non qualifying shareholder. | Same as Limited Liability Company §708(b)(1)(B). | Same as Limited Liability Company | LLC could terminate if 50% or more of interest in capital and profits are sold or exchanged in a 12 month period. §708(b)(1)(B). |
| <b>Consideration</b>   | <b>C Corporation</b>  | <b>S Corporation</b>   | <b>General Partnership</b>                       | <b>Limited Partnership</b>        | <b>Limited Liability Company</b>   |

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<sup>1</sup>For example, if the entity is a dealer in real estate, which would cause gains to be ordinary rather than capital gains, would the owner also be deemed to be a dealer due to the activity of the entity?

<sup>2</sup>Certain investment partnerships and certain oil and gas and other mineral partnerships may elect out of the partnership sections of the Internal Revenue Code. IRC §1.761-2. Such partnerships cannot conduct a business. One of the conditions for electing out of Subchapter K is that the participants must reserve the right to take or dispose of their shares of any property acquired or retained. Limited Partners may be prohibited from doing this.

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| Section 1237 -<br>Presumption of Capital<br>Asset Treatment on Sale<br>of Lots or Parcels of<br>Land | Not qualify.   | Same as Partnerships<br>since 1996.         | Same as Limited<br>Liability Company. | Same as Limited<br>Liability Company. | A sale of part of a tract<br>of land is presumed to<br>give rise to capital gain<br>treatment under certain<br>circumstances. IRC<br>§1237(a). |
| Treatment of<br>Organizational Expenses  | May be amortized over a<br>period of 60 months<br>beginning with month<br>entity begins business<br>(must begin business;<br>simply obtaining charter<br>not enough). IRC §<br>248(a); Treas. Reg. §<br>1.248-1(a)(3). | Same as C Corporation.<br>IRC § 1363(b)(3). | Same as Limited<br>Liability Company. | Same as Limited<br>Liability Company. | Same as C Corporation<br>except no deduction<br>permitted for syndication<br>expenses. IRC § 709;<br>Treas. Reg. § 1.709-2.                    |

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|--|---|--|------------------------------------|------------------------------------|---|
| Responsible Person for Withholding Taxes | Officer or employee responsible for collecting and paying over tax is individually liable; shareholder or officer may be liable for tax. IRC §§ 6671(b), 6672.  | Same as C Corporation.   | Same as C Corporation.             | Same as C Corporation.             | Same as C Corporation.  |
| Tax Rates on Entity Undistributed Income | No current tax; no basis impact on owners' interest; maximum entity tax rate 35% on ordinary income and capital gain (flat rate of 35% applies to personal service corporations). IRC §§ 11(b) - 11(c), 1201 (a). | Current tax; increase to basis in loans to entity then to stock; maximum owner rate of 39.6% on ordinary income and 28% on capital gain; owner includes a per share, per day amount of income. IRC §§ 1363(a), 1366(a), 1377(a), 1367(a)- 1367(b), 1(a), 1(h). | Same as Limited Liability Company. | Same as Limited Liability Company. | Current tax increase to basis in membership interest; maximum member tax rate of 39.6% on ordinary income and 28% on capital gain; owner includes distributive share of the income. IRC §§ 701, 704(b), 705(a), 1(a), 1(h). |
| Effect of Tax-Exempt Income              | Not taxable to entity but increases earnings and profits such that distributions of tax-exempt income are taxable dividends. Treas. Reg. § 1.312- 6(b).   | No special provision but should be treated as limited liability company.   | Same as Limited Liability Company. | Same as Limited Liability Company. | No taxable to owners with basis increase to ensure that distribution of interest attributable to tax-exempt income will not be taxable. IRC § 705(a)(1)(B).   |

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| Deductibility of Carryover Losses. | No deduction to owners but entity may use current loss to offset unrelated income in 3 preceding taxable years and 15 following taxable years. IRC § 172. | Subject to limitations discussed below, losses pass through to owners on per share, per day basis and are deductible against unrelated income; business loss may be carried back to owner's 3 preceding taxable years and carried forward to following 15 taxable years; all losses reduce owners' bases in stock and then their bases in direct loans to entity (basis does not include share of entity debt). IRC §§ 1366, 1377, 1367, 172. | Same as Limited Liability Company. | Same as Limited Liability Company. | Subject to limitations discussed below, losses pass through to owners according to their distributive shares and are deductible against unrelated income; business loss may be carried back to owner's 3 preceding taxable years and carried forward to following 15 years; all losses reduce owners' bases in their membership interests (basis includes share of entity debt). IRC §§ 704, 752, 172. |
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| Carryover of Losses. | N/A | Losses not used because of basis limitation may be carried over indefinitely to year when owner acquires additional basis; if S status terminates and entity is taxed as C corporation before losses have been deducted, owners have a one-year post-termination period within which to acquire additional basis and use deferred loss; losses not deducted under this formula cannot be used against C corporation income and will be forever lost if C corporation does not reelect S status after 5 years but before entity liquidates. <sup>3</sup> | Same as Limited Liability Company. | Same as Limited Liability Company. | Losses not used because of basis limitation may be carried over indefinitely to a year when member acquires additional basis. IRC §704(d). |
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<sup>69</sup> IRC §§ 1677(d)(1)-1366(d)(3), 1377(b), 1371(b), 1362(f)-1362(g).

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|------------------------------|--|---|------------------------------------|------------------------------------|---|
| Losses on Section 1244 Stock | Available if the C Corporation becomes worthless, provided that the requirements of Section 1244 are met.  | As a practical matter, Section 1244 losses are not available unless the loss results from a decline in value of the assets rather than operations. <sup>4</sup> | Same as Limited Liability Company. | Same as Limited Liability Company. | None, however, ordinary losses from operations are passed through to owners currently to the extent of basis.       |
| Related Party Losses         | Losses attributable to sales of property between shareholder and corporation in which shareholder owns, directly or indirectly, more than 50% of stock are not deductible; any subsequent gain recognized by related party on resale of the property will be recognized only to extent the gain exceeds prior disallowed loss. IRC § 267(a). | Same as C Corporation.  | Same as Limited Liability Company. | Same as Limited Liability Company. | Same as C Corporation except there is overlap with partnership section 707. Contrast IRC §1239 with IRC §707(b)(1). |

| Consideration | C Corporation | S Corporation | General Partnership | Limited Partnership | Limited Liability Company |
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Ordinary losses resulting from operations are passed through to the shareholders currently to the extent of their basis. Moreover, shareholders of an S corporation cannot take advantage of Section 1244, with respect to corporate stock owned by S corporation. PLR 9130003 (March 25, 1991).

## FLORIDA STATE TAXES AND FEES

|   |         |         |   |  |   |
|---|---------|---------|---|--|---|
| State Intangible Tax on Equity Interest | Yes     | Yes     | No  | No   | Yes <sup>5</sup>  |
| State Formation Fees                    | \$70.00 | \$70.00 | \$50.00 (Registration)<br>\$25.00 (LLP Qualification) | Minimum of \$87.50 and maximum of \$1,785.00 based on \$7.00 per thousand anticipated capital contribution. \$25.00 (LLP Qualification). | Effective October 1, 1999, \$100.00 for filing plus \$25.00 for filing a certificate designating a registered agent. <sup>6</sup> |
| Annual Filing Fees                      | \$150   | \$150   | None  | Minimum of \$141.25 and maximum of \$526.25, based on \$7.00 per thousand (includes the supplemental corporate fee of \$88.75).          | Effective October 1, 1999, \$50.00 annual report fee with no supplemental corporate fee. <sup>7</sup>                             |

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|------------------------|-----|-----|-----|-----|-----|
| Fictitious Name Filing | Yes | Yes | Yes | Yes | Yes |
|------------------------|-----|-----|-----|-----|-----|

<sup>5</sup>Florida currently subjects stock and LLC interests to its annual intangible tax of \$1.00 per \$1,000.00 if the total value of assets is between \$20,000.00 and \$100,000.00 and \$1.50 for every \$1,000.00 above \$100,000.00 in assets owned by the Florida resident on January 1 of each year. As of January 1, 2001, the annual intangible tax is \$1.50 per \$1,000.00 of value. But see use of Flite Trust. Lester B. Law, "The Florida Intangible Tax - The Real Voluntary Tax" Fla. Bar Journal 34 (Nov. 2000)

<sup>72</sup> Prior to October 1, 1999, Articles of Organization plus registered agent is \$285.00.

<sup>73</sup> Prior to October 1, 1999, Annual Report fee (which includes supplemental fee) is \$188.75.

|                            |                               |         |              |              |              |
|----------------------------|-------------------------------|---------|--------------|--------------|--------------|
| Annual Maintenance         | Minimal with year end review. | Minimal | More costly. | Most costly. | More costly. |
| State Corporate Income Tax | Yes                           | No      | No           | No           | No           |