

Focus Sheet
Choice of Business Entity – TAX Considerations

Group A: Limited Partnerships: Sosha, Chandler, Alexis, Shane
Group B: General Partnerships: Jake, Sierra, Ryan
Group C: Limited Liability Companies: Theodore, Nicole, Peter
Group D: Corporations: Alexzandra, Alan, Michael, Daniel

General Considerations

With your group:

1. Discuss the fundamental tax attributes of the entity or entities you are assigned.
2. What are the tax advantages and disadvantages of forming and operating that type of business entity or entities:
 - a. With regard to the distribution of profits, losses, and return of capital?
 - b. With regard to the initial contribution of property and/or services by an investor in exchange for an ownership interest?

Specific Considerations for Our Clients

Are the tax consequences for this form of business entity appropriate for Annette, Bev & Carl?

Would you recommend that they use this type of entity for the business they are contemplating?

What special consideration should we take into account for our clients if this type of business entity is chosen?

Items to Explain for Tax Focus Groups

1. Corporations:
 - a. The tragedy of double taxation of profits.
 - b. The tragedy of not passing through losses.
 - c. Ways (and risks of “constructive dividends”) of avoiding taxation at the corporate level by deducting as an expense: leasing, employment wages and bonuses, interest on loans
 - d. Contributions of low basis property – impact on Carl
 - e. Contributions of services: *Campbell v. Commissioner*. When does a service participant have to report equity or other interests as income (& pay taxes, social security, etc.).

2. General partnerships & L.P.’s & LLC’s
 - a. The joy of pass through of profits.
 - b. The joy of pass through of losses.
 - i. Passive activity loss limits
 - ii. At-risk loss limits
 - c. Contributions of low basis property – impact on Carl
 - d. Contributions of services: *Campbell v. Commissioner*. When does a service participant have to report equity or other interests as income (& pay taxes, social security, etc.).

3. S Corporations
 - a. Explain care to avoid catastrophic consequences if the S election is not properly made or is inadvertently terminated.

 - b. The Requirements for Subchapter S Status
 - (1) the corporation cannot have more than 100 shareholders
 - (2) all shareholders must be individuals & (3) citizens or legal residents of the U.S.
 - (4) only one economic class of stock (differences in voting rights are allowed but there must be identical rights to distribution)
 - (5) *all* shareholders must consent to the election in writing at the time of the election
 - (6) a timely filing of the election with the IRS: