



Business Structures

This resource provides a general overview of the most common business forms or structures of petitioning employers, agents, or sponsors filing an Immigrant Petition for Alien Workers ([Form I-140](#)) or Petition for Nonimmigrant Worker ([Form I-129](#)). These forms or structures are also relevant to the new commercial enterprises underlying an Immigrant Petition by Standalone Investor ([Form I-526](#)) or Immigrant Petition by Regional Center Investor ([Form I-526E](#)).

This resource includes information on business formation, fundamental characteristics, tax forms submitted to the Internal Revenue Service (IRS), and basic tax terms. Generally, each business form or structure discussed in this resource should have an Employer Identification Number (EIN), sometimes also called a Federal Tax Identification Number, or IRS Tax Number.¹ An EIN is used to identify a business entity for IRS purposes.

State law generally governs the formation, operation, and dissolution of business entities. As each state has its own rules for business entities, an officer should refer to the relevant state statute or state authority's website (such as the California Secretary of State's Business Programs Division) if there is a specific question about a particular business entity.

A. Sole Proprietorship

1. Definition

A sole proprietorship is a for-profit business owned by one person (or a married couple, in some cases).² A sole proprietorship is "a business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity."³ Owners may operate on their own or may employ other people. The sole proprietorship is the simplest business form under which a person can operate a business. It is not a separate legal entity from its owner;⁴ for example, the owner remains responsible for the business debts.

¹ See IRS's [Employer ID Numbers](#) webpage. For an explanation of what types of business structures require an EIN, see IRS's [Do You Need an EIN](#) webpage.

² For an explanation of married couples and sole proprietorship, see IRS's [Frequently Asked Questions for Entities](#) webpage.

³ See Black's Law Dictionary (11th ed. 2019).

⁴ See [Matter of United Investment Group](#), 19 I&N Dec. 248 (Comm. 1984).

A sole proprietorship can operate under the name of its owner or it can elect to do business under a fictitious name. The fictitious name is simply a trade name and does not create a legal entity separate from the sole proprietor owner.⁵

2. Taxes

Income from the business is included on the owner's personal income tax return, U.S. Individual Income Tax Return (IRS Form 1040). The profits and losses of the business are recorded and attached to the Form 1040 on Profit or Loss From Business (Schedule C); Supplemental Income or Loss (Schedule E); or Profit or Loss From Farming (Schedule F).

The owner's adjusted gross income on Form 1040 is used as net income for ability to pay purposes; however, there are no tax forms that list the business's current assets and liabilities. When determining a petitioner's ability to pay the proffered wage, USCIS also considers a sole proprietor's liquefiable personal assets as well as household expenses and other personal liabilities (such as rent, car payments, and child care expenses).

B. Partnership

A partnership is the relationship between two or more persons or entities who join to carry on a trade or business.⁶ Each person or entity contributes to the partnership something of value (for example, money, property, labor, or skill) and expects to share in the profits and losses of the business.⁷

A partnership is created automatically when two or more persons or entities engage in a business enterprise for profit whether or not the persons or entities intend to form a partnership.⁸ Partners seeking increased accountability, however, may opt to have their arrangement memorialized in a partnership agreement. The following subsections provide an overview of the most common forms of partnerships. The type of partnership is identified at Schedule B, Line 1 of U.S. Return of Partnership Income (IRS Form 1065).

1. General Partnership

⁵ See Michael Spadaccini, *Ultimate Guide to Incorporating in Any State* (Irvine, CA: Entrepreneur Press, 2010), p. 3. For a general overview of sole proprietorships, see Jeffrey F. Beatty and Susan S. Samuelson, *Business Law and the Legal Environment* (Cengage Learning, 2006), p. 755. See the U.S. Small Business Administration's (SBA's) [Choose a business structure](#) webpage.

⁶ See Section 101 of the Uniform Partnership Act (1997). The Uniform Partnership Act is a uniform act from the National Conference of Commissioners on Uniform State Laws for the governance of partnerships. It has been amended several times since its promulgation, most recently in 2011 and 2013. The Uniform Partnership Act has been enacted by most U.S. states.

⁷ See the IRS's [Tax Information For Partnerships](#) webpage.

⁸ See Section 202(a) of the Uniform Partnership Act (1997).

A general partnership is the simplest form of partnership, and as such, general partnerships are simply called partnerships.⁹ In a general partnership, all partners or owners may equally share responsibilities and liabilities.

A general partnership has the following characteristics:

- A general partnership is created through an express or implied agreement;¹⁰
- A general partnership has two or more partners;¹¹ and
- The owners or partners, which may be other types of entities (such as a corporation or limited liability company), are all liable for all legal actions and debts the company faces.¹²

2. Limited Partnership

A limited partnership¹³ is very similar to a general partnership, except that the partnership is partially owned by one or more limited partners and is managed exclusively by its general partner(s).¹⁴

A limited partnership must have at least one general partner. The general partner, often another type of entity (typically a corporation or limited liability company), has management powers, the right to use partnership property, and is personally liable for the debts of the partnership.¹⁵

Conversely, limited partners do not participate in the management of the business and are generally liable for the partnership's debts only to the extent of their contributed investment. Limited partnerships permit a person to invest in a partnership while limiting their liability

⁹ See IRS's Instructions for Form 1065.

¹⁰ A partnership can also be formed by estoppel (where a party is held out to be a partner and can be held liable for debts or damages incurred by the partnership). See definition of "partnership by estoppel," Black's Law Dictionary (11th ed. 2019). A written general partnership agreement usually identifies the names of the partners; the amount and type of contribution made by each partner; each partner's initial percentage of ownership; the business activities conducted by the partnership; whether and how partnership interests can be transferred; and the conditions allowing dissolution of the partnership. See Section 103 of the Uniform Partnership Act (1997).

¹¹ See the IRS's [Tax Information For Partnerships](#) webpage.

¹² See Section 306 of the Uniform Partnership Act (1997).

¹³ See the Uniform Limited Partnership Act (2001). The Uniform Limited Partnership Act is another uniform act from the National Conference of Commissioners on Uniform State Laws for the governance of partnerships.

¹⁴ See Angela Schneeman, *Law of Corporations and Other Business Organizations* (Cengage Learning, 2009), p. 114.

¹⁵ See Sections 201 and 404 of the Uniform Limited Partnership Act (2001).

and involvement in its management. In general, a formal written agreement is required to create a limited partnership.¹⁶

3. Limited Liability Partnership

In a limited liability partnership (LLP),¹⁷ all partners have limited liability similar to that of limited partners in a limited partnership, but without the limitations on control over the company.¹⁸ Some states limit usage of LLPs to certain professions (for example, lawyers).¹⁹

4. Limited Liability Limited Partnership

A limited liability limited partnership (LLLP) is a modification of the limited partnership.²⁰ Similar to a limited partnership, the LLLP consists of one or more general partners and one or more limited partners.²¹

In general, the key features of an LLLP are:

- The general partners manage the business operations of the LLLP, while the limited partners typically only maintain a passive financial interest;
- It is designed to offer limited liability to all partners in the partnership; and
- The partners decide the structure of the organization and the distribution of profits and losses. States usually recommend the partners establish a formal, written partnership agreement.²²

Not every state allows the formation of or recognizes LLLPs.

5. Taxes

The IRS generally considers partnerships to be pass-through tax entities, which means that the partnership itself does not pay income taxes and all of the profits and losses of the

¹⁶ The elements identified in these written agreements include the names of partners, the amount and type of contribution made by each partner, whether the partners hold a limited partnership interest, each partner's initial percentage of ownership, the business activities of the limited partnership, whether and how partnership interests can be transferred, and the conditions allowing the dissolution of the limited partnership. See IRS Publication 541, [Partnerships](#).

¹⁷ See IRS's Instructions for Form 1065. See Section 1001 of the Uniform Partnership Act.

¹⁸ See the U.S. SBA's [Choose a business structure](#) webpage.

¹⁹ See IRS's [SOI Tax Stats - Partnership Study Explanation of Selected Terms](#) webpage.

²⁰ For an example of limited partnerships and LLLPs, see page 21 of the Ohio Secretary of State's publication, [Start a Partnership in Ohio](#).

²¹ State law created and governs LLLPs. See, for example, page 21 of the Ohio Secretary of State's publication, [Start a Partnership in Ohio](#), and State of California Franchise Tax Board's Limited liability limited partnership webpage.

²² For a discussion of one state's LLLP provisions, see pages 21 to 23 of the Ohio Secretary of State's publication, [Start a Partnership in Ohio](#).

partnership pass through the business to the partners, who pay taxes on their share of the profits (or deduct their share of the losses) on their individual income tax returns.²³ Each partner may share in the profits and losses of the partnership equally, or in proportion to their respective contributions to the partnership or as otherwise set out in a written partnership agreement.

Even though the partnership itself does not pay income taxes, it must file U.S. Return of Partnership Income (IRS Form 1065). This form is an informational return the IRS reviews to determine whether the partners are reporting their income correctly.²⁴ Net income or loss (notated on tax forms as ordinary business income (loss))²⁵ is found on IRS Form 1065 or Schedule K and net current assets are calculated from information on Schedule L.

C. Corporation

A corporation is created by filing articles of incorporation with a state. In the eyes of the law, a corporation is a distinct body separate from its owners and management. Accordingly, a corporation is entitled to all legal rights afforded to individual persons, such as the ability to bring and defend lawsuits or to buy and sell property. The corporation's most notable feature is that, subject to narrow exceptions, it protects its owners (shareholders) from personal liability for its debts and obligations.²⁶ A corporation also has directors and officers who run the business.

A corporation has perpetual life. When a shareholder dies or otherwise elects to leave a corporation, the shareholder can transfer their stock to others. Corporate shareholders own the corporation, the board of directors manages the corporation through their direction and control of its officers, and, in almost all cases, the officers oversee the day-to-day operations of the corporation. The shareholders elect the directors, who in turn appoint the corporate officers. Often, particularly in smaller corporations, the same person might serve multiple roles within a corporation: shareholder, director, and officer.²⁷

A corporation's shareholders, directors, and officers must observe particular formalities in a corporation's operation and administration.²⁸ For example, corporations must, on at least an annual basis, make decisions regarding a corporation's management by formal vote and must record those votes in the corporate minutes. Meetings of shareholders and directors

²³ See IRS's [Tax Information For Partnerships](#) webpage.

²⁴ The partnership must also provide a Partner's Share of Income, Deductions, Credits, etc. (Schedule K-1) to the IRS and to each partner, which breaks down each partner's share of the business's profits and losses. In turn, each partner reports this profit and loss information on Schedule E of the partner's individual IRS Form 1040. See IRS's Instructions for Schedule E.

²⁵ Negative values are represented in parentheses on tax forms.

²⁶ See Michael Spadaccini, *Ultimate Guide to Incorporating in Any State* (Irvine, CA: Entrepreneur Press, 2010), p. 8.

²⁷ See Michael Spadaccini, *Ultimate Guide to Incorporating in Any State* (Irvine, CA: Entrepreneur Press, 2010), p. 8.

²⁸ See William Meade Fletcher, *Cyclopedia of the Law of Private Corporations*, Vol. 1, section 41.31 (Sept. 2021 Update). See *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681 (4th Cir. 1976) (court properly ignored the existence of a corporate entity where there was a failure to follow corporate formalities).

must be properly noticed and must meet quorum requirements. Finally, corporations must meet annual reporting requirements in their state of incorporation and in states where they do significant business.²⁹

1. Subchapter C Corporations

Corporations that have not elected to be taxed as a subchapter S corporation are by default taxed as a C corporation under Subchapter C of Chapter 1 of the Internal Revenue Code (IRC) where the general tax rules affecting corporations and their shareholders are located.³⁰

*Taxes*³¹

A C corporation files U.S. Corporation Income Tax Return (IRS Form 1120). C corporations (and other entities electing to be taxed as C corporations) are the only type of businesses that must pay income taxes on profits.³² The subsections below discuss how other corporations file and pay their taxes.

Generally, a C corporation's taxable profits consist of money kept in the company to cover expenses or expansion (called retained earnings) and profits that are distributed to the owners (shareholders) as dividends. These dividends are taxed twice, as the shareholders also pay taxes on these amounts.³³ Net income (taxable income before net operating loss deduction and special deductions) appears on the IRS Form 1120 or 1120-A, while net current assets are calculated from information on Schedule L of IRS Form 1120 or 1120-A.

To reduce taxable profits, a C corporation can deduct many of its business expenses that the C corporation spends in the legitimate pursuit of profit.³⁴

2. Subchapter S Corporations

²⁹ See *Wachovia Securities, LLC v. Jahelka*, 586 F.Supp.2d 972, 1002 (N.D.I.L. 2008) (disregarding a corporation's existence when it failed to observe required corporate formalities such as holding regular meetings, taking minutes, and maintaining corporate records).

³⁰ For instructions on electing a different taxation structure, see IRS's [S Corporations](#) webpage and IRS's Instructions for Form 1120.

³¹ When determining whether or not a corporation has the ability to pay the beneficiary the proffered wage, officers should refer to Volume 6, Immigrants, Part E, Employment-Based Immigration, Chapter 4, Ability to Pay [\[6 USCIS-PM E.4\]](#).

³² S corporations, partnerships, sole proprietorships, and limited liability companies (LLCs) are not taxed on business profits unless they elect otherwise; instead, the profits pass through the businesses to their owners, who report business income or losses on their personal tax returns.

³³ See IRS Publication 542, [Corporations](#).

³⁴ In addition to start-up costs, operating expenses, and product and advertising outlays, a C corporation can deduct the salaries and bonuses it pays and all of the costs associated with medical and retirement plans for employees. See IRS's Instructions for Form 1120.

The subchapter S corporation is a variation of the standard subchapter C corporation. The rules for subchapter S corporations are found in the IRC³⁵ and provide many of the benefits of partnership taxation while at the same time giving the owners limited liability protection from creditors.

An S corporation has the same corporate structure as a standard C corporation. It is a legal entity, chartered under state law, separate from its shareholders and officers, and there is generally limited liability for corporate shareholders. The difference is that the S corporation files an election on Election by a Small Business Corporation (IRS Form 2553), to be treated differently for federal tax purposes.

As with partnerships, the income, deductions, and tax credits of an S corporation flow through to shareholders annually, regardless of whether distributions (dividends) are made. Therefore, income is taxed solely at the shareholder level and not at the corporate level. To qualify for S corporation status, the corporation must meet certain requirements.³⁶

Taxes

An S corporation files U.S. Income Tax Return for an S Corporation (IRS Form 1120-S). The corporate income flows through and is reported on the shareholders' individual tax returns. The corporation completes and files a Shareholder's Share of Income, Deductions, Credits, etc. (Schedule K-1) with IRS Form 1120-S for each shareholder. The Schedule K-1 tells shareholders their allocable share of corporate income and deductions.

Shareholders must pay tax on their share of corporate income, regardless of whether it is actually distributed. Net income or loss, notated on tax forms as ordinary business income (loss),³⁷ appears on the IRS Form 1120-S or its Schedule K, while net current assets are calculated from information on Schedule L.

3. Personal Service Corporation

A personal service corporation is a corporation where the employee-owners are engaged in the performance of personal services. The IRC defines personal services as services performed in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, and consulting.³⁸

³⁵ See [26 U.S.C. 1361](#).

³⁶ See IRS's [S Corporations](#) webpage. A subchapter S corporation must be a domestic corporation; have only allowable shareholders (may include persons, certain trusts, and estates, but may not include partnerships, corporations, or non-resident shareholders); have no more than 100 shareholders; have only one class of stock (for example, no preferred stock allowed); and not be an ineligible corporation (such as certain financial institutions, insurance companies, and domestic international sales corporations).

³⁷ Negative values are represented on tax forms by parentheses.

³⁸ See [26 U.S.C. 448\(d\)\(2\)](#).

To qualify as a personal service corporation, substantially all the corporation's activities must involve the performance of personal services, and a percentage of the corporation's stock must be owned by employees performing the personal services.³⁹

Taxes

A personal service corporation pays tax on its profits as a corporate entity. However, a personal service corporation is not allowed to use the graduated tax rates for other C corporations. Instead, it is subject to a flat tax based on the highest corporate tax rate. Because of the high tax rate, personal service corporations generally distribute their profits as wages to the employee-shareholders. In turn, the employee-shareholders pay personal taxes on their wages.⁴⁰

The personal service corporation files its taxes on IRS Form 1120. This form contains a box for the business to indicate that it is a personal service corporation.⁴¹ Net income or loss is notated on IRS Form 1120 or 1120-A as taxable income before net operating loss deduction and special deductions, while net current assets are calculated from information on IRS Form 1120 Schedule L.

D. Limited Liability Company

A limited liability company (LLC) is a hybrid entity, combining some of the most advantageous features of partnerships and corporations.⁴² LLCs were created to provide business owners with the liability protection that corporations enjoy without the double taxation. Under the default tax standard, earnings and losses of an LLC pass through to the owners and are included on their personal tax returns.⁴³

LLCs are similar to S corporations, except that LLCs are not limited in the number of owners or types of members.⁴⁴ LLCs may be either member-managed (managed by each of its members) or manager-managed (managed by specified managers who may or may not be members of the LLC).⁴⁵ The LLC's operating agreement may distinguish between members and managing members. Generally, if such a distinction is made, managing members of the LLC are allowed a full participatory role in the business's operation. However, depending on the operating agreement, even regular members may have a role in the business's operation.

³⁹ See IRS Publication 542, [Corporations](#).

⁴⁰ See IRS's Instructions for Form 1120.

⁴¹ When determining whether or not a corporation has the ability to pay the beneficiary the proffered wage, officers should refer to Volume 6, Immigrants, Part E, Employment-Based Immigration, Chapter 4, Ability to Pay [[6 USCIS-PM E.4](#)].

⁴² See the U.S. SBA's [Choose a business structure](#) webpage.

⁴³ While the default tax treatment for an LLC is pass-through taxation, as with all entities, it may elect to be taxed differently.

⁴⁴ See IRS's [SOI Tax Stats - Partnership Study Explanation of Selected Terms](#) webpage.

⁴⁵ The powers and duties of members and managers are typically outlined in the LLC's operating agreement. See U.S. SBA's [Basic Information About Operating Agreements](#) webpage.

To set up an LLC, organizers file articles of organization with the secretary of state in the state where the LLC is formed. Some states also require the filing of an operating agreement, which is similar to a partnership agreement. LLCs do not necessarily have perpetual life and can be set up to dissolve after a set period of time, such as a specific number of years, upon the occurrence of a triggering event, such as the death or withdrawal of a member, or as otherwise provided in the operating agreement.

The IRS does not recognize an LLC as a classification for federal tax purposes and by default treats multi-member LLCs as a partnership and single-member LLCs as a disregarded entity (similar to a sole proprietorship) for tax purposes. As with other entities, however, an LLC may file an election to be taxed differently (such as a corporation).⁴⁶

1. Taxes

For federal income tax purposes, LLCs with two or more members are treated by default as partnerships (a pass-through entity) and must file the IRS Form 1065, discussed above under Section B, Partnership. Each partner receives a Partner's Share of Income, Deductions, Credits, etc. (Schedule K-1) for their share of income or losses to be reported on that partner's individual tax return.

If there is only one member in the LLC, it is treated as a disregarded entity (similar to a sole proprietorship) for tax purposes, and the owner reports the LLC's income on the owner's personal individual tax return on Schedules C, E, or F to the IRS Form 1040, discussed above under Section A, Sole Proprietorship.

As an option, LLCs may also elect to be taxed like a corporation by filing Entity Classification Election (IRS Form 8832). They can be treated as a regular C corporation (taxation of the entity's income before any dividends or distributions to the members and then taxation of the dividends or distributions once received as income by the members), or as an S corporation. These corporations file IRS Form 1120 or 1120-S, discussed above under Section C, Corporation.

E. Nonprofit Organization

1. Overview

⁴⁶ See IRS's [Limited Liability Company \(LLC\)](#) webpage. A professional limited liability company (PLLC) is an LLC organized for the purpose of providing professional services, such as a doctor, chiropractor, lawyer, accountant, architect, landscape architect, or engineer. Some states permit LLCs to engage in the practice of a licensed profession through PLLCs. Exact requirements of PLLCs vary from state to state. Typically, a PLLC's members must all be professionals practicing the same profession. In addition, the limitation of personal liability of members does not extend to professional malpractice claims.

A nonprofit organization (NPO) is an entity that serves some public purpose and therefore enjoys special treatment under the law, including often having tax-exempt status and the protection of directors, officers, and members from personal liability.⁴⁷ Typically, NPOs are engaged in charitable, educational, religious, or artistic activities of public or private interest.⁴⁸ Unlike a for-profit business entity, an NPO does not distribute profits to its owners.⁴⁹ Instead, any profits must ultimately go back into the organization.

In general, an NPO is formed and governed under state statutes the same as other entity types, and often takes the form of nonprofit corporations or LLCs. Whether incorporated or unincorporated, an NPO must keep records, prepare minutes of meetings, and have a separate bank account.

The board of directors typically makes collaborative decisions regarding the operation of the NPO. The board defines the mission and the policies of the NPO, creates budgets and oversees finances, and hires an executive director. If the NPO has an executive director, the director carries out the daily functions of the NPO under the management of the board. The executive director's job is also to advise and report information to the board about activities and programs, and to monitor finances.

2. Taxes

An incorporated or unincorporated NPO can qualify for tax-exempt status if it meets certain conditions. In most states, if an NPO qualifies for a federal tax exemption it also automatically qualifies for a state tax exemption. The federal government offers many different types of tax exemptions for nonprofits under IRC 501(c).⁵⁰ The most popular kind of NPO is called a 501(c)(3).⁵¹ Under this code section, the NPO is exempt from paying federal income taxes and contributions made to the nonprofit are generally tax-deductible for the donors.

Most NPOs are required to file an annual informational return, called a Return of Organization Exempt From Income Tax (IRS Form 990 or IRS Form 990EZ), if the

⁴⁷ See Marilyn E. Phelan, *Nonprofit Organizations: Law and Taxation*, sections 1:1, 4:1, and 7:1 (Oct. 2022 Update).

⁴⁸ See IRS's [Exempt Organization Types](#) webpage.

⁴⁹ See Marilyn E. Phelan, *Nonprofit Organizations: Law and Taxation*, section 1:2 (Oct. 2022 Update).

⁵⁰ See [26 U.S.C. 501](#).

⁵¹ To qualify, the nonprofit organization must be organized and operated exclusively for the exempt purposes set forth in IRC 501(c)(3)—charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals—and no part of their net earnings “may inure to any private shareholder or individual.” See [26 U.S.C. 501\(c\)\(3\)](#). See IRS's [Exemption Requirements – 501\(c\)\(3\) Organizations](#) webpage.

organization's gross receipts exceed \$50,000 from sources other than the exempt purpose.⁵² Some religious organizations are not required to file IRS Form 990 or 990EZ.⁵³

IRS Form 990 provides an analysis of an NPO's revenue and expenses, and net income is stated on the form as revenue less expenses. The abbreviated balance sheet on IRS Form 990 does not identify which assets and liabilities are current and therefore is not useful for calculating net current assets.

⁵² See IRS's Instructions for Form 990 Return of Organization Exempt From Income Tax.

⁵³ See IRS's Instructions for Form 990 Return of Organization Exempt From Income Tax and IRS's [Tax Guide for Churches and Religious Organizations](#).