

SUMMARY COMPARISON OF COMMON FORMS OF UTAH BUSINESS ORGANIZATION (formed 1/1/14 and later)

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<u>Factor for Comparison</u>	<u>Sole Proprietorship</u>	<u>General Partnership</u>	<u>Limited Partnership</u>	<u>Limited Liability Company</u>	<u>Corporation Without S-corp Election</u>	<u>Corporation with S-corp Election</u>
<u>General Tax Treatment</u>	Form 1040 Schedule C individual taxation	Conduit theory (flow through of income, deduction, credit, character of income, NOLs, etc.); may elect corporate or, if qualified, S-corp treatment	Conduit theory if done properly; may elect corporate or, if qualified, S-corp treatment	Conduit theory if done properly; may elect corporate or, if qualified, S-corp treatment	Tax at corporate and shareholder levels; no special capital gain rate	Conduit theory with no tax at corporate level (unless formerly a C-corp and are E & P or built-in gains)
<u>Limited Liability</u>	Not available	Not available, unless a limited liability partnership election is made	Not available for general partner unless limited liability limited partnership election is made; is available for limited partners whether or not actively engaged in the business	Available for all members whether or not actively engaged in the business	Available for all shareholders even if an officer or director	Available for all shareholders even if an officer or director
<u>Separate Legal Entity</u>	No	Yes	Yes	Yes	Yes	Yes
<u>Single Equity Holder</u>	Yes	No	No	Yes	Yes	Yes

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<u>Centralized Management</u>	Individual Control	No; internally may allocate responsibilities, however	Yes - general partners control	Yes or No – may establish with corporate-like control or with partnership-like control	Yes - Board of Directors controls (may vary by shareholder agreement)	Yes - Board of Directors controls (may vary by shareholder agreement)
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<u>Continuity of Existence</u>	No	Not perpetual;- bankruptcy, death, disability, or withdrawal causes dissociation of partner and leads to dissolution and winding up if partnership is at will, or often leads to dissolution if partnership is for definite term or particular undertaking (half may cause dissolution); dissolution also on agreement by all, expiration of term, or specified event; need at least two partners, but partnership may be of indefinite term;	Yes, may be perpetual but unless otherwise agreed, dissociation may lead to dissolution and winding up on certain events, including: dissociation (including by death) of last general partner unless there is an agreement by majority of limited partners to continue; disassociation of general partner with other general partner remaining if majority of all partners agree in 90 days to dissolve; disassociation of last limited partner, unless at least one limited admitted in 90 days; dissolution also on agreement by all to dissolve, expiration of term (which may be perpetual) , specified events under agreement;	Yes, may be perpetual; but unless otherwise agreed, dissolution occurs on: expiration of term, agreement of all members, not have at least one member for 90 days, or events specified in agreement; but events causing dissolution do not include disassociation on death or withdrawal of a member, unless specified;	Yes, may be perpetual	Yes, may be perpetual

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<u>Free Transferability of Interest</u>	Not applicable - only assets to sell	No; may transfer profits and distribution rights unless restricted; assignee not a partner unless admitted with consent of all partners unless agree otherwise	No; may transfer distribution rights unless restricted; assignee not a partner unless admitted with consent of all partners unless agree otherwise	No; may transfer distribution rights unless restricted; all members must consent before assignee a member, unless agree otherwise	Yes (unless restricted)	Yes (unless restricted)
<u>Professional's Use</u>	Yes	Yes; limited liability partnership available; are particular professional provisions	Yes; limited liability limited partnership available	Yes; are particular professional provisions	Yes; are particular professional provisions	Yes; are particular professional provisions
<u>Expense to Organize</u>	Minimal	Minimal to moderate to expensive	Moderate to expensive	Moderate to expensive	Moderate to expensive; simple corporation likely to be slightly cheaper than limited partnerships or limited liability companies, unless complex capital or control structures	Moderate to expensive; will have simple capital structure
<u>Formalities</u>	Minimal	Minimal	Moderate	Moderate	Somewhat more than limited partnerships and limited liability companies	Somewhat more than limited partnerships and limited liability companies

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<u>Management Duty of Care</u>	Not applicable	Gross negligence; agreement may modify but may not authorize intentional wrong or knowing violation of law	Gross negligence; agreement may modify but may not authorize intentional wrong or knowing violation of law	Gross negligence; agreement may modify but may not authorize intentional wrong or knowing violation of law	Due care	Due care
<u>Flexibility to accomplish allocations and control arrangements among members</u>	Not applicable	Highly flexible	Highly flexible	Highly flexible	Moderately flexible – quite flexible in Utah, but may take more complexity to accomplish desired goal; less flexible for tax purposes	Moderately flexible – quite flexible in Utah on control, but may take more complexity to accomplish desired goal; very inflexible for economic allocation; less flexible for tax purposes
<u>Attraction of Investment Capital</u>	From self or from loans	Generally limited to active participants and loans	Passive equity investment possible; are some publicly-traded partnerships; loans	Passive equity investment possible; not much present public market; loans	May have access to public debt and equity markets for numerous types of securities; loans	No public market; passive investment possible; loans
<u>Interstate Acceptability</u>	Excellent	Excellent	Excellent but need to comply with a few formalities	Excellent but need to comply with a few formalities	Excellent but need to comply with certain formalities	Excellent but need to comply with certain formalities
<u>Interentity State Law Conversion or Merger</u>	Not applicable	Available	Available	Available	Available	Available

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<u>Equity Interest as Compensation</u>	Not applicable	Pure profits interest not presently taxable, unless tradeable, tied to securities, etc.; equity interest taxed	For general or limited partner, same as with general partnerships; limited partners usually will not be receiving compensation	Pure profits interest not presently taxable, unless tradeable, tied to securities, etc.; equity interest taxed	Taxable May use statutory incentive stock options	Taxable May use statutory incentive stock options
<u>Payroll Tax as to Owners</u>	Self-employment tax; quarterly estimated tax; no FUTA tax	Self-employment tax (note: real estate rent, gain exception); quarterly estimated tax; no FUTA tax on partners	For general or active limited partner same as with general partnership (note: real estate rent, gain exception); none for passive limited partners; quarterly estimated tax; no FUTA tax on partners	Usually subject to self-employment tax like general partnership (note: real estate rent, gain exception), except for purely passive members like limited partners; quarterly estimated tax; no FUTA tax on members	Normal employee payroll taxes (½ corporate, ½ employee withholding), unemployment tax applies; may need quarterly estimated tax for corporate tax and for shareholder dividends; FUTA tax applies	Normal employee payroll taxes; possible to use low end reasonable compensation to minimize FICA and Medicare; unemployment tax applies; may need quarterly estimated tax for dividends; FUTA tax applies
<u>Owners</u>	One human	Any number and may be entities	Any number and may be entities	Any number and may be entities	Any number and may be entities	100, no entities, except certain trusts, estates, S-corp holding 100%, charity, disregarded single member LLC; (may own C-corp stock or other interests)
<u>Special Allocations</u>	Not applicable	Yes, if taxed as partnership	Yes, if taxed as partnership	Yes, if taxed as partnership	No	No

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<u>Welfare Benefits and Retirement Benefits</u>	Limits as individuals; may borrow on retirement plan account	Limited participation; may borrow on retirement plan account; complex contribution formula	Limited participation; may borrow on retirement plan account; complex contribution formula	Limited participation; may borrow on retirement plan account; complex contribution formula	Most flexible	2% shareholder takes certain benefits into income; may borrow against retirement plan
<u>Distributions – Tax Effect</u>	Not applicable	Gain on cash in excess of basis; no gain or loss on property distribution, usually (possible inside basis adjustment election); debt shift treated as cash distribution; shift hot assets (A/R, inventory) may be a sale	Gain on cash in excess of basis; no gain or loss on property distribution, usually (possible inside basis adjustment election); debt shift treated as cash distribution; shift hot assets (A/R, inventory) may be a sale	Gain on cash in excess of basis; no gain or loss on property distribution, usually (possible inside basis adjustment election); debt shift treated as cash distribution; shift hot assets (A/R, inventory) may be a sale	Dividend to shareholders; property distributed deemed sold; no special capital gain rate limit	No tax until prior taxed income used; property distributed deemed sold, often creates gain to corporation (outside basis adjustment and pass through)
<u>Tax-free Creation</u>	Yes	Generally yes, unless abuse	Generally yes, unless abuse	Generally yes, unless abuse	Yes, if meet control tests	Yes, if meet control tests
<u>Accounting Methods</u>	Cash method; if inventory, must use accrual method (small business exception if under \$25 Million 3 yr. average gross receipts (indexed after 2018))	Cash or accrual generally available; tax shelter may not use cash method; if C-corp a partner, may not use cash method unless is personal service entity or gross receipts not over \$25 Million 3 yr. average (indexed after 2018)	Cash or accrual available; tax shelter may not use cash method; if C-corp a partner, may not use cash method unless is personal service entity or gross receipts not over \$25 Million 3 yr. average (indexed after 2018)	Cash method available if not tax shelter; professional LLC not treated as shelter; accrual method if C-corp is member unless personal service entity or gross receipts not over \$25 Million 3 yr. average (indexed after 2018)	No cash basis unless not over \$25M gross receipts 3 yr. average (indexed after 2018) or farm, or qualified personal service corp	Cash basis available even for services over \$25M in gross receipts 3 yr. average, accrual method S-corp must use cash method on shareholder distribution deduction

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<u>Tax Year</u>	Generally calendar	Generally that of majority partners	Generally that of majority partners	Generally that of majority members	Generally, the accounting year	Generally calendar year
<u>Tax-free Reorganization</u>	Not applicable	Not applicable; partnership-taxed entity merger rules, or if other entity involved, liquidation rules	Not applicable; partnership-taxed entity merger rules, or if other entity involved, liquidation rules	Not applicable; partnership-taxed entity merger rules, or if other entity involved, liquidation rules	Available	Available
<u>Disregarded Entity for Tax Purposes</u>	Not applicable	No – will be at least two partners	No – will be at least two partners	Yes, for single member; spouse election if are only members and community property. No, if more than one member even spouses in common law state	No; but consolidated return rules may apply	No, generally; but yes if a Q-sub with 100% ownership by the S-corp; cannot be member of consolidated groups
<u>Deductions</u>	General individual rules 20% qualified business income pass through deduction available	Loss limited to outside basis; this basis includes company debt. 20% qualified business income pass through deduction available	Loss limited to outside basis; this basis includes company debt. 20% qualified business income pass through deduction available	Loss limited to outside basis; this basis includes company debt. 20% qualified business income pass through deduction available	General corporate rules. 20% qualified business income pass through deduction not available	Loss limited to outside basis; this basis does not include corporate debt. 20% qualified business income pass through deduction available

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<u>Audits</u>	Individual	Pre 2018: Entity level with pass-through effect (but 10-partner exception if none are flow-through entities); tax matters partner. Post 2017: Entity level with pass through effect, but entity may be liable in adjustment year for partners' deficiency in reviewed year unless fewer than 100 partners, none flow- through (other than S-corp.), and elect out, or unless alternative payment method elected (push-out, or amend returns and pay tax); partnership representative.	Pre 2018: Entity with pass-through effect (but 10-partner exception if none are flow-through entities); tax matters partner. Post 2017: same as partnership.	Pre 2018: Entity with pass-through effect (but 10-partner exception if none are flow- through entities); tax matters partner. Post 2017: same as partnership.	Corporate	Corporate with pass-through effect
<u>At Risk Rules</u>	Apply	Apply at partner level	Apply at partner level	Apply at member level	Apply if closely held; not apply to certain active businesses	Apply at shareholder level

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<u>Passive Activity Rules</u>	Apply	Apply at partner level	Apply at partner level but at partnership level if publicly traded; limited partner not also a general is presumed passive	Apply at member level but at company level if publicly traded; member without management authority as member or manager presumed passive	Apply if closely held or personal service corporation	Apply at shareholder level
<u>Sale of Interest</u>	Not applicable - asset sale only	Generally capital gain treatment, except for hot assets; ordinary income on certain redemption payments; possible termination of entity; possible step-up buyer inside basis	Generally capital gain treatment, except for hot assets; ordinary income on certain redemption payments; possible termination of entity; possible step-up buyer inside basis	Generally capital gain treatment, except for hot assets; ordinary income on certain redemption payments; possible termination of entity; possible step-up buyer inside basis	Capital gain treatment (redemptions may be dividends); possible election by buyer to treat as asset purchase; exclusion of gain from qualified small business stock held 5 years	Capital gain treatment; book closing issues; possible election by buyer to treat as asset purchase
<u>Sale of Assets</u>	Capital or ordinary asset by asset	Sale of going business doctrine may treat as sale of interests as to partners, otherwise, asset-by-asset treatment	Sale of going business doctrine may treat as sale of interests as to partners, otherwise, asset-by-asset treatment	Sale of going business doctrine may treat as sale of interests as to members, otherwise, asset-by-asset treatment	Gain or loss at corporate level, asset by asset; no special capital gain rate limit at corporate level	Gain or loss at corporate level asset by asset; pass through and basis adjustment for shareholder

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<u>Cancellation of Indebtedness Income exceptions application</u>	At individual level	At partner level	At partner level	At member level	At corporate level	At corporate level
<u>Death of Owner</u>	Step-up basis in assets	Step-up basis in partnership interest; estate may get benefit of step-up basis in company assets with special election	Step-up basis in partnership interest; estate may get benefit of step-up basis in company assets with special election	Step-up basis in membership interest; estate may get benefit of step-up basis in company assets with special election	No entity asset step-up in basis; only stock step-up in basis	No entity asset step-up in basis; only stock step-up in basis; possible use of gain on liquidation for basis increase