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Structuring Your Business for Sustainability

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Nonprofit Options

- 501(c)(3) – charitable, educational
- 501(c)(6) – trade association
- 501(c)(4) – social welfare organization
- 501(c)(5) – labor, agricultural & horticultural organizations (betterment of techniques & conditions)
- Non-exempt (medical marijuana)
- Nonprofit with for-profit subsidiary
- Mandela Marketplace model – nonprofit support for “disadvantaged” businesses that further its mission
- No outside investors/dividends
- Volunteers okay (not okay in for-profit businesses)

For Profit – Socially Responsible Models

- B Corporation
 - Shareholder versus stakeholder primacy
 - Commitment to considering the well-being of workers, community, and environment in addition to shareholders
- L3C
 - Designed to facilitate program related investments from foundations
- New legislation – e.g. H Corp in California

Partnership/LLC vs. Corp

- Pass through tax treatment (Partnerships/LLCs/S Corps)
 - Versus double tax (C Corp)
 - Allocations versus distributions; phantom income problem in pass through entity
- Employee (Corp) vs. owner (LLC)
 - Undocumented workers
- Flexible (LLC) vs. formal (Corp)
 - Piercing the veil – easier in corporations
 - distributions/allocations of profit and loss – more flexible in LLCs
- Taxation – California LLC gross receipts tax and S Corp tax; California minimum tax (all entities); employment tax
- Ease of bringing in outside investors (C Corp generally easier)
- “Collective account” – not possible in pass through entity
- S Corp – pass through treatment, but formalities of corp (owners are employees)
 - Limitations (100 shareholders, individuals only, 1 class of share)

Co-ops

- Democracy (can exist in other structures)
- Member share in profits (optional)
- Tax treatment – no double tax on patronage distributions
- Outside investment – difficult
 - Easier in new generation models
- Naming – in California must be a co-op to call itself a co-op
- Employment tax issue – IRS taking the position that patronage dividends in worker co-ops are subject to employment tax

Example of new generation statute

Wisconsin's Chapter 193

Authorizes the creation of membership interests for investors who are not patrons of the cooperative.

Such investor members' voting rights may not exceed a total of 49 percent.

The bylaws may provide such members with the power to veto certain unusual decisions such as merger or dissolution.

The investors' may not receive more than 70 percent of the profit allocations and distributions.

May elect to be taxed as a partnership or as a cooperative.

Other considerations

- Ease of operation, settled law, finding professional help – hard to find professionals that understand co-ops; corps are most straightforward
- Securities law – no sale of securities to the public without registration; cooperative exemption
- Conversions
 - From LLC to Corp – not advisable
 - From nonprofit to for-profit – not advisable