

Can you tell me about an S-Corp?

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Generally speaking, when creating a new business, your choices are to form a corporation or a limited liability company. If you form a corporation, after forming the entity you can apply with the Internal Revenue Service to elect to be taxed as an "S Corp". Then, in most states, like New Jersey, after being approved by the Internal Revenue Service as an S Corp, you then have to file with the state of New Jersey and apply to be recognized as an S Corp for state taxation purposes. This may sound like a lot of trouble, but the benefits to you as a shareholder are large. It saves you from potentially being double taxed on the corporation's incomes and losses, since taxes on the income of the corporation is generally only paid at the shareholder level not both the corporation and shareholder levels. Additionally, it allows the corporation's income and losses to flow through to the shareholders individually, based on their share ownership of the corporation. Therefore, typically if you own 50% of the corporation shares, you get taxed on 50% of the income or losses of the corporation.

How do you know you qualify to be an S Corp. with the Internal Revenue Service? The following is a general basic list of requirements to qualify to be an S Corp.:

Be a domestic corporation;

Have only natural persons as shareholders i.e. actual people (there are some limited exceptions to that rule);

Have no more than 100 shareholders;

Have only one class of stock; and

Not be an ineligible corporation (i.e. certain financial institutions, insurance companies, and domestic international sales corporations).

The process of becoming an S Corp. is straightforward, as it involves filling out forms in the proper order within the proper time. But, for many business owners, it can be a daunting task. This is one of the times I recommend working with an experienced business law attorney and accountant to ensure your filings are done correctly. The reason for recommending both an attorney and an accountant, is that there are elements of both legal knowledge and tax knowledge necessary to form the S Corp correctly. Therefore, don't try to do it alone. If you have any questions regarding S Corps, feel free to contact me at David@weinsteinlawyer.com.

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