

LLC, SMLLC & LLP



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Sole Proprietorship & Corporations



■ Sole Proprietorship

- Single business owner operating in his/her own capacity

■ Corporation

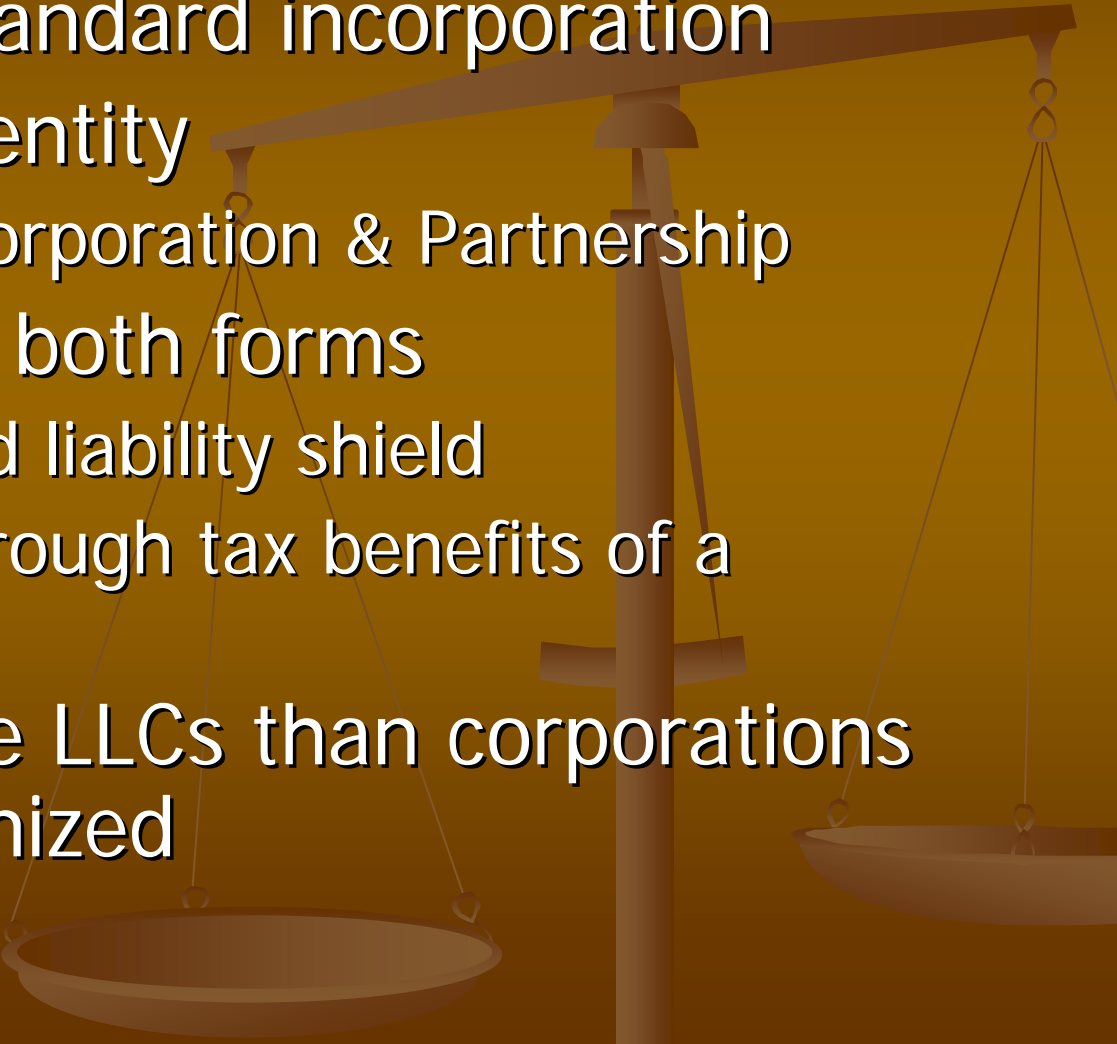
- Separate business entity recognized under state laws
 - Regular Corporation
 - One or more shareholders with limited liability for obligations of the entity
 - Federal purposes – separately taxed on profits and distributions
 - Subchapter S Corporation
 - A corporation subject to specific rules & limitations
 - Limited number & types of shareholders
 - Single class of stock
 - Federal purposes – no corporate level tax. Passthrough taxation to shareholders
 - Occupational tax purposes – taxed at corporate level not shareholder level

Partnership



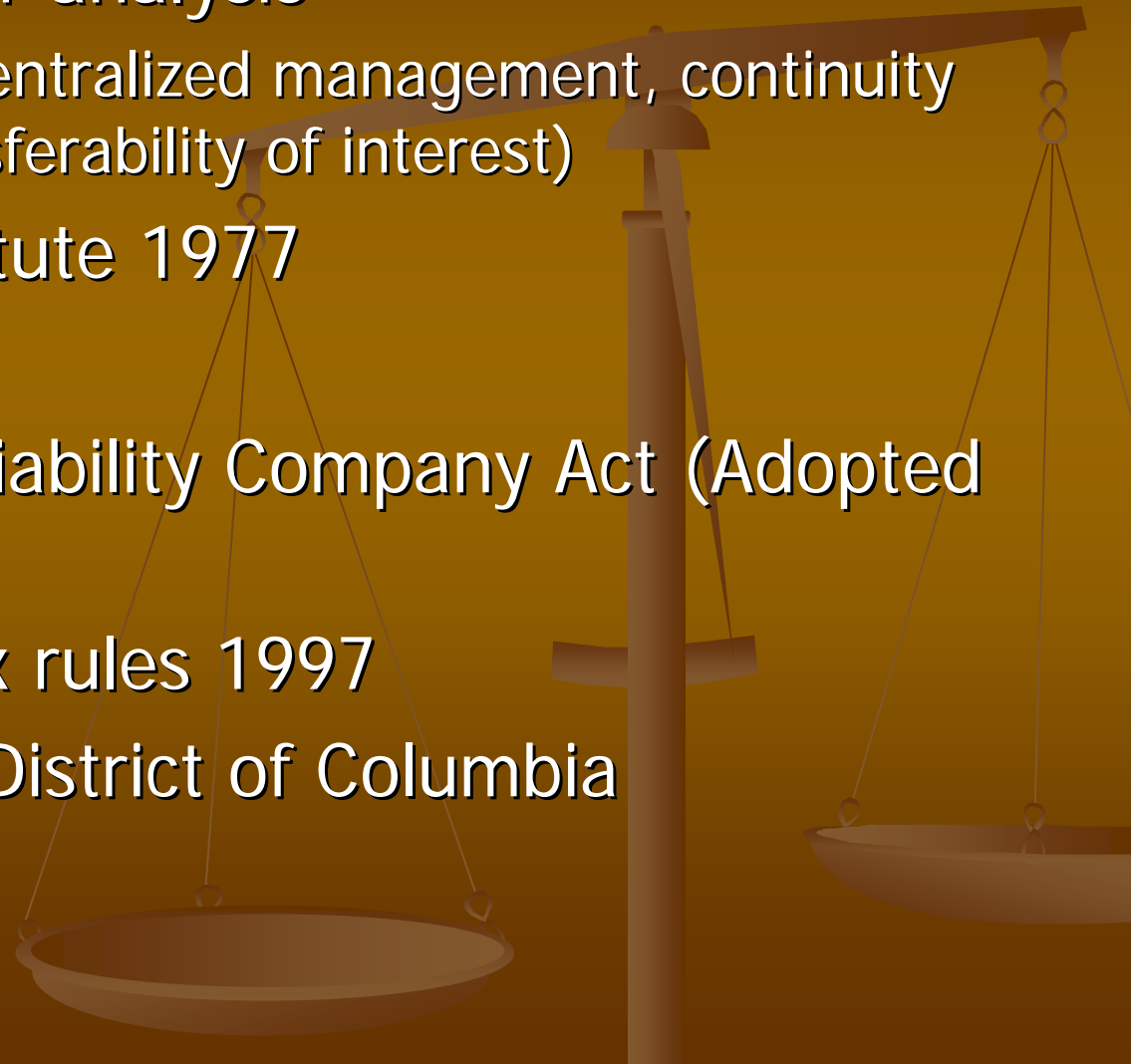
- Separate business entity composed of associates acting together to produce a profit
 - **General Partnerships**
 - **Standard General Partnerships**
 - Organized under state law (no written agreement is required)
 - Composed of at least two partners
 - Each partner has total liability for all obligations of the entity
 - Federal purposes – no entity level taxation. Partners are taxed on allocable shares of income
 - **Limited Liability Partnership**
 - Same as general partnerships
 - Except general partners are limited
 - **Limited Partnerships**
 - **Standard Limited Partnerships**
 - Organized under state law (written agreement is required)
 - Composed of at least two partners
 - One of which is general partner (same obligations as standard general partnership)
 - One of which is limited partner with limited liability
 - **Limited Liability Limited Partnerships**
 - Same as standard limited partnership except liability of general partner is limited

Limited Liability Company (LLC)


- Alternative to standard incorporation
 - Separate Legal entity
 - Hybrid - both Corporation & Partnership
 - Best features of both forms
 - Corporate-styled liability shield
 - Federal Pass-through tax benefits of a partnership
 - Since 2001 more LLCs than corporations have been organized
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History of LLCs

- Four factor Kintner analysis
 - Limited liability, centralized management, continuity of life & free transferability of interest)
- Wyoming LLC Statute 1977
- IRS ruling 1988
- Uniform Limited Liability Company Act (Adopted 1994, Amd 1995)
- IRS check-the-box rules 1997
- All 50 states and District of Columbia



Use of LLCs

- Best entity for holding real estate investments
 - Protection from lawsuits resulting from injuries on premises or other creditors
 - Flexibility in the operations and structure of the business
 - Increases estate planning opportunities
 - Asset protection, retaining control of property, gifting property, and reducing estate taxes
 - Can be used to hold personal property (equipment) or intangible property (patents)
 - Joint Ventures – normally formed as a kind of temporary partnership to carry out a particular project
 - Offers flexibility of partnership and provides maximum liability protection
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LLC Organization



- Membership requires contribution in cash, property, note or services
- LLC agreement
 - Blueprint as to management & relationship of members
 - If no written agreement – bound by state law
- Articles of Organization
 - 1) Name of Company
 - 2) Address initial designated office
 - 3) Name & street address agent for service of process
 - 4) Name and address of each organizer
 - 5) Whether or not company is to be a term company
 - 6) Whether company is manager-managed, and if so name and address of manager
 - 7) Whether one or more members of company are liable for its debts and obligations

LLC Advantages



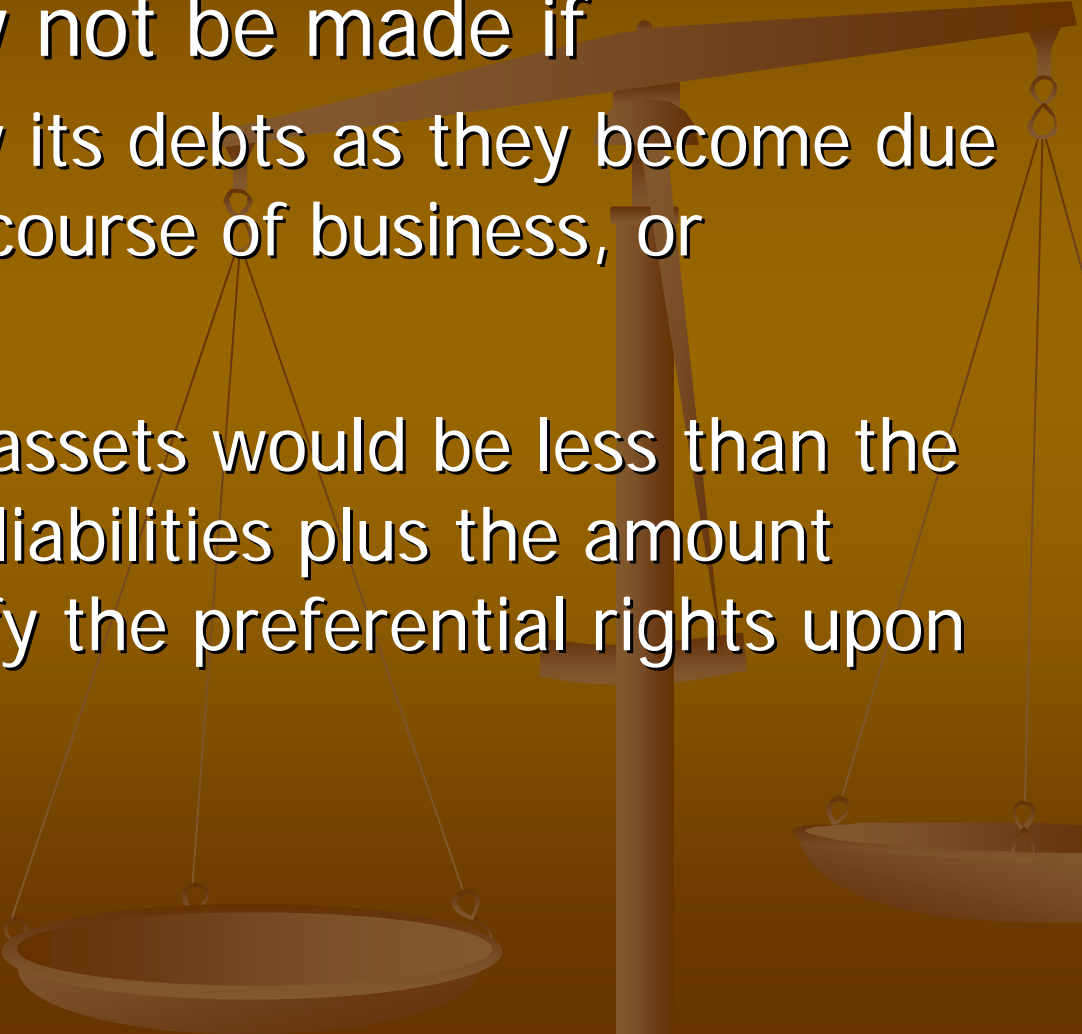
- No limitations on number or type of owners (S Corporations)
- Don't have to have general partner to get limited liability protection (LP)
- All members can participate in management without the loss of limited liability (LP)
- No articles of incorporation or bylaws (C & S Corporations)
- Do not have meeting requirements, notice requirements, dissenter's rights etc (C & S Corporations)

Management & Conduct of LLC

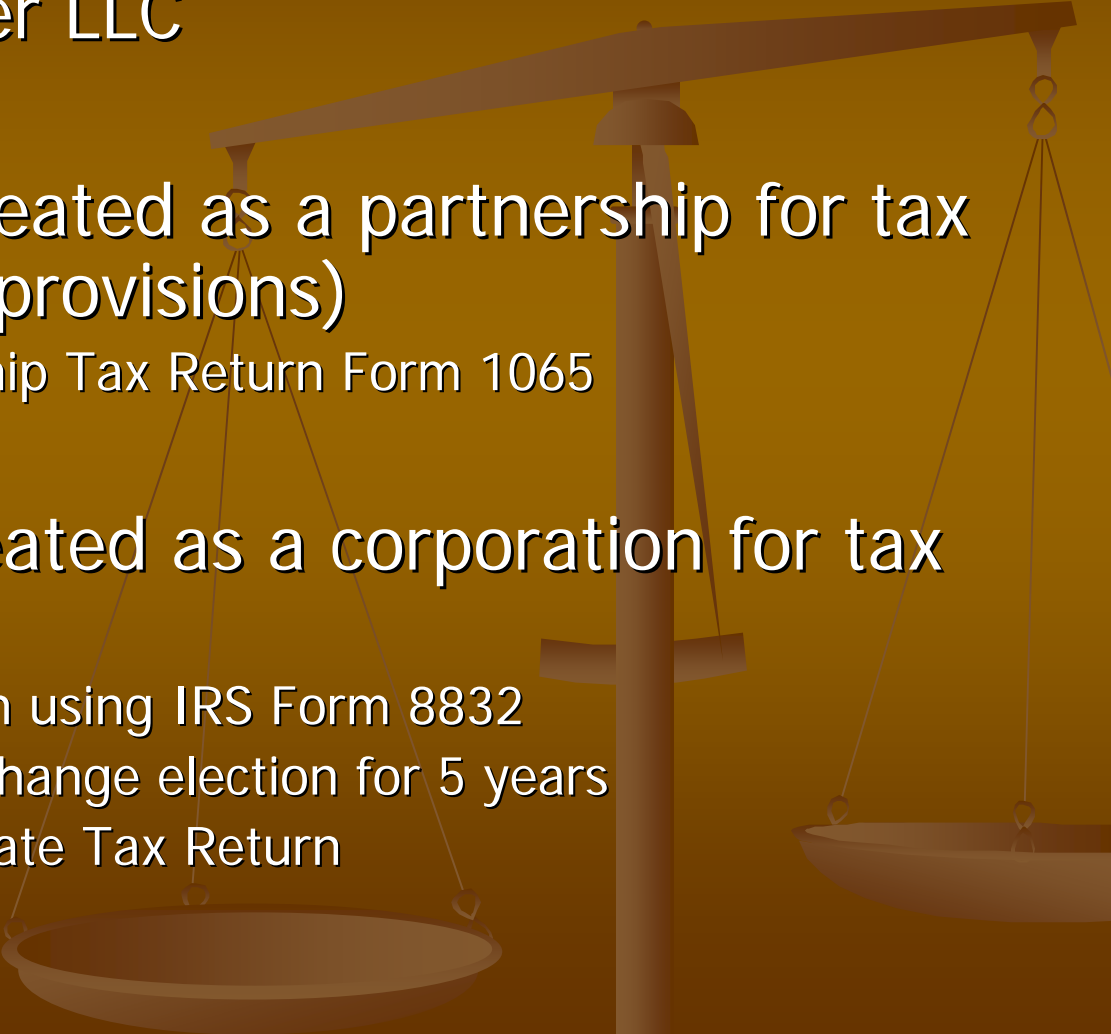
- Member-managed company
 - Operates similar to general partnership
 - Each member equal rights
 - Each member is agent of the LLC
- Manager-managed company
 - Operates similar to a corporation. Management of business concentrated in few managers
 - Each manager has equal rights
 - Managers are agents of the LLC
 - Managers do not have to be members (just as corporate officers need not be shareholders)
 - Members are similar to shareholders
 - Members are not agents of LLC



Distributions

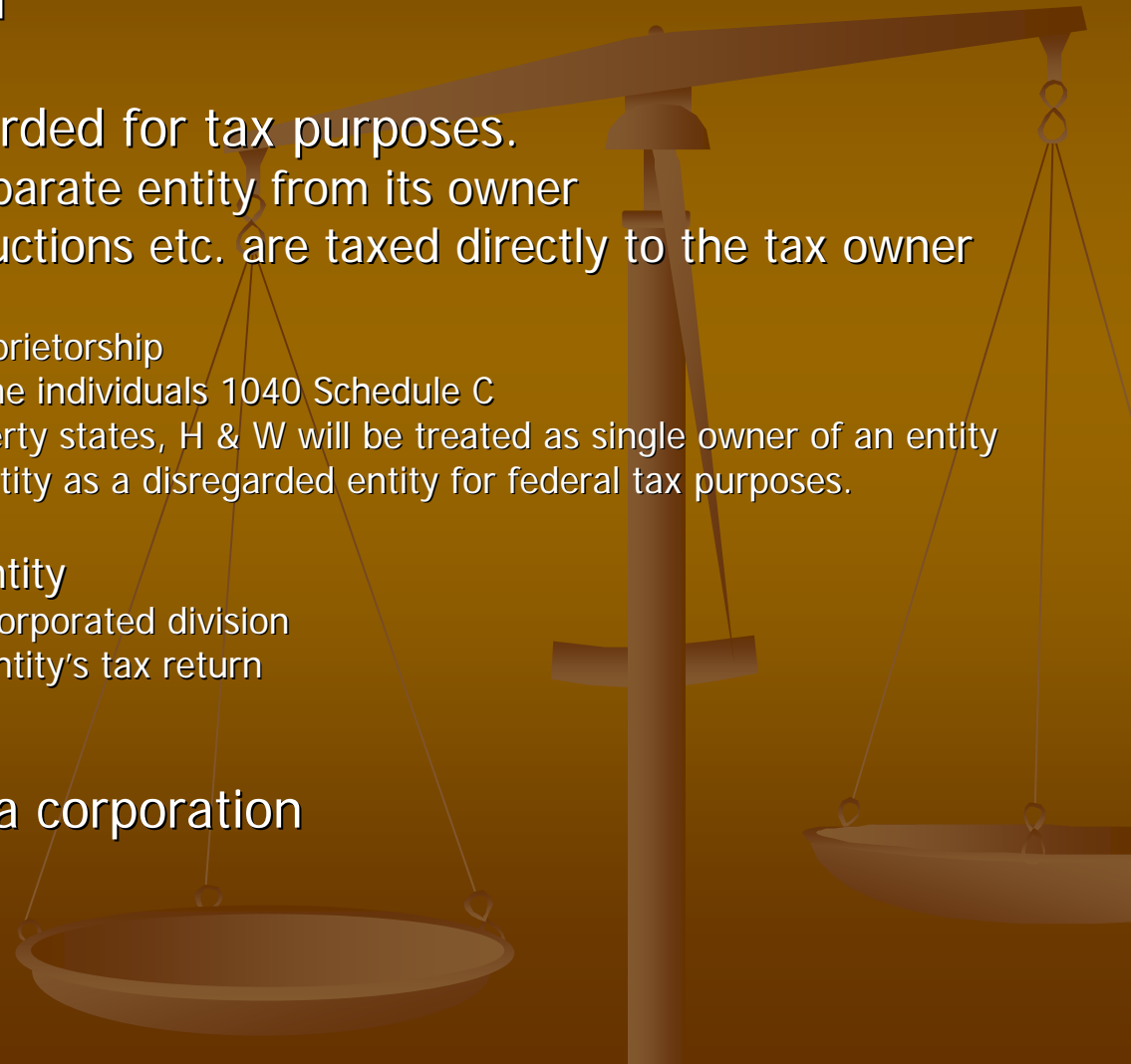
- Distribution may not be made if
 - LLC can not pay its debts as they become due in the ordinary course of business, or
 - The LLC's total assets would be less than the sum of its total liabilities plus the amount needed to satisfy the preferential rights upon dissolution.
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LLC for taxation purposes

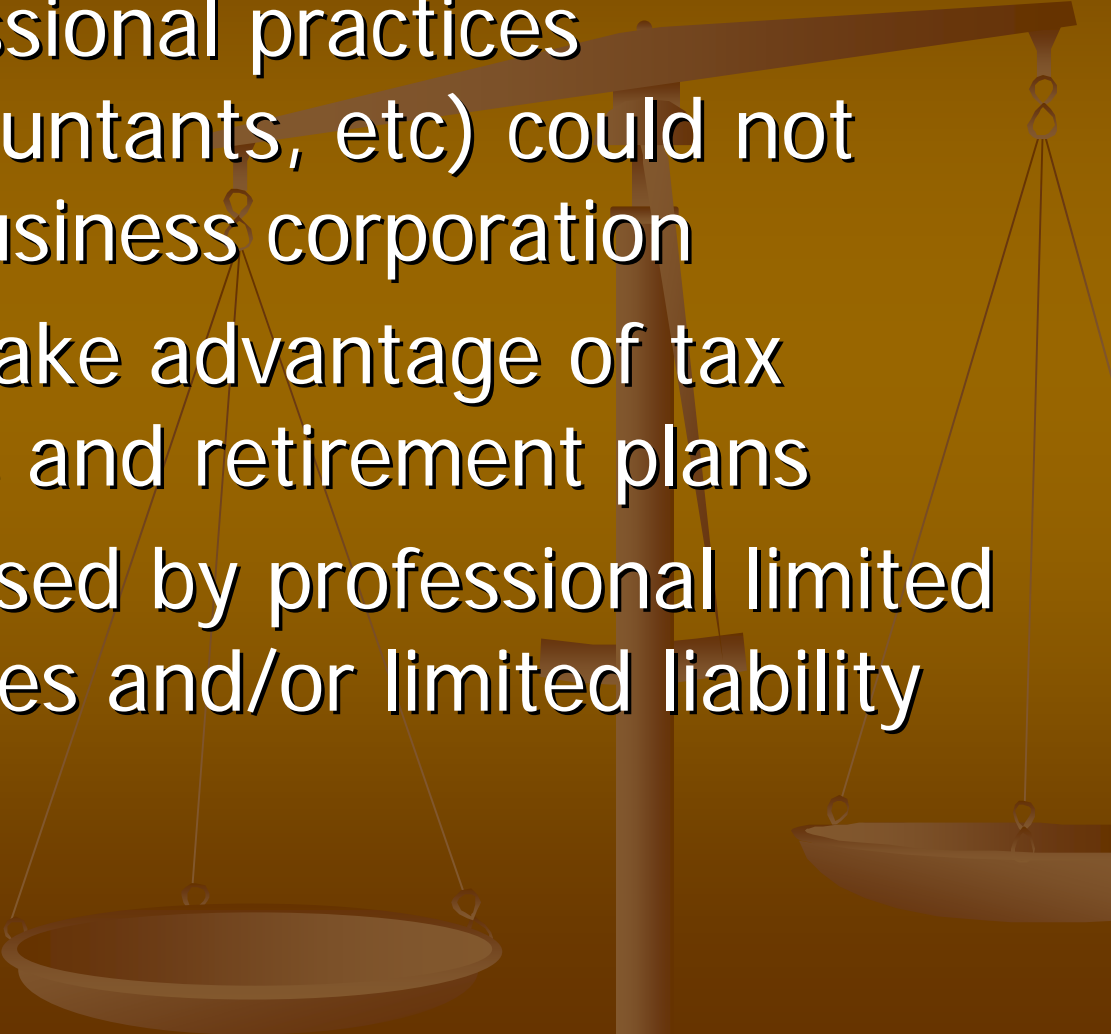
- In multiple member LLC
 - Normally will be treated as a partnership for tax purposes (default provisions)
 - File a US Partnership Tax Return Form 1065
 - Can elect to be treated as a corporation for tax purposes.
 - Affirmative election using IRS Form 8832
 - Generally cannot change election for 5 years
 - File a 1120 Corporate Tax Return
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Single Member Limited Liability Company (SMLLC)

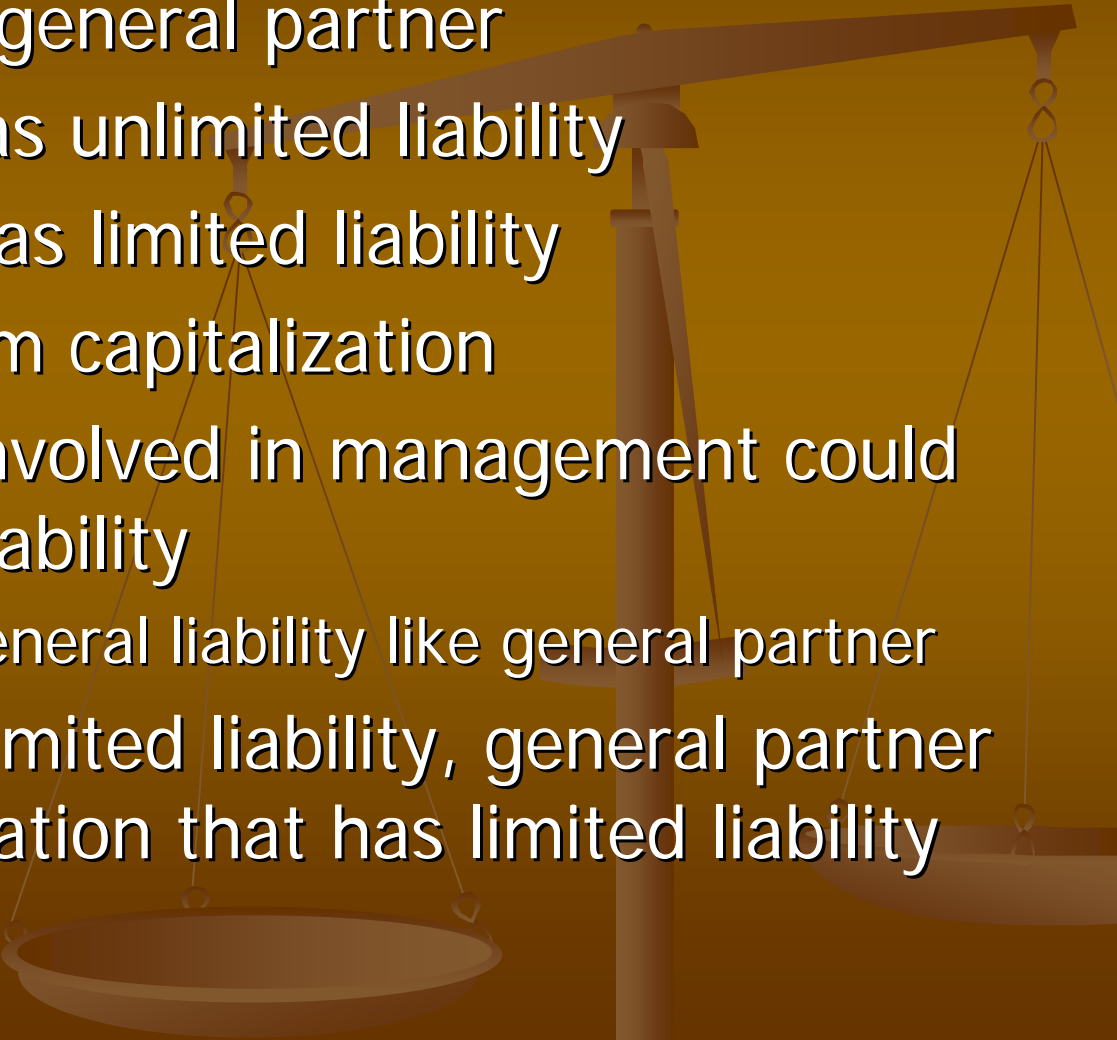
- LLC with a single member
- Can choose to be disregarded for tax purposes.
 - LLC is not treated as separate entity from its owner
 - Income, gain, loss, deductions etc. are taxed directly to the tax owner
 - Owner is individual
 - Treated as sole-proprietorship
 - Report income on the individuals 1040 Schedule C
 - In community property states, H & W will be treated as single owner of an entity if they treat such entity as a disregarded entity for federal tax purposes.
 - Owner is a business entity
 - Treated as an unincorporated division
 - Report income on entity's tax return
- Can elect to be taxed as a corporation



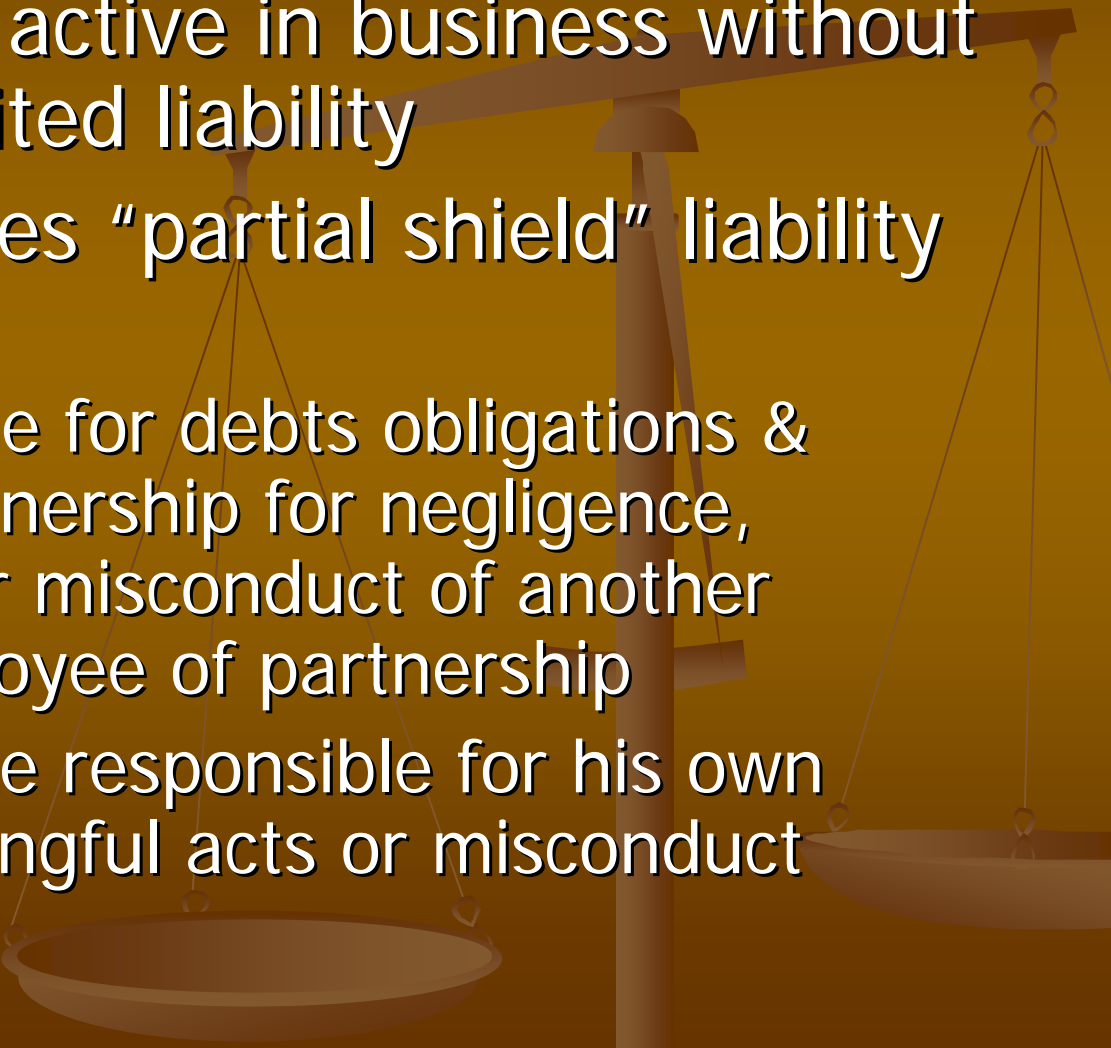
Professional Service Corporation (PSC)

- Originally professional practices (attorneys, accountants, etc) could not organize as a business corporation
 - PSC formed to take advantage of tax favored benefits and retirement plans
 - Today PSC eclipsed by professional limited liability companies and/or limited liability partnerships
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Limited Partnership (LP)

- Need at least one general partner
 - General Partner has unlimited liability
 - Limited partners has limited liability
 - Mandated minimum capitalization
 - Limited partners involved in management could lose their limited liability
 - Become subject general liability like general partner
 - To get around unlimited liability, general partner is usually a corporation that has limited liability
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Limited Liability Partnership (LLP)

- Partners can be active in business without jeopardizing limited liability
 - Kentucky provides “partial shield” liability protection
 - Partner not liable for debts obligations & liabilities of partnership for negligence, wrongful acts or misconduct of another partner or employee of partnership
 - Partner would be responsible for his own negligence, wrongful acts or misconduct
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History of LLPs



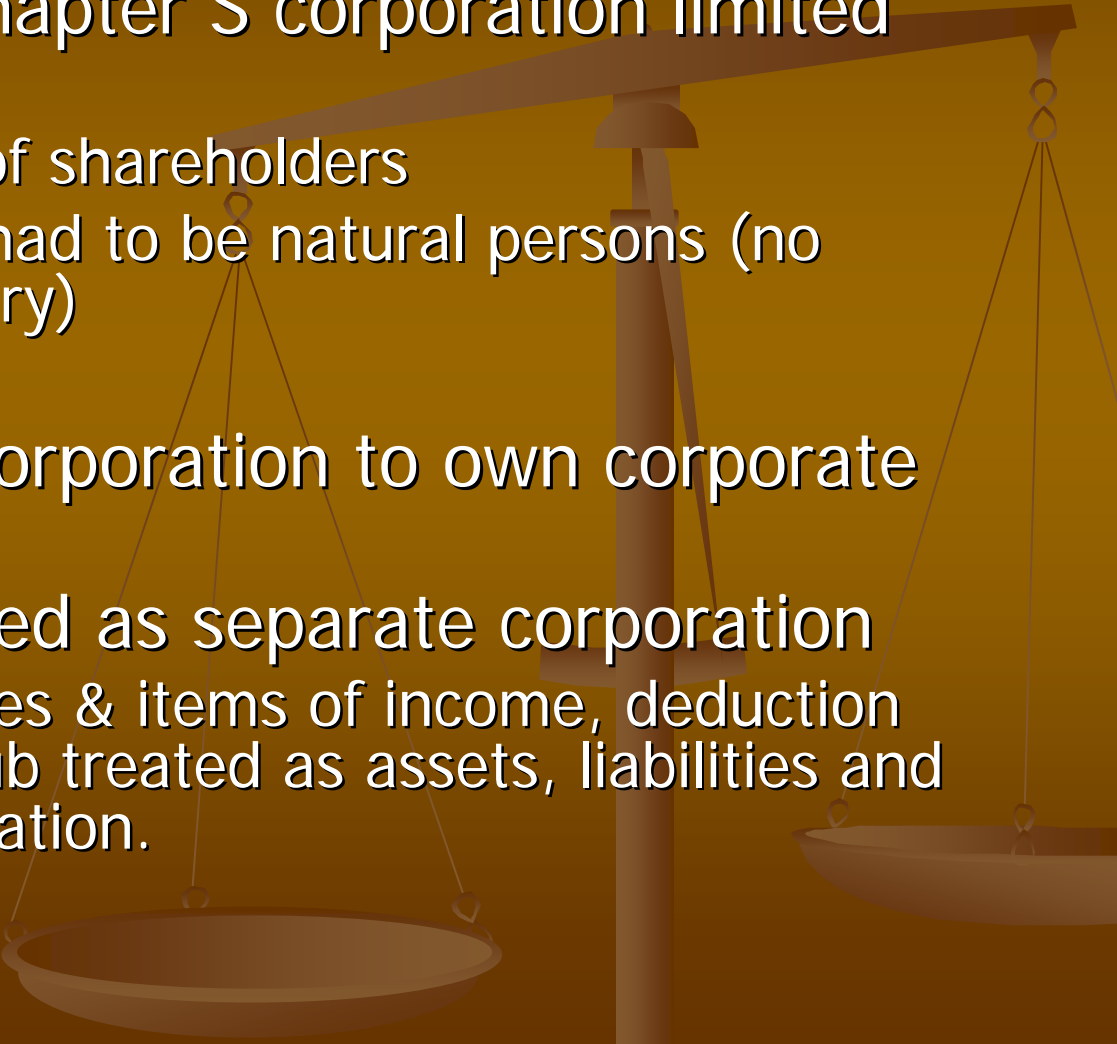
- Originated Texas 1991
 - Government suits against law & accounting firms involved with savings and loan and thrift associations
 - Claims against all partners
- Effort to shield professional partners from personal liability from debts & obligations from malpractice of other professionals

Kentucky Statutes

- Business Corporation
 - KRS Chapter 271B
- Partnership (including LLPs)
 - KRS Chapter 362, §§ 362.150-362.360, 362.555-362.605
- Limited Partnership
 - KRS Chapter 362, §§ 362.401-362.546
- Limited Liability Companies
 - KRS Chapter 275
- Professional Service Corporation
 - KRS Chapter 274

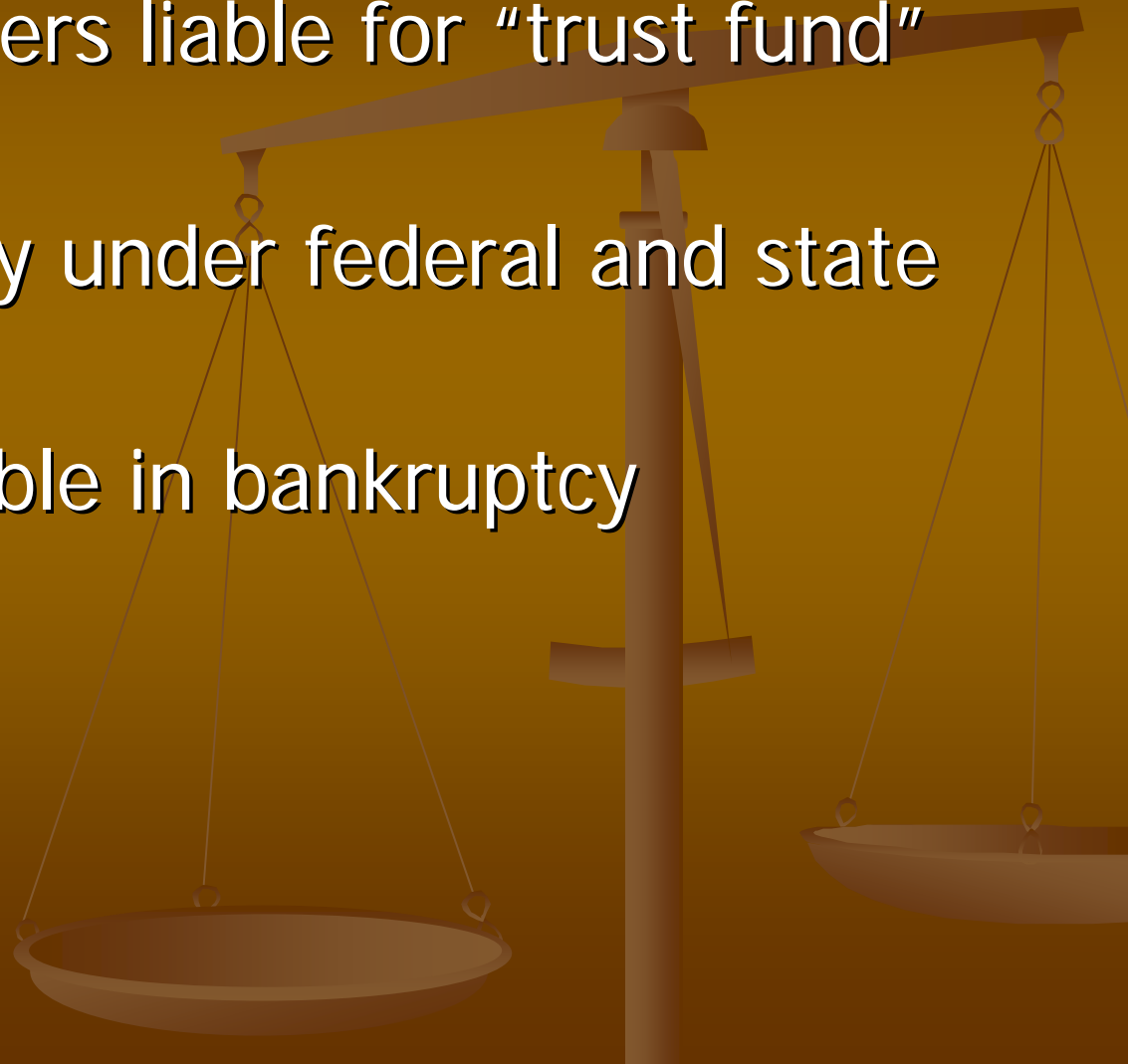


Qualified Subchapter S Subsidiaries (QSub or QSSS)

- Until 1996, Subchapter S corporation limited flexibility
 - Limited number of shareholders
 - All shareholders had to be natural persons (no affiliated subsidiary)
 - 1996 allowed S corporation to own corporate subsidiaries
 - QSub is not treated as separate corporation
 - All assets, liabilities & items of income, deduction and credit of QSub treated as assets, liabilities and items of S corporation.
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Employment Tax Liability

- Owners & partners liable for “trust fund” taxes
- Personal Liability under federal and state statutes
- Non-dischargeable in bankruptcy



State Provision for Employment Tax Liability

- Provision not contained in occupational taxation statutes. Suggested future amendment.
- *KRS § 141.340(3) (STATE PROVISION)*
- *(3) Notwithstanding any other provisions of this chapter, KRS 275.150, or KRS 362.220(2) to the contrary, the managers of a limited liability company and the partners of a registered limited liability partnership or any other person holding any equivalent office of a limited liability company or a registered limited liability partnership subject to KRS 141.310 or 141.315 shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under this chapter from wages paid to one (1) or more employees of any such limited liability company or registered limited liability partnership. Dissolution, withdrawal of the limited liability company or registered limited liability partnership from the state, or the cessation of holding any office shall not discharge the liability of any person. The personal and individual liability shall apply to each and every manager of a limited liability company and partner in a registered limited liability partnership at the time the taxes become or became due. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes imposed by this chapter become or became due. "Taxes" as used in this section shall include interest accrued at the rate provided by KRS 131.183, all applicable penalties imposed under this chapter, and all applicable penalties and fees imposed under KRS 131.180, 131.410 to 131.445, and 131.990.*

Current tax issues

- Passive investment companies
- Payments of royalties and interest
- Geoffrey, Inc. v. South Carolina Tax Commission, 437 S.E.2d 13 (1993)
- Fixing loopholes

