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# Traditional Taxpayer Question:

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✍ Should I operate as a Partnership, C-Corp or S-Corp?

✍ Considerations:

- ✍ Limited Liability
- ✍ Business Continuity
- ✍ Transferability of Interest
- ✍ Method of Taxation



## The 90's

 1993 AL Limited Liability Company Act

 1996 AL Uniform Partnership Act RUPA

 1997 AL Limited Partnership Act RULPA

Alabama adopted Subchapter K - IRC



# Taxpayer Question:

Should I operate as a general partnership,  
limited partnership or limited liability co?



# Partnership

- ✍ Partners are all general partners
- ✍ Personal assets liable for partnership debts
- ✍ Informal, closely-held business



# Limited Partnership



- ✍ One or more general partners
- ✍ All others limited partners
- ✍ Limited partners have limited liability for partnership debts
- ✍ Limited partners can lose legal benefit if too involved in operations



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# Limited Liability Company

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- ✍ All members have limited liability
- ✍ Pass-through tax benefits
- ✍ Can have member-managers
- ✍ Transferability of ownership interests

# Limited Partnerships & Limited Liability Companies

✍ Sometimes used in Estate Tax planning

- ✍ Removes assets from taxable estate
- ✍ Allows owner to retain control
- ✍ Valuation Discount – Gift Tax benefits

✍ If Estate Tax is gone, is there still a need?

# Alabama Taxation of Partners

✍️ 1940

- ✍️ Section 40-18-24, Code of Alabama
- ✍️ Partners liable for income tax
- ✍️ Partner reports distributive share
- ✍️ Partnership income computed as an individual
- ✍️ Alabama Income Tax Regulations mirrored IRC

# Subchapter K Entities

✍ 1997

- ✍ Adopted Subchapter K of Internal Revenue Code Sections 701 through 761
- ✍ Did not adopt special rules for electing large partnerships.



# Alabama Differences

- ✍️ AL does not differentiate between active, passive and portfolio income.
- ✍️ Non-separately stated items and separately stated items lumped together on AL K-1.
- ✍️ Consistent since 1940 (code, regs and forms)



# Partnership Concentration

- ✍ 1990's brought changes in partnership law
- ✍ 1990's brought reduction in staffing
- ✍ Only special projects done on compliance
- ✍ Financial crisis in 2001
- ✍ More attention to pass-through income



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# The Big Issue - Nonresidents

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- ✍ Income from intangible personal property
- ✍ Misunderstanding led to noncompliance
- ✍ Estate Tax planning glitch
- ✍ CPA hate mail



# The Big Issue



- ✍ Gross income Regulation 813-3-14-.05
- ✍ Intangible personal property business situs
- ✍ Alabama trust law – nonres beneficiaries
- ✍ *Mobilia sequuntur personam*
- ✍ Court cases