



Selecting the  
Right Business  
Form for an  
Agricultural &  
Alternative Agricultural  
**BUSINESS**

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*“Everything should be made as simple as possible, but no simpler.”* Anonymous

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## I. INTRODUCTION.

Selecting the right legal form to operate any agricultural business requires careful planning. This is particularly true for farmers and ranchers who are considering high risk or nonconventional enterprises like specialty crops or ranch recreation activities, bringing in young family members as co-owners, or soliciting investors to finance new value-added enterprises. Which legal form—sole proprietorship, partnership, corporation, limited liability company, business trusts, or their hybrids—can best address the needs of these producers?

Selecting the right legal form involves four steps. First, producers must assess the status of their current operations. Second, they must establish specific requirements or objectives for the form they will select. Third, they must evaluate the forms available in their state and choose the form that best meets their needs. Finally, they must work with their attorneys and financial advisers to implement the form selected and then monitor its effectiveness and update their selection as their needs and the law changes. Important considerations in the final step include the ability to form the business without tax being imposed, creditor protection, and the ability to liquidate the entity without a tax consequence.

The purpose of this bulletin is to assist readers and their advisers in carrying out the first three steps of this process. In Section II, some of the objectives producers might consider in selecting a particular business form are outlined. Several questions producers might consider and records they should examine in making this decision are discussed. In Part A of Section III, various legal forms available for Wyoming farmers and ranchers are briefly described. In Part B, the characteristics of these forms are contrasted with the requirements/objectives described in Section II. Finally, in the last section, how this information might be used in making a decision is illustrated. A brief glossary of terms used in this bulletin is provided.

The article provides an overview of a very complicated legal topic. Farmers and ranchers are encouraged to work closely with their legal and financial advisers in selecting the best legal form to



operate their businesses based on their specific facts and requirements. This article is not intended to provide legal advice or substitute for competent professional assistance.

## II. SOME BEGINNING QUESTIONS.

### A. Why Select A Particular Business Form?

The 1997 Census of Agriculture found that sole proprietorships remain the most prevalent form of business organization in agriculture both in the United States and Wyoming.<sup>2</sup> The total number of agricultural businesses held as sole proprietorships and partnerships in the United States and Wyoming fell during the 1987-1997 period as did the total acreage held by non-family farm corporations. The number and acres in family farm corporations in the United States rose during this period.

Why do producers select a particular legal form? For some it is tradition – their families have always operated their farms or ranches as sole proprietorships or partnerships. Others have adopted a particular form because a friend or adviser suggested it. There is nothing wrong with that provided that the form chosen meets their needs and the producers understand and follow its legal requirements. Stories abound, however, of farm corporations that do not hold annual meetings and whose finances are intermixed with the owners' personal assets. Creditors have been successful in persuading Wyoming courts to disregard the corporate entity (“pierce the corporate veil”) in similar nonagricultural cases and hold shareholders personally liable for the corporate entity's debts.<sup>3</sup>

The best reason to select a legal form is that it can satisfy the specific needs of producers and their families. Producers seek a number of things from the legal forms they select. For simplicity these requirements/objectives are grouped into 11 categories.

**Easy to Enter and Operate.** First, producers want a business form that is easy to enter and exit. They do not want to pay sizable attorney or accountant fees associated solely with establishing a form. They are also not interested in paying annual fees or having to file complicated reports just to operate a business form.

**Simplify and Sharpen Day-to-Day Management.** Second, producers want the legal form they select to provide clear lines of authority for decision making when multiple owners are involved. They do not want to have to hold formal meetings or obtain approval each time a decision has to be made.

Some producers are also interested in delegating management authority. Many retired farmers and ranchers are not interested in managing their business's day-to-day operations. Other owners want to specialize their management skills, delegating responsibilities for other aspects of their business to co-owners or third party managers.

**Legally Available.** Third, producers want assurances that they can use this form to farm and ranch and also carry out business not only in Wyoming but in other states as well.

**Limited Liability.** Fourth, producers want the form to protect their personal assets from business creditors. Limited liability may be particularly important for producers considering new risky enterprises or worrying about their potential liability from the mistakes of co-owners.

**Generating Additional Financing and Investors.** Fifth, some producers want the form they select to assist them in obtaining financing and investors for their businesses. Adding new owners can be a double-edged sword. The funds they bring may permit the business to do new things or

old things better, but the addition of new owners can also dilute the current owners' authority and expose current owners to liability from the new owners' actions.

**Fair Distributions and Compensation.** Sixth, producers want to make sure that the legal form they select will fairly distribute profits and losses among the owners. Owners who work daily for the operation are often interested in being specially compensated for their labors. In contrast, off-farm or ranch investors are concerned that such payments may consume most of the earnings from the business.

**Maximize After-Tax Income.** Seventh, some producers want the legal form to assist them in taking advantage of specific provisions of the federal income tax code. These producers are interested in how business income will be taxed, what deductions may be available (either for themselves or the business), and what the tax consequences will be if the business is terminated or their interest bought out.

**A Right to Withdraw or Transfer the Ownership Interest.** Eighth, producers in multi-owner operations want to be able to withdraw (dissociate) from the business and transfer their ownership interest in it to a third party. Producers may want to dissociate from the business because they do not like where it is going. They may be fearful that they will be held personally liable for decisions with which they disagree.

Owners may also want to sell some or all of their interest to third parties to cover other personal expenses or generate income for retirement. The remaining co-owners are normally sympathetic to the exiting owner's needs. Nevertheless, they may be concerned about how a new owner will impact operations. They want a say in whether the new owner will be permitted to exercise any management authority in the business.

**The Business's Duration.** Ninth, producers are interested in a legal form that has a life span meeting the needs of their specific businesses. For example, a business established by two producers to haul their hay to sell in drought areas in the summer requires a business form with a much shorter life span (i.e. that summer) than one formed to create a new market for their hay by processing their and their neighbors' alfalfa into cubes for sale in Japan. The corporate business form with its potentially perpetual life might be more appropriate in the latter case if this were a primary concern of the producer; a joint venture—a type of general partnership—that dissolves after completing a specific activity might be more appropriate in the first case.

Owners who might exit from a business without selling their interest to a third party also want to know whether they will be compensated by the business if they leave. The remaining owners are also interested in the compensation question. In discussing compensation questions, two scenarios come into play:

- **Scenario One:** The business is required to stop as a going concern (dissolve), its affairs are wound-up, its creditors are paid, and the contributions and remaining surplus or deficits are allocated among the co-owners. Owners are interested in knowing what events will trigger this scenario and what rules govern final distributions made to the co-owners.
- **Scenario Two:** The business is permitted to continue after a co-owner leaves. Owners are interested in learning under what circumstances this might occur and what rights the exiting co-owner has to compensation — when it is required, how much must be paid, and whether phased payments are permitted.

**Estate-Planning Considerations.** Tenth, many producers would like the business forms they select to assist them in accomplishing their estate-planning goals. A legal form can do this by permitting owners to transfer interests in the business to others and take advantage of annual gift tax exclusions under federal law, reducing federal income taxes by shifting income to family members who are in lower income tax brackets and lessening their taxable estate for federal estate tax purposes when they die while still retaining control of the income-producing assets themselves.

**Protecting Minority Interests.** Eleventh, producers and quite often their children are also concerned about what their rights might be if the majority owner is not playing fairly. For example, a shareholder in a family-owned Subchapter S corporation may complain that the majority shareholder is taking most of the profits as compensation as its chief operating officer. She does not begrudge the salary but objects to the fact that the corporation never declared a dividend even though it had profits over the years. She will be even less pleased when she discovers that she is legally responsible for her share of these retained profits and faces interest and penalties for not declaring them on her federal income form even though the profits were never distributed.

## **B. Some Other Questions to be Considered in Selecting a Business Form for an Agricultural Business.**

The checklist in Figure 1 asks readers to consider several questions before selecting a legal form for their agricultural businesses. First, what will the operation look like over the next 10 years? What is its purpose? What will it do and not do? A business form that is too big — permits too many enterprises — may be just as uncomfortable as one that is too small. The answer to this question can be included in the operating agreements for many of the legal forms discussed.

Second, how important are each of the objectives just outlined to readers? Have any of the reader's goals been overlooked? The bulletin will show that several of the available forms can satisfy many of the same objectives. Readers will have to determine whether other attributes — operating costs, legal uncertainties, added complexities, etc. — might tip the balance in favor of one form over another.

Third, is the current agricultural operation or the operation being planned profitable enough to support additional owners? What level of earnings would be necessary? What additional capital (debt or equity) and resources are necessary to support additional owners or new enterprise(s)?

Fourth, can the current owner work with the proposed co-owner(s) on a day-to-day basis? What parts of the business would the current owner focus on; what parts of the business might the proposed co-owner(s) specialize in? If the co-owner is another family member, how might family interactions/conflicts complicate or smooth the business relationship? What conditions must be in place for this operation to work professionally and personally? Potential co-owners are encouraged to complete this questionnaire separately and share their answers. It may be eye opening.

## **C. Documents.**

Figure 2 gives a checklist of some of the documents potential co-owners should examine before entering into a multi-ownership arrangement. Many of these documents summarize the earning potential of the current operation. The parties should also prepare pro forma (projected) income and balance sheets to assess the viability of the new venture. The remaining documents summarize some basic ownership questions.



Figure 1: Questions to Consider in Choosing a Business Form for a Farm or Ranch.

<b>CHECKLIST 1: EVALUATING THE FUTURE NATURE OF THE FARM OR RANCH BUSINESS</b>	
<b>A. NATURE OF THE BUSINESS OVER THE NEXT TEN YEARS</b> (add additional pages if necessary)	
1. Briefly describe what the business will be doing (business activities).	
2. Are there some business activities it will not be doing (e.g., the business will not raise the following alternative crops/livestock, engage in the following ranch recreation activities, and/or carry-out the following value-added enterprises)?	
3. Assets:	
a. What assets will the business control (e.g., land, structures, livestock, equipment, etc.)? How will these assets be controlled (e.g., the entity will own the property, the property will be rented to the business; the business will jointly own the property with another person or entity, etc.)?	
b. Are these assets currently controlled by the reader? If not, how will control be acquired?	
4. Who will be involved in the operation (e.g., on-farm/ranch versus off-farm owners)? In what capacity? Who may live on the farm/ranch? What rights and obligations are associated with this arrangement?	

**B. RANK THE RELATIVE IMPORTANCE OF THE FOLLOWING OBJECTIVES IN SELECTING A BUSINESS FORM FOR THE READER’S FARM OR RANCH**

**Instructions:** Please use the following scale: 1 not important, 2 somewhat important, 3 important, 4 very important, or 5 would not select a business form that did not consider this concern. An owner’s attorney can use the information on this page to determine which legal form best addresses the owner’s concerns.

**Illustration:** A business form should not be selected if it is not legally available. A reader, operating solely in Wyoming, thus may circle question 3 as a (1). However, risk-averse readers may rank it higher because they are concerned that the laws governing some of the newer forms have not been considered by Wyoming courts. Similarly readers with lands or co-owners in other states may rank this question higher because they are concerned about how the laws of these other states will affect the business form they are considering.

1. Ease of Entry:	1	2	3	4	5
2. Simplification of Management:	1	2	3	4	5
3. Legal Availability:	1	2	3	4	5
4. Limitation of Legal Liability:	1	2	3	4	5
5. Generation of Additional Financing and Investors:	1	2	3	4	5
6. Fair Distributions and Compensation:	1	2	3	4	5
7. Maximization of After-Tax Income:	1	2	3	4	5
8. Right to Withdraw or Transfer an Ownership Interest:	1	2	3	4	5
9. The Business’s Duration (e.g., perpetual life):	1	2	3	4	5
10. Estate Planning Concerns:	1	2	3	4	5
11. Protection of Minority Owner’s Interests:	1	2	3	4	5

The Reader’s General Comments Regarding the Relative Importance of Each of these Concerns:

### **C. FARMING OR RANCHING TOGETHER.**

**Instructions:** The remaining questions are for readers evaluating whether to operate their businesses with others. Answers to these questions will help them in selecting a business form and in preparing relevant management agreements for their business regardless of which form is selected. Readers should consider exchanging their answers with potential co-owner(s) to discover similarities and differences in their expectations.

1. The Operation's Potential to Support Additional Co-owners.
  - a. How many additional co-owners are being considered?
  
  
  
  
  
  
  
  
  
  
  - b. What contributions towards the business will the additional co-owners supply (e.g., cash, assets, services, etc.)?
  
  
  
  
  
  
  
  
  
  
  - c. Is the current agricultural operation or the operation being planned profitable enough to support additional owners? What level of earnings would be sufficient?
  
  
  
  
  
  
  
  
  
  
  - d. How will the contributions made by additional owner(s) boost the income of the agricultural operation? By how much? How/when will this occur?
  
  
  
  
  
  
  
  
  
  
  - e. By what additional amount will these contributions raise the profitability of the business? Will this addition be sufficient to cover the needs of the current and additional owner(s)? If the answer to this question is no, what other sorts of contributions (e.g., loans, contract arrangements, etc.) or sources of income (e.g., nonfarm jobs) is the reader considering to make up the difference? What additional obligations will these arrangements create? Who will be responsible for them? Are these obligations acceptable?



Figure 2: Checklist of Documents to Examine Before Entering a Multi-Owner, Multi-Management Business.

### **CHECKLIST: DOCUMENTS TO EXAMINE.**

- Historic balance sheets of the business (and any business that is to be merged into the reader's current operation).
- Historic income statements of the business (and any business that is to be merged into the reader's current operation).
- A pro forma balance sheet of the new business operation.
- A pro forma income statement for the new business operation.
- Five years of federal income tax returns for the business (and any business that is to be merged into the reader's current operation).
- Five years of other documents governing other local, state, or federal taxes, filing or other obligations of the business (e.g., annual property taxes, corporation license fees, etc.) and for any business that is to be merged into the reader's current operation.
- Organizational documents filed with the secretary of state.
- Bylaws, partnership agreement, operating agreement, and any other owners' agreement.
- Business ownership records such as stock or other ownership books or records.
- A summary of existing debt and debt instruments for the new business operation.
- Copies of documents of title and other ownership interests of property (e.g., leases) to be part of the new business operation.
- Summaries of any other important documents or agreements:
  - Agreements with input suppliers.
  - Agreements with output purchasers.
  - Existing insurance contracts.
  - Employee wage/fringe/incentive/bonus contracts.
  - Current wills.
  - Buy-sell arrangements.

### III. TEN ALTERNATIVE BUSINESS FORMS AVAILABLE IN WYOMING FOR FARMING AND RANCHING OPERATIONS.

#### A. Alternative Forms.

Wyoming law currently permits agricultural producers to choose among six traditional legal forms and four hybrids. Businesses operated under all of these forms are also subject to local, state, and/or federal laws governing land use, health, pesticide use, the environment, labor, and other concerns associated with agricultural activities. Additionally, all of these forms — other than those for sole proprietorship and general partnership — may be subject to state and federal securities laws.<sup>4</sup> This may also be true for general partnerships where new partners/investors exercise no management authority. Normally, small and family-owned businesses that use these forms will be exempted from registration requirements under various provisions within the federal securities laws.

#### 1. Six Distinct Legal Forms.

##### a. Sole Proprietorships.

**Establishment and Operations.** Sole proprietorships are established the moment an owner begins operating a business for him or herself. Sole proprietors are not obligated to file any documents either locally or with the Wyoming Secretary of State to commence operations.

**Sole proprietors manage their businesses.** They may also hire a variety of agents to act on their behalf (e.g., sales agents, realtors, etc.). Sole proprietors are personally liable for any obligations of their businesses.

**Transformations.** Sole proprietorships end when owners voluntarily or involuntarily terminate them, sell their assets, die, or become incapacitated. Creditors may ask state courts to attach business assets to cover an owner's personal debts.

**Selected Tax Characteristics.** Sole proprietorships provide limited tax advantages to their owners. Profits are included on the owners' individual federal income tax form and are subject to self-employment taxes. Sole proprietors may not deduct their meals or housing costs while working on their farms or ranchs although they can normally deduct these same costs for employees as business expenses. Federal law now permits sole proprietors to deduct a portion of their medical insurance expenses for federal income tax purposes.<sup>5</sup>

##### b. General Partnerships.

**Establishment and Operations.** A general partnership is created when two or more persons agree to operate a business for profit together.<sup>6</sup> Co-owners are not required to file any specific documents with the Wyoming Secretary of State to establish a general partnership. Wyo. Stat. Ann. §§ 17-21-101 through 17-21-1105 outline the necessary requirements to establish and operate a general partnership.

General partners may also prepare an oral or written partnership agreement describing the nature of their business and their relative rights and duties. The Wyoming statutes act for the most part as gap fillers in cases in which a partnership agreement fails to address particular issues. However, a partnership agreement may not waive certain statutory rights



or duties such as the partners' right to examine the business's records or a partner's duties of loyalty and good faith owed to other co-owners.

General partnerships are separate legal entities from their owners. They may sue and be sued, own property, borrow money, make contracts, and create other obligations. Unlike shareholders of corporations and members of limited liability companies, general partners are personally liable for any business obligations or debts not covered by a partnership's assets. Partners may be sued individually or as a group to collect on these obligations unless the claimant previously agreed otherwise.<sup>7</sup>

General partners establish their interests in a business by contributing cash, assets, or services to it. Unless a partnership agreement specifies otherwise:<sup>8</sup>

- Partners will share equally in its management, regardless of their relative contributions.
- Each partner is legally authorized to make ordinary business contracts binding the partnership.<sup>9</sup>
- Each partner will receive an equal share in profits or losses even though one of the partners may have contributed most of the capital or the labor to the business.
- In case of disagreements, majority rule governs day-to-day decisions.
- Partners have no right to be compensated for services they perform for the partnership except when winding up the business.
- Unanimous consent is required to modify a partnership agreement or to add new partners.

**Transformations.** General partners may withdraw (dissociate) from their general partnerships at any time even though their withdrawal may constitute a breach of contract.<sup>10</sup> Partners who dissociate and give appropriate notice to former clients and the public will normally not be liable to third parties for the subsequent actions of the partnership.<sup>11</sup>

**Assignment of a Partnership Interest.** A partnership interest is assignable in whole or in part except as provided in a partnership agreement. An assignment allows an assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Upon assignment of a partnership interest, a partner ceases to be a partner except as provided in a partnership agreement.<sup>12</sup>

A general partner may have a court order the dissolution of a partnership in certain circumstances. The right depends upon the type of partnership involved:

- **Partnership at Will:** A partnership whose written or oral agreements do not specify a particular time frame or purpose. Partners and those to whom a partnership interest has been voluntarily or involuntarily transferred (e.g., purchasers, creditors, former spouses, etc.) have a right to the immediate termination of the partnership at any time.
- **Durational Partnership:** A partnership for a specified duration or activity. Durational partnerships end upon their completion, but their partners may unanimously agree to continue the business. Durational partnerships may also be dissolved by an event specified in the partnership agreement, a request by a current partner following the dissociation of another, or by judicial action.

**Selected Tax Characteristics.** Establishing a general partnership does not normally create a tax exposure for its owners. However, it is important to bear in mind that once a partnership has been formed, the partnership may be taxed if property is contributed that has debt in excess of its basis. Upon formation of a partnership, the basis of the partnership's interest is equal to the amount of money and the adjusted basis of the property transferred to the partnership. Under IRC section 752, a partner's pro rata share of partnership liabilities will increase the basis, which may result in tax consequences.<sup>13</sup> However, upon liquidation or dissolution there are no tax consequences.

With respect to taxes and the yearly income, general partnerships are normally flow-through entities for federal income tax purposes. This means that the partnership is not taxed as a separate entity. Partners must pay personal income taxes on their share of partnership income. With respect to business losses, partners may deduct their share of the partnership losses up to their tax basis in the partnership.<sup>14</sup> Their tax basis includes any cash or property contributions they have made to the partnership plus their share of partnership liabilities for which they are personally liable.<sup>15</sup> Partners are normally treated like sole proprietors with respect to fringe benefit deductions and self-employment. The partnership is only obligated to file an information return. Beginning in 1997, the Internal Revenue Service (IRS) authorized partnerships to elect, under "check-the-box" regulations, to be taxed like regular corporations.<sup>16</sup>

### **c. Limited Partnerships.**

**Establishment and Operations.** To establish a limited partnership, the co-owners must file a Certificate of Limited Partnership with the Wyoming Secretary of State.<sup>17</sup> A limited partnership's name must contain, without abbreviation, the words "limited partnership."<sup>18</sup> Wyo. Stat. Ann. §§ 17-14-101 through 17-14-1104 detail the requirements for establishing and operating a limited partnership in Wyoming.

Owners of a limited partnership prepare a limited partnership agreement outlining the purpose of the business and fixing their relative rights and responsibilities. The agreement may be oral or in writing.

Limited partnerships have one or more general partners and one or more limited partners.<sup>19</sup> General partners manage the business. They are admitted to the limited partnership in accordance with the limited partnership agreement and named in its certificate of limited partnership as general partners.<sup>20</sup> Limited partners are co-owners, admitted to the limited partnership in this capacity and in conformance with the limited partnership agreement.<sup>21</sup> Limited partners act primarily as passive investors. The Wyoming statutes allow them to engage in a number of actions and decisions without losing this status. These include permitting limited partners to act as contractors, agents, employees, consultants, or participants in winding up the limited partnership. They may also vote on a number of issues including dissolution, changes in the nature of the business, and other matters related to the business identified in the written limited partnership agreement.<sup>22</sup>

Status as a limited partner is important. General partners have the same unlimited liability as their counterparts in the general partnership form. In contrast, limited partners in exchange for giving up their right to exercise control over the business are only liable for business obligations up to the value of their required contributions.<sup>23</sup> However, limited

partners who engage in prohibited management activities lose this status and are treated as general partners for liability purposes.

If a limited partnership agreement fails to cover a particular issue, Wyoming statutes may supply a default/gap filler. Under these defaults, for example:

- General partners have equal authority to manage the business.<sup>24</sup>
- The partners will share profits and losses based upon the value of their contributions.<sup>25</sup>
- Disagreement on day-to-day management will be decided by a majority vote of the general partners.<sup>26</sup>
- Managing general partners have no right to additional remuneration for their services to the business.<sup>27</sup>
- Limited partners have no right to demand a return of their capital contribution or to force dissolution of the partnership.

**Transformations.** General partners may dissociate from a limited partnership at any time even though such actions constitute a breach of contract.<sup>28</sup> Limited partners may only withdraw in accordance with the limited partnership agreement.<sup>29</sup> However, except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. A limited partnership is not dissolved when there is an assignment of a partnership interest, and the assignee is not entitled to exercise any rights of a partner. The assignee receives, to the extent assigned, only the distribution to which the assignor would be entitled. Unless otherwise provided in the partnership agreement, when a partner assigns his whole interest, he ceases to be a partner.<sup>30</sup>

Limited partnerships normally must dissolve and have their affairs wound up when their duration or purpose ends, an event specified in the limited partnership agreement occurs, or the limited partners fail to appoint a general partner after the last general partner(s) withdraws.<sup>31</sup> Limited partnerships must specify in their certificate of limited partnership the latest date upon which the limited partnership is to dissolve and must have a definite duration period under Wyoming law.<sup>32</sup> Except in the last instance, the partners may unanimously agree to continue the business. A partner may also request that the district court order the dissolution of the limited partnership following a finding that it is not reasonably practicable to carry on its business in conformance with the limited partnership agreement.<sup>33</sup> Distributions, following payment of creditors, would be based on the partners' contributions.<sup>34</sup>

**Selected Tax Characteristics.** Partners can decide whether to have their limited partnership taxed like a regular corporation (see below) or like a partnership (see above). Different rules do apply for the taxation of limited partners if the limited partnership is taxed like a partnership. For example, income allocated to limited partners is typically excluded from self-employment taxes unless payment was made for service rendered to the business.<sup>35</sup> Additionally, losses distributed to limited partners are likely to be affected by the IRS's passive loss rules. These rules prevent taxpayers who do not materially participate in the business from deducting losses from this passive activity from any other business income other than from another business in which they did not materially participate (passive income). Limited partners may overcome the passive loss rules by materially participating in the business, but doing so may threaten their status as limited partners depending upon their involvement. (See the list of permissible activities above.)

#### **d. General Business Corporations.**

**Establishment and Operations.** Incorporators can establish general business corporations by filing their articles of incorporation with the Wyoming Secretary of State. Day-to-day business operations are normally governed by the corporation's bylaws. The shareholder-owners may also sign shareholder agreements, fixing voting rights and establishing other rules governing director and shareholder actions. Wyo. Stat. Ann. §§ 17-16-101 through 17-16-1804 outline the general requirements to establish, operate, and transform a Wyoming business corporation.

General business corporations are distinct entities from their shareholder owners. They may, among other things, sue and be sued, acquire and transfer property, establish debt, make contracts, and transact any lawful business.<sup>36</sup> Three groups manage general business corporation affairs:

- Shareholder owners who exercise their rights by electing directors, establishing Bylaws, and voting on certain other matters.
- Directors who exercise their powers by establishing general policies and naming officers and employees.
- Corporate officers and employees who are in charge of the day-to-day management of the business.

Ownership in corporations is signified by certificates or stocks that are issued based upon cash or other asset contributions made to the business. In accordance with their articles of incorporation, general business corporations may create a single class or different classes of stock having different rights regarding voting, sharing of profits, and distributions.<sup>37</sup> Stock certificates are normally freely transferable.

Typically, shareholders are only liable for corporate debts and obligations to the extent of their required contributions.<sup>38</sup> (Section B will describe instances in which the shareholders may still be personally liable for the obligations of their corporations.)

**Transformations.** General business corporations may be terminated in certain cases. First, the corporation's board and shareholders may terminate it voluntarily.<sup>39</sup> Second, they may be terminated administratively by the Wyoming Secretary of State for certain technical failures including the expiration of their duration as specified in the articles of incorporation, failure to notify the Wyoming Secretary of State of a change in their registered agent or office, failure to deliver annual reports or pay annual license taxes, or upon a determination that termination would be in the public interest.<sup>40</sup> Third, general business corporations may be terminated judicially if, among other reasons, a petitioner can show: a) the directors are deadlocked, the shareholders cannot break this deadlock, and irreparable injury has or will occur to the business or shareholders; b) the shareholders are deadlocked and have not been able to elect successors to directors for at least two annual meetings; c) illegal, oppressive, or fraudulent actions by the board or those in control; or d) misapplication or wasting of corporate assets.<sup>41</sup>

**Selected Tax Characteristics.** General business corporations may be taxed for federal income tax purposes in two ways: as regular Subchapter C corporations or as specially designed S corporations. Subchapter C corporations pay income taxes on their corporate earnings. Dividends distributed by Subchapter C corporations are also taxable income for their shareholders.

Alternatively, federal law permits certain business corporations to file a request with the IRS to be taxed like partnerships. To qualify for this Subchapter S designation, a corporation must have: a) no more than 75 shareholders, b) only one class of stock, c) no nonresident aliens as shareholders, and d) only natural persons other than certain estates, trusts, and tax-exempt organizations as shareholders. With respect to the requirement of only one class of stock, the IRS has determined that differences in voting rights alone will not create a separate class of stock, provided the outstanding shares have identical rights to distribution and liquidation proceeds.<sup>42</sup> Income earned by Subchapter S corporations is not taxed at the corporate level. Subchapter S shareholders are responsible for paying federal income taxes on their proportionate share of the profits even if no dividends are paid. Unlike general partners, however, Subchapter S shareholders are not obligated to pay self-employment taxes on their share of the corporate profits.

#### **e. General Limited Liability Companies.**

**Establishment and Operations.** General limited liability companies (LLCs) have characteristics of both general partnerships and corporations as well as attributes unique to themselves.<sup>43</sup> LLCs are separate legal entities from their member owners, having all the powers necessary or convenient to accomplish the purpose(s) for which they are established.<sup>44</sup> LLCs are established by filing articles of organization with the Wyoming Secretary of State. Wyo. Stat. Ann. §§ 17-15-101 through 17-15-143 govern this form.

Member owners of general LLCs normally prepare operating agreements setting out the rules governing day-to-day management, transfers of rights, dissolution, and allocating powers among member owners. LLCs may be member managed or manager managed depending on the terms of the articles of organization and operating agreement.<sup>45</sup> Absent such terms, companies are member managed and their authority proportionally based upon each member's relative contributions. The operating agreement may also specify how profits and distributions will be handled. If the operating agreement is silent, such distributions are also based on contributions.<sup>46</sup> Member owners of LLCs generally have limited liability.<sup>47</sup> They are responsible for the company's debts and obligations up to their required contributions.

**Transformations.** Member owners' interests in a general LLC may be transferred or assigned as provided in the operating agreement.<sup>48</sup> Transferees of this interest receive the transferor's rights to any profits or distributions from the LLC. However, transferees receive no right to participate in the company's management unless the remaining member owners give unanimous written approval.<sup>49</sup>

Wyoming statutes provide that the life of a general LLC is 30 years or the period specified in the articles of organization.<sup>50</sup> An LLC is dissolved and its affairs must be wound up: a) if its duration or purpose expires, b) member owners unanimously agree in writing to dissolve it, or c) a member owner dies, retires, resigns, is removed, becomes bankrupt, dissolves, or goes through any other event that occurs that terminates the member's continued membership unless the remaining member owners unanimously agree to continue in accordance with rights specified in the articles of organization.<sup>51</sup>

**Selected Tax Characteristics.** Under federal law, member owners may choose whether to have their companies taxed like general corporations or partnerships.<sup>52</sup>

## **f. Statutory Trusts.**

**Establishment.** A statutory trust is established by filing a certificate of trust with the Wyoming Secretary of State.<sup>53</sup> Statutory trusts are similar to ordinary trusts with trust property held by the trust, trustee(s) named to manage the property, and beneficiaries established to whom benefits from the trust are to be distributed. Unlike ordinary trusts, however, statutory trusts are created to operate a business. Trustees of statutory trusts typically have more day-to-day management responsibilities and face greater risk than trustees of ordinary trusts. Wyo. Stat. Ann. §§ 17-23-101 through 17-23-302 control the establishment and operations of statutory trusts.

The creator of a statutory trust also prepares a governing trust instrument outlining the trust's purpose and allocating authority, rights, and duties among the trustee(s) and beneficial owners.<sup>54</sup> While trustees are normally charged with the day-to-day management of the business, the beneficial owners may also be authorized to vote on certain matters.<sup>55</sup> Beneficial owners have the same level of liability as shareholders of general business corporations.<sup>56</sup> Similarly, trustees of statutory trusts are subject to no higher standard of care than that imposed upon directors of Wyoming business corporations.<sup>57</sup> The governing instrument determines profits and other distributions. If the governing instrument is silent, distributions are based on each beneficial owner's proportionate share of the total beneficial interests in the trust.<sup>58</sup>

**Transformations.** The governing instrument details how individuals become beneficial owners of the statutory trust. The governing instrument may authorize the statutory trust to sell beneficial interests to the public. The governing instrument may also name certain persons to be beneficial owners without requiring them to make any contributions.<sup>59</sup>

Beneficial interests are transferable in accordance with the governing instrument. In the absence of unanimous consent from the trustee(s) and other beneficial owners or a specific provision within the governing instrument, a subsequent transferee has no right to participate in, be kept apprised of, or become a beneficial owner in the statutory trust.<sup>60</sup>

Statutory trusts will terminate in accordance with the governing instrument. Beneficial owners may also seek judicial dissolution based upon general trust principles.<sup>61</sup>

**Selected Tax Characteristics.** Trustees for statutory trusts may choose whether to have their businesses taxed like corporations or partnerships.<sup>62</sup>

## **2. Four Hybrid Forms.**

### **a. Registered Limited Liability Partnerships.**

**Establishment.** A registered limited liability partnership (RLLP) is a general partnership that provides limited liability to all its partners.<sup>63</sup> It is created by filing a statement of registration with the Wyoming Secretary of State. Its business name must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," or a statutorily authorized abbreviation (e.g., "R.L.L.P.," "L.L.P.," "RLLP," or "LLP").<sup>64</sup> Wyo. Stat. Ann. §§ 17-21-101(a)(xi), 17-21-306(b)-(g), and 17-21-1101 through 17-21-1103 (passed in 1998 and amended in 2000) set forth the specifics.

**Special Characteristics.** Aside from the broad limited liability protection afforded their general partners, RLLPs are subject to the same rules governing general partnerships.



Partners of this form remain liable for their own negligent acts and the negligence of those whom they are supervising.<sup>65</sup> Partners of RLLPs may also be liable for any obligations they personally guarantee<sup>66</sup> or for any obligations that a majority of the partners agree to be responsible for unless otherwise provided for in any agreement between the partners.<sup>67</sup>

## **b. Close Corporations.**

**Establishment.** A close corporation is a Wyoming business corporation with 35 or fewer shareholders whose filed articles of incorporation and stock indicate that it is being operated as a close corporation.<sup>68</sup>

**Special Characteristics.** Wyo. Stat. Ann. §§ 17-17-101 through 17-17-151 provide several special rules for business corporations qualifying to be close corporations. They:

- Permit shareholders to eliminate directors and officers for the corporation as well as bylaws and annual meetings.<sup>69</sup>
- Authorize shareholders to impose limits on the transferability of the close corporation's stock.<sup>70</sup>
- Establish special rules protecting minority shareholders' rights.<sup>71</sup>

The last two provisions will be examined in the following section. Otherwise, close corporations are governed by the same rules outlined earlier for Wyoming general business corporations.<sup>72</sup>

## **c. Flexible Limited Liability Companies.**

**Establishment.** Flexible Limited Liability Companies (FLLCs) are created by including within their filed articles of organization a specific statement indicating that their businesses will be operated under Wyo. Stat. Ann. § 17-15-144.

**Special Characteristics.** Under Wyo. Stat. Ann. § 17-15-144:

- FLLCs may have a single owner member (general LLCs must have at least two owner members).
- Interests in FLLCs are freely transferable except as provided in an operating agreement. The operating agreement may automatically authorize transferees to participate in the management of the business.
- FLLC operating agreements may also provide for the business's continuation following the occurrence of events that would otherwise terminate a general LLC.
- The articles of organization for an FLLC may allow for the personal liability of officers, agents, managers, or members.

## **d. Close Limited Liability Company.**

**Establishment.** Wyo. Stat. Ann. § 17-25-103 defines a "Close Limited liability Company" (CLLC) as "a limited liability company whose articles of organization contain a statement that the company is a close limited liability company." The statement is also to appear conspicuously in the operating agreement and upon any certificates of ownership in the business. Wyo. Stat. Ann. §§ 17-25-101 through 109 govern the establishment and

operation of CLLCs. The FLLC provisions, described above, may not be applied to businesses organized as CLLCs.

**Special Characteristics.** The rules governing the establishment and operation of CLLCs look very much like those for the general LLC. CLLCs may have a single member owner although a general LLC must have at least two.<sup>73</sup> CLLCs may be either member managed or manager managed.<sup>74</sup>

The rules governing withdrawal from a CLLC and its dissolution are significantly different from those governing a general LLC. A member owner may only withdraw from a CLLC in accordance with the terms of the operating agreement.<sup>75</sup> If the operating agreement is silent regarding withdrawal, a member may only withdraw with the unanimous consent of all other members of the company. A withdrawing member owner may only receive part or all of his contributions to the CLLC if the business assets are sufficient to cover all other obligations other than those owed to other member owners for their contributions and: a) the remaining member owners all consent, b) the CLLC is dissolved, or c) the articles of organization or operating agreement so provide.<sup>76</sup> A CLLC must be dissolved: a) when the period fixed for its duration expires, b) upon unanimous written agreement of all member owners, or c) at the time or upon the occurrence of an event specified in the operating agreement.<sup>77</sup>

## **B. Relating Producer's Objectives in Selecting a Legal Form with the Characteristics of Legal Forms Available to Wyoming Farmers and Ranchers.**

Table 1 relates the objectives outlined in Section II and the characteristics of each of the legal forms discussed.

### **1. Ease of Entry.**

Sole proprietorships and general partnerships are the easiest forms to enter. The other forms all require public filing with the Wyoming Secretary of State. Table 2 describes some of the state licensing or filing fees associated with each of these forms.

In reality the major expense in establishing a legal form will be in preparing the necessary agreements governing the business's operation and transformation (e.g., the partnership agreement, operating agreement, bylaws, or governing instrument). Spending this money up front for a good agreement will save readers money and headaches in the future.

### **2. Simplification of Day-to-Day Management.**

Management questions are also best addressed with a good written document. No agreement is required if a single owner (sole proprietorship) is involved. The remaining forms all require some description of how power will be allocated among the co-owners. Partnership agreements for both general and limited partnerships and operating agreements for the general LLCs may be oral or in writing. A written agreement is always preferred lest co-owners' memories fade over time.

It was indicated earlier that the Wyoming statutes provide default/gapfillers in certain instances when the co-owners' agreement does not address an issue. Readers should be particularly aware that the default or gap-filling provisions differ depending upon which legal form is adopted. For example, under these defaults:

- General partners have equal management authority; disputes pertaining to ordinary business matters will be based on majority rule.

Table 1: Selected Characteristics of and Objectives in Choosing a Particular Legal Form for an Agricultural Enterprise

Form	Ease of entry	Agriculture may use*	Management	Limited liability	Investors permitted	Distribution of profits and compensation	Income taxes	Transfer interest	Use in estate planning	Protect minority interest
Sole Proprietorship	Filing not required	Yes	Sole proprietor	No	No	All earnings are sole proprietors	Earnings are included on owner's tax returns and subject to self-employment taxes; limited ability to deduct fringe benefits	May sell assets	Minimal	Not applicable
General Partnership	Filing not required	Yes	Defined by agreement; otherwise shared by partners	No	Yes (adding new partners requires unanimous consent)	Subject to agreement, otherwise distributed equally; no right to compensation	No taxes at entity level; all earnings subject to self-employment taxes; limited ability to deduct fringe benefits; subject to family partnership rules	Limited	Limited (transfer is a technical dissolution); may be subject to family partnership rules	Partners owe duties of loyalty, good faith, due care, and fair dealings to each other
Business Corporation	Articles of incorporation must be filed	Yes	Defined by articles and bylaws	Yes	Yes	Defined by bylaws and other documents	May be taxed at both entity and shareholder level (C corporation) or only at share-holder level (S corporation)	Unlimited	Possible (transfer of voting stock may threaten control)	Directors must exercise reasonable business judgment
Limited Liability Company	Articles of organization must be filed	Yes	Defined by operating agreement; may be member or manager managed; may be silent member managed	Yes	Yes	Defined by operating agreement; otherwise distributions based on contributions	May choose to be taxed like a corporation or partnership	Limited	Possible	Statutes do not specify duties; indemnify for negligence, misconduct or receiving improper personal benefits
Statutory Trust	Certificate of trust must be filed	Yes	Defined by governing instrument; managed by trustee	Yes	Yes	Defined by governing instrument; otherwise based on proportionate share of total beneficial interest	May choose to be taxed like C corporation or general partnership	Limited	Possible	Trustee owes same standard of care owed by director of a corporation

Table 1: Selected Characteristics of and Objectives in Choosing a Particular Legal Form for an Agricultural Enterprise (continued)

Form	Ease of entry	Agriculture may use	Management	Limited liability	Investors permitted	Distribution of profits and compensation	Income taxes	Transfer interest	Use in estate planning	Protect minority interest
Limited Partnership	Certificate of limited partnership must be filed	Yes	Managed by general partners; powers may be fixed by limited partnership agreement	Yes (for limited partners)	Yes	Subject to agreement, otherwise based upon contributions	May choose to be taxed like C corporation or general partnership	Limited	See general partnership; (transfer of limited partnership interest does not threaten control)	See general partnership (no duties specified for limited partners)
Registered Limited Liability Partnership	State-ment of registration must be filed	Yes	See general partnership	Yes	Yes	See general partnership	May choose to be taxed like C corporation or general partnership	Limited	See general partnership	See general partnership
Close Corporation	Filed articles must include a statement that the business is a close corporation	Yes	See business corporation; shareholders may agree to have business managed like a partnership	Yes	Yes	See general corporation	See general corporation	Greatly limited	See general corporation	See general corporation (minority shareholders may petition court to act upon a showing that actions are /ill be illegal, oppressive, fraudulent, or unfairly prejudicial
Flexible Limited Liability Company	Articles of organization must indicate business is a LLC	Yes	See LLC	Yes	Yes	See LLC	May choose to be taxed like a corporation or partnership	May be transferred like stock	See LLC	See LLC
Close Limited Liability Company	Articles of Organization must indicate business is a LLC	Yes	See LLC	Yes		See LLC	May choose to be taxed like C corporation. or general partnership	Greatly limited	See LLC	See LLC

# Corporate and LLC forms used in agriculture are restricted in the adjoining states of South Dakota and Nebraska

Table 2: Wyoming Filing Fees

Entity	Type of Filing	Fee
Sole Proprietorship	None required.	
General Partnership	None required. May file — Statement of partnership authority. Certified copy of such a statement.	\$ 10 \$ 10
Other Multiple Ownership Forms except Statutory Trusts or Nonprofit Corporations	Initial filing fee.  Additional filings other than an initial filing annual license tax, or change of registered agent or office.  Annual Report License Tax.	\$100  \$ 50  \$ 50 or two-tenths of one mill on the dollar (\$0.0002), whichever is greater based on the company's assets located and employed in the state of Wyoming
Statutory Trust	Certificate of trust/certificate of authority.  Any filing other than an initial filing, annual tax, or change of registered agent or office.  Annual tax.  Certificate of Existence.	\$100  \$ 50  \$100 (if not paid by 2/1 penalty of \$100)  \$ 10

Source: Wyoming secretary of state "Filing Fee Schedule"  
<http://www.soswy.state.wy.us/corporate/fee.htm> (last visited June 14, 2004).

- Member owners' authority and voting rights in LLCs are based on their relative contributions.
- Shareholders' voting rights are based on the number and types of shares they own. The articles of incorporation and bylaws may, however, specify super-quorums or super-majority voting requirements for certain matters. Shareholders may also employ voting proxies, voting trusts, and other agreements to alter voting rights.

### 3. Legally Available.

Wyoming farmers and ranchers may use any of these forms to engage in agricultural pursuits in Wyoming. Some forms have a longer history and more case laws to instruct attorneys as to how their governing law and agreements will be interpreted. For example, the statutory trust and FLLC forms have only been authorized in Wyoming since 1995. The CLLC form was created in 2000. Agricultural businesses with property or co-owners in other states create other problems. Both South Dakota and Nebraska statutes, for example, limit the use of the corporate and limited liability company forms in agriculture in some instances.<sup>78</sup>

#### **4. Limited Liability.**

Aside from sole proprietorships and general partnerships, all other legal forms provide some (limited partners in a limited partnership arrangement) or complete limited liability to owners, at least theoretically. Why just theoretically? First, as the introduction noted, courts may disregard the corporate form and hold shareholders personally liable when corporate formalities have been disregarded, when personal and business assets have been co-mingled, or when the corporation is under capitalized.<sup>79</sup> The Wyoming Supreme Court recently held that the limited liability company form may also be disregarded under similar circumstances.<sup>80</sup> In contrast, the Wyoming legislature has specifically provided in the close corporation statutes that failure to follow technical requirements shall not be grounds for disregarding this business form and holding its shareholders personally liable.<sup>81</sup>

Second, practical problems lessen the promise of limited liability for many farmers and ranchers using these forms. Many producers' major assets (e.g., land, livestock, crops, equipment) are held by their businesses. Moreover, under each of the forms discussed owners are personally liable for any business obligation they might guarantee. Additionally, owner employees will also be personally liable for their own negligent or criminal actions while working for their farm or ranch business. Furthermore, limited partners will be treated like general partners for liability purposes if they participate in the control of the business, partners in RLLPs will remain liable for their own negligence and the negligence of those whom they supervise, and member owners of FLLCs can agree to be personally liable for their company's obligations.

As a practical matter, therefore, producers should not rely solely on their business's legal form to protect their personal assets from business creditors. Producers should have a separate risk-management plan in place to address liability exposures.<sup>82</sup> They should make sure their businesses have adequate liability insurance to cover potential civil suits brought against the business and themselves in their capacities as directors, officers, managers, employees, and/or agents.

#### **5. Generating Additional Financing and Investors.**

All of these forms may utilize debt to finance farm or ranch businesses. Aside from the sole proprietorship form and subject to their oral or written agreements and filings, all the other forms may also seek new investors (equity) to finance the operations.

Pragmatically, however, the fact that a business can use equity financing does not necessarily mean that it will be able to or even should. Who, aside from family members or friends, will be interested in investing in a farm or ranch? What do these new owners want if they invest? How will these investors be solicited? How might such investments dilute the current owners' authority or create new conflicts?

Seeking new investors and developing schemes to preserve the initial owners' authority will create other problems. Soliciting outside investors may subject a business to state and federal securities laws though, as noted earlier, small businesses may qualify for certain exemptions from federal registration requirements. Owners who create separate types of stock with different voting and payment rights in an effort to retain control may jeopardize their corporation's Subchapter S designation if the IRS determines that the scheme creates a second class of stock. In contrast, such restrictions may be imposed if the LLC, partnership, statutory trust, or their variations are adopted without jeopardizing the current owners' ability to choose to have the business taxed like a partnership or a corporation.



## 6. Fair Distributions and Compensation.

Owners and owner employees can deal directly with this issue in the agreements associated with each business form. Otherwise it is important to recall that different business forms have different gap fillers. For example, under Wyoming's statutory defaults:

- Partners will receive an equal share of profits from general partnerships regardless of their level of contributions. Partners do not have a right of remuneration for services performed for general partnerships except in winding up a business.
- Profits in limited partnerships are allocated based on contributions. Managing partners have no right to remuneration for any services performed other than in winding up a business.
- Profits and losses in LLCs and their variations are to be allocated based upon the relative contributions of the owner members. The statutes are silent regarding compensation for services provided to a company.
- Profits and losses from statutory trusts are to be allocated among beneficial owners of statutory trusts based upon the proportion of the entire undivided beneficial interest that they own.

## 7. Maximizing After-Tax Income.

An often heralded disadvantage in utilizing a general business corporation form is the prospect of “double taxation” — taxation of corporate income at the corporate level and then again when the income is distributed as dividends to shareholders. The availability of Subchapter S designation eliminates such double taxation by treating these corporations as pass-through entities like partnerships. Moreover, owners of the noncorporate, multi-owner business forms described in this bulletin can also choose whether to have their business's income taxed like a regular corporation or like a partnership.<sup>83</sup>

Even so, Subchapter S designation is not the same as being taxed as a partnership or a limited liability company.<sup>84</sup> For example, shareholders in Subchapter S corporations may deduct their share of a business's losses only up to their basis in the stock they own — generally the value of the cash and other property they contributed to obtain their interest — and loans they have made to the corporation. In contrast, general partners may deduct all such losses — even exceeding their basis and loans to the partnership — to the extent of their share of the partnership's liabilities. Owner-members of limited liability companies may also deduct their share of a business's losses beyond their initial basis by their share of the company's debts and obligations.

Subchapter S designation may also prevent businesses from making certain deductions that are otherwise available to regular Subchapter C corporations. For example, Subchapter C corporations may deduct a variety of fringe benefits given to their owner employees (e.g., health care plans, premiums for disability insurance, meals and lodging supplied for the benefit of the corporation). These same benefits are normally not income for shareholder employees. In contrast, shareholder employees of a Subchapter S corporation who own two percent or more of its stock will be treated like self-employed individuals and may not deduct many of these same benefits.

Partners and owner members of LLCs may also allocate income and losses in any reasonable manner within the relevant agreements, provided only that it has a substantial

economic effect (i.e., its sole purpose is not simply to minimize taxes). Recall that partnership interests may be based not only on the partners' cash or assets contributions but also on any services they provide to their businesses. In contrast, allocations of income for Subchapter S corporations are to be based solely upon the number and types of shares owned. The receipt of stock in exchange for services rendered to the corporation represents compensation income though the timing for recognition of this income will depend upon the applicable tax code provision.<sup>85</sup> Allocation of income is further complicated by the fact that Subchapter S corporations may only have one class of stock.

Farmers and ranchers should discuss with their attorneys and accountants the relative tax savings associated with each of these forms and make sure that their agreements specifically address potential allocation problems and opportunities discussed. One commentator advises: "The tax factor may be the tie breaker in arriving at a decision regarding the choice of a legal form, but in most cases should not be the sole determinant."<sup>86</sup>

## **8. Right to Withdraw or Transfer the Interest.**

The sole proprietorship form provides the easiest mechanism to withdraw from a business and transfer the business interests. The two close forms — the close corporation and LLC — greatly restrict the rights of shareholders and member owners to transfer their interests in the business. For example, the Wyoming statutes governing close corporations authorize shareholders to establish:

- A right of first refusal, allowing the corporation to match any offer received by a shareholder.<sup>87</sup>
- Mandatory repurchase arrangements for a decedent's or his/her co-owner's shares upon the death of the shareholder.<sup>88</sup>
- A buy-sell agreement providing for shareholder purchases of an exiting owner's interest.<sup>89</sup>

These same statutes restrict the sale of close corporation stock to "qualified" shareholders, those who otherwise qualify to own stock under the corporation's tax status (C versus S corporation) and whose ownership would not impose a personal holding company or other penalties. The statutes for LLC make no similar provisions for transferring member owners' interests.

Perhaps a more interesting question in looking at multi-ownership forms is the nature of the interest that can be transferred. Under the corporate form, all rights, including the right to engage in management, are transferred. With respect to the other multi-ownership forms, only the economic interests (rights to any distributions from a business) are readily transferable subject to the terms of the applicable agreements. The right to participate in management is typically not transferred unless the remaining co-owners agree.

## **9. The Business's Ease of Entry, Duration, Creditor's Rights, Liquidation.**

### **Ease of Entry.**

- **Partnerships:** Formation is relatively easy as there are few formal restrictions and little expense involved. Limited partnerships are required to file a certificate of limited partnership, and formation and syndication costs can be quite expensive.

- **Corporations:** For both C and S corporations state law requirements for incorporation have to be satisfied. Expenses for corporation formation tend to be more expensive than for partnerships. Because S corporations are closely held, costs tend to be less than for C corporations.
- **LLCs:** LLCs must meet state law requirements. Expenses are similar to those for incorporation.<sup>90</sup>

### **Formation and Tax Consequences.**

- **Sole Proprietorships:** There are tax consequences on the formation of sole proprietorships because no separate entity and no transfers of property occur.
- **Partnerships, LLCs, and Corporations:** A transfer of property with a basis of less than the amount of debt encumbering the property in exchange for a partnership interest or shares of stock in a corporation can cause gains to the transferor.<sup>91</sup> A gain on contributions for a partnership and LLC can be avoided for property with debt in excess of the basis if the contributing partner/member remains liable or guarantees the debt. However, this cannot be done for a corporation. This can be an important issue because many ranchers and farmers have high debt and a low basis for their property.

### **Duration.**

As a general rule, sole proprietorships and partnerships-at-will are the least durable of the forms examined and corporations the most. (See the discussion above.) All of the legal forms permit owners to agree to end a business. Otherwise:

- Sole proprietors need no one's permission to close; creditors may request that the sole proprietorship's assets be sold to cover both business and personal obligations.
- Partnerships at will may be terminated by any partner, transferee(s), or creditor(s) following a court order at any time.
- Durational partnerships, while intended to be more permanent, may still be terminated at any time if their duration or purpose is accomplished, if one of their general partners has dissociated, and for other reasons .
- Limited partnerships must be wound up if the limited partners are unable to name a new general partner for the business after the last general partner leaves.<sup>92</sup>
- General LLCs, subject to the terms of their operating agreements, must be dissolved and their businesses wound up upon: a) the expiration of their period of duration or b) the death, retirement, resignation, expulsion, bankruptcy, dissolution of an owner-member, or occurrence of a specified event in the operating agreement unless the remaining owner members unanimously consent in writing to carry on and if the articles of organization give them such a right.<sup>93</sup>
- CLLCs are only dissolved if a) their duration expires or b) an event specified in their operating agreements occurs.
- Statutory trusts are terminated in accordance with the governing instrument. Beneficial owners may also ask the courts to terminate their statutory trust based on ordinary trust principles.

**Creditors' Rights.** An important distinction between LLCs and partnerships and the corporate form is the creditor protection each provides. That is, when a creditor seizes an interest in an LLC or partnership, all the creditor has is the right to the income, if any, generated by the interest seized. The creditor has no right to vote or participate in the management of the entity.<sup>94</sup> This may be an important consideration for ranchers and farmers who want to give ownership interests in the entity to their children but who do not want the child's creditors or an ex-spouse to become involved in the business.

### **Tax Consequences of Liquidation.**

- **Sole Proprietorship:** There are tax consequences because there is no transfer of property from an entity
- **Partnership and LLC:** The general rule is that there are no tax consequences from a liquidation and transfer of partnership property to a partner. The partner simply takes the partnership's basis in the property.
- **Corporations:** Both C and S Corporations have a taxable event involving the liquidation and distribution of corporate property to shareholders. The liquidation and transfer is treated as a sale of the corporate property for fair market value. In a C corporation, this generates tax at the corporate level and another tax at the shareholder level. For an S corporation, the gain from the sale is passed down to the shareholders and taxed at their level.

The tax consequences of liquidation may be an important consideration for many ranchers and farmers. If a corporate form was chosen and land is transferred to the corporation in exchange for stock, then a later attempt to liquidate the corporation and return the land to the individual or the individual's children may cause a significant taxable gain. In contrast, if a partnership or LLC form is selected, the subsequent liquidation and transfer of the land back to the individual or the individual's children can occur without causing a taxable event.

### **10. Estate Planning Considerations.**

The sole proprietorship form provides few estate planning benefits. Gifts of assets during an owner's lifetime may threaten the continued viability of a farm or ranch business. Transfers of farm or ranch assets to family members at death create other problems, particularly when family squabbles or federal estate taxes remove resources necessary to keep the agricultural business operating. Gifting income-producing assets while attempting to retain control over them can create the worst of all possible worlds for sole proprietors. The IRS may well conclude that the gift was not completed and include the income from and value of the supposedly transferred asset in both the sole proprietor's federal income tax obligations during his or her lifetime and in his or her taxable estate, for estate tax purposes, upon his or her death.

Both the corporate and the noncorporate multi-ownership forms (e.g., partnership, LLC, or statutory trust) resolve this problem by permitting owners to transfer stock or other certificates of ownership to family members rather than the assets themselves. Properly planned, a transfer of these interests will not threaten the viability of the operation and may allow the owner parents to take maximum advantage of annual gift tax deductions under the federal law, transfer income-producing assets to family members in lower income tax brackets, and reduce their taxable estate upon their deaths. Moreover, carefully planned gifting may

permit valuation discounts for either the transferred interest or the parents' retained interests when computing federal gift or estate taxes. The minority interest would not by law be an easily saleable asset. Producers interested in the estate tax aspects of selecting a business form should discuss these issues in greater detail with their attorneys and accountants. Most producers should contact an attorney to make sure that their current estate plan is still accomplishing their objectives given the changes created by the Economic Growth and Tax Relief Reconciliation Act of 2001 that phase out the federal estate tax by 2010 but retain the federal gift tax.<sup>95</sup>

## **11. Protecting Minority Interests.**

Conflicts are to be expected in a multi-owner, multi-manager business. Other commentators have suggested that such problems might be particularly troublesome in inter-generational agricultural operations where parents and children often have very different goals for their business.<sup>96</sup>

In these fights, depending on the terms of the governing documents, the majority owner normally wins. Theoretically, permitting disgruntled owners to simply transfer their interests to third parties protects minority interests. This protection is of limited utility, however, when there is not a ready market for the ownership interest, transfer rights themselves are restricted (as is the case for close corporations and LLCs), or the rights being transferred are limited (e.g., the right of management will normally not transfer unless the majority partner, member owner, or beneficial owner consents).

Producers should be aware of the default protections afforded minority owners under each of these forms:

- Managing general partners owe duties of loyalty, due care, good faith, and fair dealing in operating a business to both the partnership and the minority partners. All partners have a right of access to the partnership books and records.
- Trustees of statutory trusts owe a fiduciary duty to the beneficial owners though no greater than the duty owed by directors to shareholders of Wyoming general business corporations.
- Corporate directors and officers of general business corporations have a duty to act in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in or at least not opposed to the corporation's best interest. Wyoming statutes also regulate potential conflict of interest transactions between directors and a corporation.
- Wyoming statutes specially protect minority shareholders in close corporations. Close corporation shareholders may seek relief from state district courts if they can show, among other reasons, that "[t]he directors or those in control have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner whether in his capacity as a shareholder, director, or officer of the corporation."<sup>97</sup>

A commentator has pointed out, however, that the typical remedy in close corporation minority shareholder cases is an opportunity to be bought out rather than a change in the offending party's actions.<sup>98</sup> This may or may not be satisfactory given the desires of the minority shareholder(s).

## IV. SUMMARY AND CONCLUSIONS.

### A. Applying the Information Presented.

Changes in federal and state laws have significantly transformed earlier discussions of the choice of business forms. Those discussions focused almost exclusively on the sole proprietorship, partnership, and corporate forms and based their analysis on duration, limited liability, and income tax concerns. Today nearly all of the multi-owner, noncorporate forms and their hybrids can provide owners with limited liability and a choice between being taxed like a partnership or a corporation. Additionally, producers can now opt for centralized management (through a corporation, limited partnership, manager-managed LLC, or statutory trust), a free-wheeling multi-owner process (via a general partnership or member-managed LLC in its various forms), or gradations in between (as defined by the relevant document governing day-to-day management for the multi-owner forms).

The preceding section (III.B.) described how each legal form speaks to 11 potential objectives. Specific facts will also influence a producer's choice of business forms. For example:

- **Single-Owner Businesses.** Single-owner businesses may not use either the partnership or the general LLC company forms. All of the remaining forms discuss permit single ownership.
- **Businesses with a Corporate Co-owner.** All of the multi-owner forms discussed may have a corporate co-owner. However, a Subchapter S designation will not be available to a general business corporation with a corporate co-owner. Additionally, while a close corporation can apparently be created with a corporate co-owner, the stock of a close corporation may not be transferred to a corporate co-owner if it would threaten the close corporation's Subchapter S designation. Readers can still achieve partnership-like taxation along with achieving limited liability and centralized management by using the general LLC form or its variations.
- **Businesses Expecting Losses during their Duration.** Businesses expecting to have losses during their duration and wanting to pass these losses on to their investors must make sure the form selected allows losses to be passed on and also permits investors to materially participate in the business. Investors who do not materially participate can only deduct these passive losses against income from other passive sources.
- **Businesses with Co-Owner(s) Providing Services as Contributions.** The noncorporate, multi-owner forms allow co-owners to base their contributions on services provided to a business. A transfer of services in exchange for a share of the profits in the noncorporate, multi-owner forms is not a taxable event for federal income tax purposes. Federal tax law gives great flexibility to noncorporate, multi-owner forms to allocate income, taking such service contributions into account.
- **Persons Considering Transfers of Interests in their Business to their Minor Children.** Any transfer of an ownership interest in a farm or ranch to minor children should be carefully and cautiously considered.
  - Until the children have committed to the business, a transfer may be unwise, particularly if the children subsequently decide they do not want to participate in the family business. Other arrangements — employment contracts with profit incentive packages, leases, and joint ventures — will better allow parents and children to test whether they should establish a multi-owner, multi-

manager business. If the goal is to reduce the parents' taxable estate, then transfers of interests rather than assets and transfers of nonvoting rather than voting interests make more sense than transferring the assets themselves.

- The IRS family partnership rules greatly restrict any tax benefits that transfer to minor children that using the partnership form might create. These rules will only recognize that a minor child owns a partnership interest if it can be demonstrated that the child is competent to manage the property or that the partnership interest is managed by an independent guardian appointed for the sole benefit of the child and under the supervision of a court.<sup>99</sup>
- **Multiple-Objectives.** The best form for a farmer or rancher may involve several legal entities rather than just one.<sup>100</sup> Multiple entities can allow producers to take advantage of the different attributes of each form to achieve several objectives. For example, a producer and her family who are considering a new ranch recreation enterprise may create a separate Subchapter C corporation to operate the ranch recreation enterprise. The producer would rent the land to the business rather than contribute it to the corporation. The Subchapter C form gives the producer limited liability, allows family employees to take advantage of certain fringe benefits deductible for the corporation and not income for them, and ensures the producer a steady source of income from the operation (the rent) that is not subject to self-employment taxes. The C Corporation status may be particularly desirable if the owners want to retain earnings to expand the operation. It may not be as advantageous if the owners expect the business to have a relatively short duration and they are concerned about any taxes the C corporation and shareholders might be obligated to pay upon liquidation.

## **B. Conclusions and Limitations.**

Three steps in a process to determine an appropriate legal form for a farm or ranch have been briefly discussed. Eleven objectives producers may have in selecting such a form have been outlined. Producers should complete the first checklist (Figure 1) to determine how important each of these and any other objectives might be for them and their potential co-owners. Ten legal forms have been examined. This list of options is also incomplete. For example, producers may simply rent land rather than enter into a formal multi-owner, multi-management operation with others. Farmers and ranchers might prefer various employment or joint venture arrangements when testing whether to establish a more permanent legal form with a son or daughter. Finally, the characteristics of each of these business forms with the 11 goals laid out earlier have been compared. Even here the analysis has been limited. For example, the tax implications if a business is subsequently liquidated have not been discussed. As indicated in the last example, the liquidation of a corporation may have very different tax implications than if the business is organized as in a noncorporate, multi-owner form.

## **GLOSSARY**

### **Articles of Incorporation:**

The constitution of a corporation. The articles for a Wyoming general business corporation must be filed with the Wyoming Secretary of State. They must include: name, the number of shares the corporation is authorized to issue, the address of its initial registered office and name of its registered agent, and the name and address of each incorporator. The articles may also include other provisions not inconsistent with law. See Wyo. Stat. Ann. § 17-16-202 (LexisNexis 2003).

### **Articles of Organization:**

A document filed with the Wyoming Secretary of State to establish a limited liability company (LLC). The articles must set forth the LLC's name, its duration, its purpose, the name and address of its registered agent, the total amount of cash and a description and agreed upon value of property other than cash contributed, the total additional contributions, if any, the rights, if any, given to existing member owners to admit new members, the rights, if any, to continue the business upon the happening of an event that would otherwise terminate the continued membership of a member owner, whether the business is to be member managed or manager managed and the names of the manager managers or members if member managed, and any other provision not inconsistent with the law. If the member owners intend for the business to be operated as a flexible limited liability company, the articles must make specific reference to Wyo. Stat. Ann. § 17-15-107(a)(x) (LexisNexis 2003).

### **Basis, Tax, of a Business**

#### **Interest:**

When an interest in a business is created through the transfer of property to the business, the owner's basis equals the value of cash and other assets contributed in exchange for the interest. If the interest is purchased, the basis is the purchase cost. When the interest is received as a gift, the recipient's basis in the gift is equal to the donor's basis plus a proportion of the gift tax paid. If the interest was acquired through inheritance, the tax basis equals the fair market value of the property on the date of death or the fair market value on the alternative valuation date six months after the date of death. The Economic Growth and Tax Relief Reconciliation Act of 2001 modified the rules for adjusting the basis ("step-up" in basis) upon the previous owner's death.

#### **Bylaws:**

Rules adopted by the board of directors or shareholders governing the management of a business and the day-to-day affairs of the corporation not inconsistent with Wyoming law or its articles of incorporation. See Wyo. Stat. Ann. § 17-16-206 (LexisNexis 2003).



**Certificate of Limited Partnership:**

Document filed with the Wyoming Secretary of State's office to establish a limited partnership. Document must include the name of the limited partnership, the address of the office and name and address of the agent for service of process, the name and business address of each general partner, the amount of cash and a description and statement of the agreed value of the other property or services contributed or to be contributed in the future, the latest date upon which the limited partnership is to dissolve, and any other matters the partners determine to include. See Wyo. Stat. Ann. § 17-14-301 (LexisNexis 2003).

**Certificate of Trust:**

Document filed with the Wyoming Secretary of State's office to establish a statutory trust. A Certificate of Trust must include the name of the statutory trust, the name and business address of at least one of its trustees, the future effective date or time of the certificate if it is not to be effective upon filing, and any other information the trustee determines to include. See Wyo. Stat. Ann. § 17-23-114 (LexisNexis 2003).

**Check-the-Box Rules:**

Provisions under federal regulations allowing owners of qualified, noncorporate business entities to file a form indicating whether they want their business to be taxed like a regular corporation or a partnership.

**Close Corporation:**

A Wyoming business corporation, with 35 or fewer shareholders, that includes within its Articles of Incorporation a statement that it is a close corporation. Close corporations may significantly modify how their business is governed and greatly restrict the transferability of their stock.

**Close Limited Liability Company:**

An LLC whose articles of organization include a statement that it is a close limited liability company. Its operating agreement and any certificates of ownership in the business must also include a "notice of restrictions on transfers and withdrawals" as outlined in Wyo. Stat. Ann. § 17-25-103 (LexisNexis 2003). A CLLC may have a single member owner. Member owners may withdraw from a CLLC only in accordance with the term and conditions in its operating agreement or, in the absence of such terms, upon the unanimous consent of the remaining member owners. Return of capital is also restricted, and a CLLC is only required to be dissolved upon the expiration of its duration, the unanimous consent in writing of its member owners, or the happening of an event specified in the operating agreement.

**CLLC:**

Close limited liability company.

**Dissociate:**

Separate from a co-owned business.

<b>Dissolution:</b>	The process of dissolving a business. The time at which the focus of a business changes from actively seeking new opportunities to completing existing obligations, paying creditors, compensating co-owners for their contributions, and allocating their share of any remaining surpluses or shortfalls.
<b>Durational Partnership:</b>	A partnership for a specified duration or activity.
<b>Duty of Loyalty and Good Faith:</b>	Fiduciary obligation of certain business owners to subordinate their personal interests to shared interests of all the owners.
<b>Fiduciary Duty:</b>	A duty, owed by certain persons (e.g., trustees, partners), to act on another's behalf, subordinating their personal interests. The highest standard of duty implied by law.
<b>FLLC:</b>	Flexible limited liability company.
<b>Flexible Limited Liability Company:</b>	An LLC operated under special rules created by Wyo. Stat. Ann. § 17-15-144 (LexisNexis 2003). To create an FLLC, member owners must specifically refer to this section in the business's articles of organization. The articles of organization and operating agreement for an FLLC may modify a number of the bullet-proof rules established for general LLCs. FLLCs may have a single owner (general LLCs must have at least two). Their operating agreements may make interests in the FLLC freely transferable and provide for continuation of the business following the occurrence of an event that would otherwise terminate a general LLC. Its articles of organization may allow for the personal liability of officers, agents, managers, or members for business obligations.
<b>Flow-Through Entity:</b>	A legal entity (e.g., partnership, Subchapter S Corporation, LLC) whose profits/losses are not necessarily recognized at the entity level but instead are recognized at the owners' level. Owners must pay taxes on their share of the entity's profits and may deduct, subject to specific rules, their share of any business losses. See discussion of "check-the-box" rules.
<b>General Partnership:</b>	See Partnership, General.
<b>Governing Instrument:</b>	A document that establishes a statutory trust and provides for its governance. See Wyo. Stat. Ann. § 17-23-102(a)(ii) (LexisNexis 2003).
<b>Incorporators:</b>	Persons who prepare articles of incorporation and submit them to the Wyoming Secretary of State. Incorporators may also prepare initial bylaws for the corporation. Incorporators need not be shareholders.
<b>IRS:</b>	Internal Revenue Service.
<b>Joint and Several Liability:</b>	A legal doctrine under which a party may sue and collect a judgment from one or more of the co-owners individually (severally) or all of the co-owners together (jointly).

<b>Joint Venturers:</b>	A form of general partnership carried out for a single or limited purpose.
<b>Legal Form:</b>	Template of legal rules (e.g., sole proprietorship, partnership, corporation, limited liability company, etc.) adopted by an owner(s) to carry out a business.
<b>Limited Liability Company:</b>	A legal form that has characteristics of both a partnership and a corporation as well as characteristics unique to itself. It may be member managed or centrally managed. It may have limited life or perpetual life. Its member owners are normally not liable for its obligations beyond their required contributions. Interests may be freely transferrable or greatly restricted. Member owners can elect to have the LLC taxed like a regular corporation or like a partnership.
<b>Limited Partnership:</b>	A partnership formed by two or more persons under Wyoming law, having at least one or more general partners and one or more limited partners.
<b>LLC:</b>	Limited Liability Company.
<b>Material Participation:</b>	<p>Involvement in the business activity in a “regular, continuous, and substantial” manner. A requirement to deduct business losses from regular business income from other sources. Temporary IRS regulations have created several tests for establishing material participation including:<sup>101</sup></p> <ul style="list-style-type: none"> <li>— The taxpayer participated in the activity for more than 500 hours during the year.</li> <li>— If the activity requires less than 500 hours of involvement by any one individual, the taxpayer’s participation represented “substantially all of the participation” in the activity by all participants.</li> <li>— The taxpayer puts more than 500 hours during the year into the activity and his/her participation is not less than any other individual.</li> <li>— The taxpayer’s aggregate participation in significant participation activities for the year exceeds 500 hours. The taxpayer is permitted to add together trade or business activities (“significant participation activities”) in which s/he participated for more than 100 hours each during the tax year.</li> <li>— The taxpayer materially participated in the activity for five of the preceding 10 years.</li> <li>— The taxpayer will be treated as materially participating based on all the facts and circumstances.</li> </ul> <p>A surviving spouse who inherited qualified real estate from a wife/husband satisfies this requirement if s/he has engaged in “active management.” Retired or disabled taxpayers materially participate in farm or ranch activities if they had materially participated for five or more years out of the previous eight years prior to retirement or the disability.</p>

<b>Operating Agreement:</b>	An agreement made among member owners of an LLC governing the day-to-day management of the business. Similar to bylaws for a corporation.
<b>Operating Instrument:</b>	Trust instrument detailing the rights and duties of the trustee(s) and beneficial owner(s) regarding the day-to-day management and operation of a statutory trust.
<b>Partnership Agreement:</b>	An agreement, written or oral, among the partners outlining the nature of the partnership, the partners' relative rights and duties, and providing for dissolution or continuation of the business upon the happening of certain events.
<b>Partnerships-at-Will:</b>	Partnerships whose written or oral agreements do not specify a particular time frame or purpose that must be accomplished before ending.
<b>Partnership, General:</b>	An association of two or more persons to carry on as co-owners of a business for profit. No documents must be filed with the secretary of state to establish a general partnership. See Wyo. Stat. Ann. § 17-21-101(a)(vii) (LexisNexis 2003).
<b>Passive Activities:</b>	Any business activity in which a taxpayer does not materially participate. Rental activity (particularly cash rents) is normally a passive activity. Generally a taxpayer can only deduct losses from passive activities from income from other passive activities. See IRS Publication 925.
<b>Pierce the Corporate Veil:</b>	To disregard the legal entity and hold shareholders (corporations) or member owners (LLCs) personally liable for a business's obligations. In making this decision, courts will consider, among other things, whether the corporation was under capitalized (given its expected obligations at the time of formation), statutory formalities (like holding annual meetings) were disregarded, and personal and/or corporate and personal assets were commingled.
<b>Pro Forma Income and Balance Sheets:</b>	Financial documents prepared prior to operating a business or particular activity. Contains predictions of future performance of the business or activity.
<b>Pro Rata:</b>	Proportionately.
<b>Register Limited Liability Partnership:</b>	A general partnership providing limited liability to its partners. Established by filing a Statement of Registration with the Wyoming Secretary of State. Partners of an RLLP remain liable for their own negligence, the negligence of those they supervise, and any personal guarantees they make regarding an obligation of the partnership. Unless the partnership agreement or some other agreement among the partners provides otherwise, a majority of the partners of a RLLP may also agree to hold all the partners liable for certain obligations.

<b>RLLP:</b>	Registered Limited Liability Partnership.
<b>Sole-Proprietorship:</b>	A business form in which one person owns all the assets and carries on a business for him or herself.
<b>Statement of Registration:</b>	Document filed with the Wyoming Secretary of State's office to establish a registered limited liability partnership. The statement must include the name of the partnership, the address of its principal office and name of its registered agent for service of process, if the partnership's principal office is not in Wyoming the address of a registered office and the name and address of a registered agent for service of process in this state which the partnership is required to maintain, a brief statement of the partnership's business, any other matters the partnership determines to include, and the fact that the partnership thereby registers as a registered limited liability partnership. See Wyo. Stat. Ann. § 17-21-1101(a) (LexisNexis 2003).
<b>Statutory Trust:</b>	An unincorporated association created by a trust instrument under which property is to be held and managed or the business or professional activities for profit carried on by a trustee or trustees for the benefit of a person(s) who either is/are or may become entitled to a beneficial interest in the trust property. See Wyo. Stat. Ann. § 17-23-102(a)(v) (LexisNexis 2003).
<b>Transferee:</b>	The person receiving an interest in the business.
<b>Transferor:</b>	The person giving an interest in the business.
<b>Trust:</b>	An arrangement in which a person, the settlor, transfers title to property (the trust property) to another, the trustee, to be managed for the benefit of another, the beneficiary. Trusts may be created during the settlor's lifetime (inter vivos trusts) or upon his or her death (testamentary trusts).

## ENDNOTES

1. Staff Attorney, Blue Cross Blue Shield of Wyoming, and Ag & Natural Resource Law Specialist, University of Wyoming Cooperative Extension Service, respectively.
2. National Agricultural Statistics Service, 1997 Census of Agriculture, <http://www.nass.usda.gov/census/> (last visited August 17, 2001).
3. *Miles v. CEC Homes, Inc.*, 753 P.2d 1021 (Wyo. 1988) (evidence that development corporation had inadequate records, that corporate funds were commingled with majority shareholder's personal accounts, that majority shareholder had used corporation to procure labor and services for himself, and that corporate funds and assets were diverted to other that corporate uses were sufficient reasons to pierce the corporate veil).
4. See, for example, Elaine A. Welle, *Limited Liability Company Interests: Planning and Drafting Strategies Related to Securities Law Considerations*, 31 LAND & WATER L. REV. 153 (1996). See also Gay George, *An Overview of Wyoming Securities Law*, 2 WYO. LAW. REV. 345 (2002).
5. 26 U.S.C. § 162(e)(1) (2000).
6. Wyo. Stat. Ann. § 17-21-101(a)(vi) (LexisNexis 2003).
7. Wyo. Stat. Ann. § 17-21-306(a) (LexisNexis 2003) (joint and several liability for all obligations of the partnership unless otherwise agreed by the claimant or provided by law).
8. Wyo. Stat. Ann. § 17-21-401 (LexisNexis 2003).
9. See also Wyo. Stat. Ann. § 17-21-301 (LexisNexis 2003) (partners as agents for the partnership).
10. Wyo. Stat. Ann. §§ 17-21-601(a)(i) (LexisNexis 2003) (right to dissociate); 17-21-602 (rights of remaining partners against a partner who wrongfully dissociates).
11. Wyo. Stat. Ann. § 17-21-703 (LexisNexis 2003).
12. Wyo. Stat. Ann. § 17-14-802 (LexisNexis 2003).
13. Stand. Fed. Tax. Rep. (CCH) ¶ 880.03 (2003).
14. 26 U.S.C. § 752(a) (2000).
15. Id.
16. Treas. Reg. § 301.7701-3(a) (2001).
17. Wyo. Stat. Ann. § 17-14-301 (LexisNexis 2003).
18. Wyo. Stat. Ann. § 17-14-203 (LexisNexis 2003).
19. Wyo. Stat. Ann. § 17-14-202(a)(vii) (LexisNexis 2003).
20. Wyo. Stat. Ann. § 17-14-202(a)(v) (LexisNexis 2003).
21. Wyo. Stat. Ann. § 17-14-202(a)(vi) (LexisNexis 2003).
22. Wyo. Stat. Ann. § 17-14-403(b) (LexisNexis 2003).
23. Wyo. Stat. Ann. § 17-14-403(a) (LexisNexis 2003).
24. Wyo. Stat. Ann. § 17-14-503 (LexisNexis 2003).
25. Wyo. Stat. Ann. § 17-14-603 (LexisNexis 2003).

26.Wyo. Stat. Ann. § 17-14-503 (LexisNexis 2003).

27.*Id.*

28.Wyo. Stat. Ann. § 17-14-702 (LexisNexis 2003).

29.Wyo. Stat. Ann. § 17-14-703 (LexisNexis 2003). A reviewer points out subsection (b) of this statute, which became effective July 1, 1999, prevents limited partners from either withdrawing or forcing dissolution upon an attempted withdrawal. Subsection (a) of this statute, which applied prior to the July 1, 1999 date, authorized withdrawal and forced dissolution following the giving of prior, six-month notice to each general partner. The reviewer indicates that subsection (a) is similar to language found in the Uniform Limited Partnership Act.

30.Wyo. Stat. Ann. § 17-14-802 (LexisNexis 2003).

31.Wyo. Stat. Ann. § 17-14-901 (LexisNexis 2003).

32.Wyo. Stat. Ann. § 17-14-301(a)(xiii)(LexisNexis 2003).

33.Wyo. Stat. Ann. § 17-14-902 (LexisNexis 2003).

34.Wyo. Stat. Ann. § 17-14-904 (LexisNexis 2003).

35.26 U.S.C. § 707(c) (2000).

36.Wyo. Stat. Ann. § 17-16-302(a) (LexisNexis 2003).

37.Wyo. Stat. Ann. § 17-16-601 (LexisNexis 2003).

38.Wyo. Stat. Ann. § 17-16-622(a) (LexisNexis 2003).

39.Wyo. Stat. Ann. § 17-16-1401 (LexisNexis 2003).

40.Wyo. Stat. Ann. § 17-16-1420(a) (LexisNexis 2003).

41.Wyo. Stat. Ann. § 17-16-1430 (LexisNexis 2003).

42.Treas. Reg. § 1.1361-1(1)(1) (2003).

43.For an overview of the characteristics and evolution of the law governing and use of Limited Liability Companies in Wyoming, see Joseph P. Fonfara & Corey R. McCool, *Comment, The Wyoming Limited Liability Company: A Viable Alternative to the S Corporation and the Limited Partnership?*, 23 Land & Water L. Rev. 523, 524 (1988); Joseph A. Rodriguez, *Comment, Wyoming Limited Liability Companies: Limited Liability and Taxation Concerns in Other Jurisdictions*, 27 Land & Water L. Rev. 539 (1992); and Tassma A. Powers & Deby L. Forry, *Comment, Partnership Taxation & the Limited Liability Company: Check Out the Check-The-Box Entity Classification*,” 32 Land & Water L. Rev. 831 (1997).

44.Wyo. Stat. Ann. § 17-15-104(a)(xii) (LexisNexis 2003).

45.Wyo. Stat. Ann. § 17-15-116 (LexisNexis 2003).

46.Wyo. Stat. Ann. § 17-15-119 (LexisNexis 2003).

47.Wyo. Stat. Ann. § 17-15-113 (LexisNexis 2003).

48.Wyo. Stat. Ann. § 17-15-122 (LexisNexis 2003).

49.*Id.*

50.Wyo. Stat. Ann. § 17-15-107(a)(ii) (LexisNexis 2003).

- 51.Wyo. Stat. Ann. § 17-15-123 (LexisNexis 2003).
- 52.Treas. Reg. § 301.7701-3(a) (2001).
- 53.Wyo. Stat. Ann. § 17-23-114 (LexisNexis 2003).
- 54.Wyo. Stat. Ann. § 17-23-102(a)(ii) (LexisNexis 2003).
- 55.Wyo. Stat. Ann. § 17-23-108(a) (LexisNexis 2003).
- 56.Wyo. Stat. Ann. § 17-23-105 (LexisNexis 2003).
- 57.Wyo. Stat. Ann. § 17-23-105(b) (LexisNexis 2003).
- 58.Wyo. Stat. Ann. § 17-23-107(a) (LexisNexis 2003).
- 59.Wyo. Stat. Ann. § 17-23-104(a) (LexisNexis 2003).
- 60.Wyo. Stat. Ann. § 17-23-107(d) (LexisNexis 2003).
- 61.Wyo. Stat. Ann. § 17-23-113 (LexisNexis 2003).
- 62.Treas. Reg. § 307.770-3 (2001).
- 63.Wyo. Stat. Ann. § 17-21-306(b)-(g) (LexisNexis 2003).
- 64.Wyo. Stat. Ann. § 17-21-1103(a) (LexisNexis 2003).
- 65.Wyo. Stat. Ann. § 17-21-306(c) (LexisNexis 2003).
- 66.Wyo. Stat. Ann. § 17-21-306(e) (LexisNexis 2003).
- 67.Wyo. Stat. Ann. § 17-23-306(d) (LexisNexis 2003).
- 68.Wyo. Stat. Ann. § 17-17-103 (LexisNexis 2003).
- 69.Wyo. Stat. Ann. §§ 17-17-120 (LexisNexis 2003) (authorizes Shareholders' Agreements); 17-17-121 (provides for the elimination of the Board of Directors); 17-17-122 (provides for the elimination of Bylaws so long as provisions required by law are included in the Articles of Incorporation or Shareholders Agreement); and 17-17-123 (provides for the elimination of the annual meeting).
- 70.Wyo. Stat. Ann. §§ 17-17-111 (LexisNexis 2003) (share transfer prohibition, sanctioning of buy-sell agreements among shareholders); 17-17-112 (right-of-first-refusal given to corporation); and 17-17-114 (provides for compulsory purchase of shares after the death of a shareholder).
- 71.Wyo. Stat. Ann. § 17-17-140 (LexisNexis 2003).
- 72.Wyo. Stat. Ann. § 17-17-102(c) (LexisNexis 2003).
- 73.Wyo. Stat. Ann. § 17-25-104 (LexisNexis 2003).
- 74.Wyo. Stat. Ann. § 17-25-106 (LexisNexis 2003).
- 75.Wyo. Stat. Ann. § 17-25-107(a) (LexisNexis 2003).
- 76.Wyo. Stat. Ann. § 17-25-107(b) (LexisNexis 2003).
- 77.Wyo. Stat. Ann. § 17-25-108(a) (LexisNexis 2003).
- 78.Matthew M. Harbur, *Anti-Corporate, Agricultural Cooperative Laws and the Family Farm,*" 4 DRAKE J. AGRIC. L. 385 (1999).
- 79.AMFAC Mechanical Supply Co. v. Federer, 645 P.2d 73 (Wyo. 1982).



80. Kaycee Land and Livestock v. Flahive, 46 P.3d 323 (Wyo. 2002). See also Warren H. Johnson, *Limited Liability Companies (LLC): Is the LLC Liability Shield Holding Up Under Judicial Scrutiny?*, 35 NEW ENG. L. REV. 177 (2000).
81. Wyo. Stat. Ann. § 17-17-125 (LexisNexis 2003).
82. See, for example, Alan Schroeder, *Legal Liability Risk Management and Recreation Enterprises: An Overview* (DRAFT, July 2001).
83. Treas. Reg. § 301.701-3(b) (2001) establishes the following default provisions in case a new, eligible domestic entity fails file an election:
- “(i) A partnership if it has two or members; or
  - “(ii) *Disregarded as an entity separate from its owner if it has a single owner.*”
84. James R. Monroe, *The Restructuring of Agribusiness Operations from a Tax Perspective*, 4 Drake J. Agric. L. 407 (1999).
85. 26 U.S.C. § 83 (2000).
86. Monroe, *supra* note 84, footnote 8.
87. Wyo. Stat. Ann. § 17-17-112 (LexisNexis 2003).
88. Wyo. Stat. Ann. § 17-17-114 (LexisNexis 2003).
89. Wyo. Stat. § 17-17-111 (LexisNexis 2003).
90. Stand. Fed. Tax Rep. (CCH) ¶ 880.03 (2003).
91. See Internal Revenue Code §§ 357(c) and 731(a).
92. See note 29, *supra*.
93. Withdrawing owner-members have only a right to a return of their contributions; they have no right to receive a share of the company’s value as a going concern. *Lieberman v. Wyoming.com LLC*, 11 P.3d 353 (Wyo. 2000).
94. Mark A. Sargent & Walter D. Schwidetzky, *Limited Liability Company Handbook* § 3:98 (2001-2002 ed. 2001); J. William Callison, *Partnership law and practice* § 2.03 (2000).
95. Ron Durst, James Monke & Douglas Maxwell, *How Will The Phaseout of Federal Estate Taxes Affect Farmers?* (Economic Research Service, United States Department of Agriculture, Agriculture Information Bulletin No. 751-02, February 2002).
96. Kenneth H. Thomas & Michael D. Boehlje, “Farm Business Arrangements: Which One for You” (North Central Regional Extension Publication 50, Rev. 1982).
97. Wyo. Stat. Ann. § 17-17-140(a)(i) (LexisNexis 2003).
98. Steven C. Bahl, *Judicial Approaches to Resolving Dissention Among Owners of the Family Farm*, 73 NEB. L. REV. 14 (1994).
99. 26 U.S.C. § 704(e) (2000).
100. Monroe, *supra* note 84, at 435-436.
101. Neil E. Harl, *Farm Estate & Business Planning*, 308-310 (14th ed. 1999).

