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Characteristics, Advantages, and Disadvantages of the Various Forms of Business Organization Used by Alabama Farmers



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For additional information on business organizations see "Characteristics and Legal Requirements for the Various Forms of Business Organization Available to Alabama Farmers", Alabama Agricultural Experiment Station Bulletin 551.

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Characteristics, Advantages, and Disadvantages of the Various Forms of Business Organization Used by Alabama Farmers*

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INTRODUCTION

HE PARTIES INVOLVED in farm business are free to choose the form of organization under which the business will operate. Unfortunately, there is no "cut and dried" method for choosing the proper organization. Each farm business is unique and should be individually analyzed before a form of organization is selected.

The most common form of business organization in American agriculture is the sole proprietorship. This is a logical choice since most are one-owner, one-manager operations. Another factor contributing to the popularity of the sole proprietorship is that fewer government regulations are imposed on it than on any other form of business organization. Although the sole proprietorship should definitely be considered in the selection of a form of business organization, it may, in fact, represent an absence of organization.

The partnership and the corporation are alternative forms of farm business organization, although they are not as widely used as the sole proprietorship. When two or more individuals are involved in the ownership and/or management of a business, the partnership and corporation are valid alternatives to the sole proprietorship. A partnership may consist of general and/or limited partnership agreements. The corporate form of business organi-

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zation may be subdivided into the general corporation and the Subchapter S (tax option) corporation.

The objectives of both the business entity and the owners are factors to consider when choosing the organizational structure of the farm business. Some of the objectives to be considered are estate planning, business management, liability, anticipated duration of the business, and income tax management. A form of business organization that facilitates the estate planning objectives may not be the best form of business organization to accomplish the day-to-day operation of the business.

The objectives of a business are intertwined; therefore, all objectives must be considered when choosing the basic form of business organization. If this is not done, the form of business organization chosen may not accomplish the objectives of the owners.

Objectives and Procedure

The primary objective of this study was to examine the various forms of business organization used by Alabama farmers. The specific objective was to determine the effects of the different forms of business organization on credit acquisition, farm income taxes paid, and capital accumulation of Alabama farmers.

Personal interviews were conducted with 23 Alabama farmers to determine how each farmer began the farming operation and how the farm business was financed. The farms selected were stratified by size of farm, type of farm, geographic area of the State, and type of farm business organization.

Federal income tax records were obtained from each farmer to analyze annual taxable income and amount of income taxes paid. The oldest net worth statement available and a net worth statement for the current year of operation were obtained so that the amount of capital accumulation could be calculated.

Several agricultural lenders who supplied the capital needs of the farmers who participated in this study were interviewed to determine the impact of alternative business organization forms on credit policies. Several accountants employed by the participating farmers were also interviewed to obtain information regarding income taxation, formation, dissolution, stock transfer restrictions, and estate planning characteristics of each form of business organization.

CHARACTERISTICS OF ALABAMA FAMILY FARMS BY TYPE OF BUSINESS ORGANIZATION

Information collected from each farmer included personal characteristics, farm data including land use and income, and financial data including credit acquisition and debt structure, as well as the type of business organization used, why it was selected, and the advantages of that particular type of business organization.

Personal Characteristics of Operators

All six sole proprietors interviewed had a high school education, while two had completed B.S. college degrees. The average age of the sole proprietors was 40.5 years.

All partners of the six partnerships interviewed had a high school education, two had completed B.S. college degrees, and one had received a doctorate. The average age of the partners was 38.8 years.

One officer of each of the six Subchapter S corporations that participated in this study was interviewed. All officers interviewed had a high school education, while two had completed B.S. degrees. The average age of the officers interviewed was 46.8 years.

One officer of each of the five regular corporations that participated in this study was interviewed. All had a high school education, while three had completed B.S. degrees. The average age of the officers interviewed was 44.5 years.

Land Use, Acreage, and Income

The average acreage and land use characteristics of the 23 farms that participated in this study are listed according to form of business organization in table 1.

All the sole proprietorships had some soybean acreage, three reported corn acreage, two reported cotton acreage, two reported peanut acreage, five had brood cows, and three had brood sows. Only one sole proprietorship had any grain sorghum acreage.

One of the partnerships rented all the land it operated. One was a stocker cattle operation and did not have any cultivated acreage. Five of the partnerships had corn acreage, four had soybean acreage, one had cotton acreage, two had peanut acreage, and one had grain sorghum acreage. Two of the partnerships had brood cows and three had dairy cows, while none had brood sows.

All six of the Subchapter S corporations had some soybean acre-

Item/unit	Sole proprietor- ships	Partner- ships	Subchapter S corp.	Regular corp.
Total lands operated, acres	. 1,394	1,735	1,555	1,282
Land owned, acres	. 460	740	268	506
Land rented in, acres	. 934	995	1,287	777
Non-tillable open, acres	. 194	785	365	427
Woodland and other, acres	. 193	176	233	378
Land cultivated, acres		773	957	477
Corn, acres		190	70	92
Soybeans, acres		365	820	229
Cotton, acres		118	45	84
Peanuts, acres		67	45	84
Grain sorghum, acres		33	0	0
Brood cows, head		34	38	77
Brood sows, head		0	15	41
Dairy cows, head		173	40	0

Table 1. Average Land Acreage and Use, by Type of Business Organization, 23 Alabama Farms, 1978

age, three had corn acreage, one had cotton acreage, two had peanut acreage, three had brood cows, two had brood sows, and two had dairy cows.

Four of the five regular corporations that participated in this study had some soybean acreage, two had corn acreage, one had cotton acreage, two had peanut acreage, two had brood cows, and two had dairy cows. One was a dairy farm and had no cultivated acreage. Two rented all the land they farmed from the shareholders.

Information was obtained from Schedule 1040-F of the tax returns of each participating farm. The average gross return, total expenses, and net farm profit or loss for each type of business organization for the tax years 1973 through 1978 are given in table 2. The figures in table 2 represent the average of the farms on which tax information was obtained for that year.

The sole proprietorships and partnerships averaged a net farm profit 2 out of the 6 years. The Subchapter S corporations averaged a net farm loss for each of the 6 years. The regular corporations averaged a net farm profit 3 out of the 6 years. It should be noted that five of the partnerships paid the partners a salary. Four of the Subchapter S corporations and four of the regular corporations paid the officers or shareholders a salary. These salaries were deducted as an expense of the farm business, which had a negative effect on the net farm profit.

One of the Subchapter S corporations that participated in this

TABLE 2.	AVERAGE GROSS INCOME, EXPENSES, AND NET FARM PROFIT OR LOSS, BY TYPE	E
	of Business Organization, 23 Alabama Farms, 1973-78	

The same formation			Average	, by year		
Item/unit	19731	19742	19753	19764	19775	19786
	Dol.	Dol.	Dol.	Dol.	Dol.	Dol.
Sole proprietorships	;					
Gross income	90,220	125,136	170,231	202,957	187,321	223,548
Expenses	93,843	134,725	150,049	186,741	204,191	255,774
Profit or loss	-3,623	-9,589	20,182	16,216	-16,870	-32,226
Partnerships						
Gross income	201.015	214,661	205,411	267,863	321,210	297,629
Expenses	192,572	229,175	211,925	269,591	316,341	329,893
Profit or loss	8,443	-14,514	-6,514	-1,728	4,869	-32,264
Subchapter S corpo	rations					
Gross income	108,403	118,316	130,598	175,361	154,162	179,761
Expenses	124,568	136.695	152,203	189,161	179,163	226,723
Profit or loss		-18,379	21,605	13,800	-25,001	-46,962
Regular corporation	ıs	•				
Gross' income	147,549	133,352	156,256	200,201	132,463	166,207
Expenses	143,075	132,650	176,764	206,100	146,725	164,736
Profit or loss	4,474	702	20,508	5,899	-14,262	1,471

¹Tax information from 3 sole proprietorships, 4 partnerships, 3 Subchapter S corporations, and 2 regular corporations were obtained for the 1973 tax year.

²Tax information from 5 sole proprietorships, 4 partnerships, 3 Subchapter S corporations, and 4 regular corporations were obtained for the 1974 tax year.

³Tax information from 6 sole proprietorships, 5 partnerships, 3 Subchapter S corporations, and 4 regular corporations were obtained for the 1975 tax year.

4Tax information from 6 sole proprietorships, 6 partnerships, 4 Subchapter S corporations, and 4 regular corporations were obtained for the 1976 tax year.

⁵Tax information from 6 sole proprietorships, 6 partnerships, 5 Subchapter S corporations, and 5 regular corporations were obtained for the 1977 tax year.

6Tax information from 6 sole proprietorships, 6 partnerships, 6 subchapter 8 corporations, and 5 regular corporations were obtained for the 1978 tax year.

study paid its officers or shareholders a salary bonus at the end of the year. One of the corporations paid the officers or shareholders rentals for land used in the farming operation. None of the corporations paid the officers or shareholders rental for equipment used in the farming operation. Only one of the Subchapter S corporations paid dividends to shareholders. This corporation averaged paying the shareholders a dividend 3 out of every 4 years.

Three of the partnerships paid the partners a salary bonus at the end of a profitable year. None of the partnerships paid the partners rental for equipment, but three paid the partners rent on land used in the partnership business.

Three of the regular corporations paid their officers or shareholders a salary bonus at the end of a profitable year. Three of the corporations paid the officers or shareholders rent for land used in the farming operation and one paid the shareholders rent for equipment used in the farming operation. Two of the corporations paid the shareholders a dividend at the end of a profitable year.

Federal Income and Estate Planning

Only one sole proprietor had an estate plan. This individual had set up a business trust for his children to minimize estate taxes.

Two of the partnerships were using the partnership form of business organization for income tax purposes. The partners of these two partnerships believed there was an advantage in splitting the partnership income, thus putting each partner in a lower income tax bracket. One partnership had an estate plan, but this was not the reason the farm business elected to operate as a partnership.

Four of the six partnerships had made provisions for the death of a partner, by purchasing a life insurance policy on each-partner. Upon the death of a partner, the life insurance proceeds would be available to purchase the deceased partner's interest in the partner-

ship.

Stockholders of two of the Subchapter S corporations were planning to transfer equity ownership before death by transferring shares of stock to their children. The four Subchapter S corporations that did not have a plan to transfer equity ownership before death stated intentions to develop a plan for intergenerational

property transfer.

Four of the Subchapter S corporations were using their present form of business organization for federal income tax purposes. Although the Subchapter S (tax option) corporation does not pay federal income tax, it is required to file an informational tax return. Each shareholders reports his share of the Subchapter S corporation's net income or net operating loss and investment credit on his individual tax return. Therefore, each shareholder's portion of the Subchapter S corporation's income is taxed at the individual shareholder's federal income tax rate. Since the Subchapter S corporation does not pay federal income tax, double taxation that occurs with the regular corporation is avoided.

Two of the Subchapter S corporations were using the corporate form of business organization for estate planning purposes. The

parents involved in these two corporations transferred shares of stock to retain control of the corporation. Retaining control of the corporation was important to these parents because it assured them that the children could not sell the land used in the farming operation, which was owned by the corporation. Although parents may jointly give each child \$20,000 annually in gifts for estate tax planning purposes, once the title to the land or other assets is transferred to the child, the child is then free to sell or transfer the land or other assets at will.

All five of the regular corporations were using their present form of business organization for estate planning purposes. The parents were transferring shares of stock to their children to minimize estate taxes, but most were planning to keep at least 51 percent of the stock to retain control of the corporation. One of the regular corporations was also using the corporate organization for federal income tax purposes. Salaries and rentals for land paid to shareholders were deducted as an expense by the corporation.

Although estate planning was the primary reason that three family farms elected to incorporate as a regular corporation, only one of the regular corporations had a plan to transfer any equity ownership before death. Three of the corporations stated intentions to develop a plan to transfer some equity ownership before death. One of the regular corporations did not intend to develop a plan to transfer equity ownership before death. Instead, shares of stock in the corporation were to be willed to family members.

Credit Acquisition and Debt Structure

Opinions were equally divided among partners of the six partnerships concerning whether a partnership could obtain credit any easier than a sole proprietorship. Some of the partners though that a partnership could obtain credit easier than a sole proprietorship due to greater pay-back and management abilities. One partner pointed out that the life span of a partnership does not have to be as closely tied to the life of an individual as a sole proprietorship, thus making it easier for a partnership to obtain credit. The sources of credit of the various types of business organization that participated in this study are given in table 3.

Stockholders of five of the Subchapter S corporations reported that credit was not easier to obtain after incorporation, while one of the corporations felt that credit had been easier to obtain. In this instance, a father incorporated the farming operation and

True of husiness		Type of loan1	
Type of business organization	Short term	Intermediate term	Long term
Sole proprietorships	CB PCA	FMC PCA SBA CB FLB Ind.	FLB FHA Ind.
Partnerships	CB PCA	FMC PCA CB FLB	FLB FHA SBA IC
Subchapter S corporations	CB PCA	CB PCA SBA	FLB FHA SBA Ind.
Regular corporations	CB PCA FHA	CB PCA FHA FLB	FLB Ind. SBA FHA

Table 3. Sources of Credit, by Type of Businesss Organization, 23 Alabama Farms, 1978

¹CB = Commercial banks; PCA = Production Credit Associations; FMC = Ford Motor Credit; SBA = Small Business Administration; FLB = Federal Land Bank; FHA = Farmers Home Administration; IC = Insurance company; and Ind. = Individual.

transferred shares of stock to his sons, who were also working full time on the farm. The father's age would have been a limiting factor in obtaining a loan as a sole proprietor. However, since the corporation insured continuity of existence, credit was easier to obtain.

None of the incorporators of the Subchapter S corporations was relieved from any personal guarantees on notes that the corporation assumed. At least one shareholder of each Subchapter S corporation was held personally liable for the corporate loans. Shareholders of the Subchapter S corporations were required to personally guarantee short term, intermediate term, and long term loans. All four shareholders of one Subchapter S corporation were required to personally guarantee a long term loan made to the corporation. Personal guarantees were not required on operating loans made to one corporation, but were required on long term loans.

Shareholders of all five of the regular corporations said credit was not easier to obtain after incorporation. A shareholder of one of the regular corporations thought that lending institutions

77	Type of loan						
Type of business organization	Short term	Intermediate term	Long term				
	No.	No.	No.				
Sole proprietorships Partnerships Subchapter S corporations Regular corporations	6	5 6 2 2	6 5 6 4				

Table 4. Type of Debt Outstanding, by Farm Business Organizational Structure, 23 Alabama Farms, 1978

charged corporations the prime interest rate while charging individual borrowers a lower interest rate. Some lending institutions were relatively inexperienced in making corporate farm loans. When one of the farm families incorporated as a regular corporation, the agricultural lending institution serving that family had never dealt with a corporate farm loan. However, most of the lending institutions that make agricultural loans have now established corporate farm loan policies.

Incorporators of the regular corporations were not relieved from any personal guarantees on notes that the corporation assumed. At least one shareholder of each regular corporation was required to personally guarantee short term, intermediate term, and long term corporate loans. The type of debt outstanding by business organizations is summarized in table 4.

Expansion and Capital Accumulation

Partners in all the partnerships believed that the partnership form of business organization encourages expansion because of the pooling of capital resources and management ability.

Shareholders of four of the Subchapter S corporations believed that the corporate form of business organization encouraged expansion. One shareholder stated that agriculture is a high risk business with a small profit margin. He said that in order to survive, the farming operation had to increase in size and sales volume, which would also increase the risk of failure. The limited liability characteristic of a corporation offers some protection against risk of failure.

One shareholder believed that a corporation can have more of a sense of direction than a partnership or a sole proprietorship, primarily because the shareholders can make more long range plans and decisions since the life of the corporation is not as closely tied to the lives of the individual shareholders. One shareholder stated that his sons had taken much interest in the growth and profitability of the farming operation since incorporation.

Shareholders of two of the regular corporations believed that the corporate form of business organization encourages expansion. A shareholder of one of the regular corporations stated that money in a corporation cannot be as easily diverted for personal expenses as it can be in a sole proprietorship or partnership. Thus, if no dividends are paid, more money should be available for expansion. A shareholder of another regular corporation felt that the corporate framework encouraged expansion because the life of the corporation is not closely tied to the lives of the individual shareholders.

The average annual capital accumulation per participating farm by type of business organization is summarized in table 5. Although the Subchapter S corporations had the greatest decrease in annual capital accumulation per farm, it should be noted that three of the Subchapter S corporations and one of the partnerships did not own any land. Five partnerships, four Subchapter S corporations, and four regular corporations paid the partners, officers, or shareholders a salary. These salaries were deducted as an expense of the farm business, which had a negative effect on net farm income and capital accumulation.

TARLE 5. AVERAGE ANNUAL CAPITAL ACCUMULATION, BY TYPE OF BUSINESS ORGANIZATION, 23 ALABAMA FARMS

Type of business organization	Annual capital accumulation per farm ¹
	Dol.
Sole proprietorships	3,303
Partnerships Subchapter S corporations	
Regular corporations	

¹These figures were deflated by using the Index of Total Prices Paid by Farmers (including interest, taxes, and wage rates), base year 1967 = 100.

Year and Cost of Formation

The partnerships that participated in this study were formed in 1947, 1968, 1970, 1975, and 1976. There was an average of 3.3 partners in the partnerships interviewed. Only three of

Source: Agricultural Statistics 1980, Chapter IX, table 597, p. 416, and Agricultural Statistics 1975, Chapter IX, table 583, p. 416.

the partnerships received professional assistance in forming the partnership agreements. Attorneys were used in all three cases. The cost of forming a partnership in 1947 was \$25. The legal fees involved in organizing a partnership in 1976 were \$300. One of the partnerships used an attorney and a certified public accountant to draw up a new partnership agreement for estate tax planning purposes. The reorganizational expenses totaled \$1,500.

All of the Subchapter S corporations were incorporated in Alabama. The oldest Subchapter S corporation was incorporated in 1961 with the aid of an attorney at a cost of \$2,500. One was incorporated in 1971 with the aid of an attorney at a cost of \$200. Another was incorporated in 1972 with the aid of an attorney and a tax accountant at a cost of \$500. One was incorporated in 1974 with the aid of a consultant and an attorney at a cost of \$500. Two were incorporated in 1977, each with the aid of an attorney, at a cost of \$200 and \$250. The legal fees involved in forming a corporation depended upon the complexity of the structure of the corporation.

Four of the regular corporations were incorporated in Alabama. The oldest was incorporated in 1954 with the aid of an attorney. The costs of incorporation could not be determined in this instance. One was incorporated in 1969 with the aid of an attorney and a CPA at a cost of \$350; another in 1970 with the aid of an attorney at a cost of \$250; and a fourth was incorporated in 1975 with the aid of an attorney at a cost of \$500.

One of the regular corporations was incorporated in Delaware in 1974 with the aid of an attorney and a CPA at a cost of \$1,500. Farm corporations are usually organized in the state in which the property is located. Reports to the state of incorporation and to all states in which the corporation does business are usually required and the tax laws of all states involved generally apply.

Assets Transferred Upon Formation of New Business Organization

The average estimated value of assets transferred to the partnerships when they were formed was \$36,608, with two of the partnerships having no assets when formed. Forty acres of land were transferred to one partnership after it was formed. An average of \$2,750 worth of machinery and equipment, \$7,333 in cash, and \$38,333 worth of livestock was transferred to the partnerships after they were formed, with only two partnerships having these assets transferred after they were formed.

The average estimated value of the Subchapter S corporations' assets when first formed was \$123,416. The incorporators of two of the Subchapter S corporations originally transferred land to the corporation in exchange for shares of stock. One corporation received 354 acres and the other 523 acres of land. Although several of the corporations purchased land in the corporation's name, none of the shareholders had transferred land to the Subchapter S corporations after they were formed.

An average of \$45,166 worth of equipment, \$14,500 in cash, and \$27,916 worth of livestock per farm was transferred to Subchapter S corporations. Three of the Subchapter S corporations rented all the land used in the farming operations. Once land is put into a corporation, federal tax laws may make it difficult or impractical to transfer the land out of the corporation. A CPA and/or an attorney should be consulted before transferring land to a corporation.

One of the Subchapter S corporations was part of a multiple entity. The Subchapter S corporation owned the livestock, machinery, and other operational assets and was the operational part of the business. A regular corporation owned the land and rented it to the Subchapter S corporation. The object of this multiple entity was to give the regular corporation most of the farm income, since the corporate tax rate was lower than the stockholders' individual tax rates.

The average estimated value of the regular corporation's assets when first formed was \$104,226. The incorporators of two of the regular corporations originally transferred land to the corporation in exchange for shares of stock. The shareholders of one corporation transferred 490 acres and shareholders of another transferred 1,876 acres. Although several of the corporations purchased land in the corporation's name, none of the shareholders transferred any land to the regular corporations after they were formed. An average of \$27,719 worth of equipment, \$4,379 in cash, and \$26,277 worth of livestock was transferred to the regular corporations.

Effect of Incorporation on Amount of Federal Income Tax Paid

Shareholders of three of the Subchapter S corporations said incorporation of the farm business had no effect on the amount of federal income tax paid. Stockholders of the other three Subchapter S corporations had a different opinion, believing that incorporation had lowered the amount of federal income tax paid. One corporation thought the amount of federal income taxes paid since incorporation was lower due to lower corporate tax rates. However, incorporation as a Subchapter S corporation actually had no effect on the amount of federal income taxes paid due to lower corporate tax rates since a Subchapter S corporation pays no federal income taxes, but rather is taxed the same as a partnership for federal income tax purposes.

The stockholders of the other Subchapter S corporation believed the amount of federal income taxes paid since incorporation was lower because the business was a multiple-entity operation. The Subchapter S corporation was the operational part of the business that leased the land from a regular corporation. The objectives of the owners were to make the regular corporation as profitable as possible to take advantage of the lower corporate tax rates while keeping the Subchapter S corporation as near as possible to a break-even basis.

Four of the regular corporations believed that incorporation of the farm business had no effect on the amount of federal income taxes paid. Two of the corporations had low (if any) net income; therefore, incorporating had little or no effect on the amount of federal income taxes paid. It is also noted that salaries paid to shareholders were deducted as an expense by the corporation, which reduced the profitability of the corporation. One of the regular corporations reported that incorporating lowered the amount of federal income taxes paid due to the lower corporate tax rate.

Reason for Choosing Present Form of Business Organization

Most of the partners formed a partnership to combine management, labor, and capital resources. The capital requirements for a farming operation are often too large for any one individual. Thus, several individuals may form a partnership and combine capital resources to meet the financial requirements of a farming operation. Most of the partners believed that a partnership can more efficiently utilize labor, machinery, and equipment than a sole proprietorship.

The major reason the Subchapter S corporations elected to incorporate was for intergenerational property transfer. They felt it was much easier to transfer shares of stock than to transfer title to particular assets, and shares of stock could be transferred without losing control over the assets of the corporation as long as 51 percent of the stock was retained. Another reason given for incorporating was that the corporation could deduct premiums on health and life insurance policies covering employees as a business expense, whereas a sole proprietor could not deduct these expenses. The limited liability relationship between the corporation and its shareholders was also cited as a reason for incorporating. A shareholder's liability is limited to the investment made in the shares of stock, unless a personal guarantee is made. Thus, personal assets not transferred to the corporation cannot be used for obligations for which the corporation is liable. One farmer incorporated his farming operation for federal income tax as well as estate tax purposes.

Three of the regular corporations elected to incorporate the family farm primarily for estate planning purposes, and one was formed for federal income tax and limited liability purposes. The other was formed for federal income tax, limited liability, and estate planning purposes.

Professional Assistance with Farm Records and Tax Returns

All the partnerships received professional assistance with their farm records and income tax returns from a CPA. Two of the partnerships were not satisfied with the assistance they were obtaining from their accountant. Two of the partnerships were using the Production Credit Association Agrifax farm record system. Partners in one of the partnerships reported that their records were no more complete and accurate than before the partnership was formed.

All of the Subchapter S corporations reported having a more complete and accurate set of records than before incorporation. All of these corporations received professional assistance with their farm records and tax returns, three from a CPA, two from an attorney and a CPA, and one from a CPA and a consultant. All were satisfied with the professional assistance they were receiving.

Four of the regular corporations reported they had a more complete and accurate set of records than before incorporation. All of the corporations received professional assistance with their tax returns and farm records from a CPA and were satisfied with

the professional assistance received. Three of the corporations held one regular directors meeting per year, while two held two such meetings per year.

Limited Liability Characteristics of Corporations

None of the Subchapter S corporations had benefited directly from the limited liability aspect of the corporate form of business organization. However, they recognized limited liability as one of the major advantages of incorporation. The parents, who were the incorporators of one of the Subchapter S corporations, utilized the limited liability characteristic of the corporate organization by not transferring title to their home and personal automobiles to the corporation. It should be noted, however, that personal assets may be required to satisfy the debts and obligations of a corporation if the assets of the corporation are inadequate to satisfy such debts and if the debt or obligation was personally guaranteed. The shareholders of one of the Subchapter S corporations realized little of the limited liability advantage since virtually all of the shareholders' personal assets were transferred to the corporation. The shareholders did, however, realize that the limited liability characteristic of the corporation also protects the shareholders from personal liability for accidents that occur during the corporation's normal business activities, assuming none of the shareholders were negligent.

None of the regular corporations had benefited directly from the limited liability aspect of the corporate form of business organization. However, three of the regular corporations recognized limited liability as one of the major advantages of the corporation.

Stock Structure of Family Farm Corporations in Alabama

All of the Subchapter S corporations issued only one class of stock (common), which is one of the requirements to qualify as a tax option corporation. Four of the corporations issued 1,000 shares of stock each, one issued 2,000 shares, and one issued 200 shares of stock. All the shareholders were immediate family members. The Subchapter S corporations had an average of 3.5 shareholders per corporation. Only voting stock was issued. Three of the corporations issued par value stock with a value of \$21.80 per share.

Four of the Subchapter S corporations did not have stock

transfer restrictions. The two corporations that had stock transfer restrictions required stockholders who wished to sell shares of stock to give the other stockholders the right of first refusal to purchase the stock.

Four of the Subchapter S corporations issued shares of stock to their subscribers in a nontaxable exchange for assets transferred to the corporation. The other two Subchapter S corporations issued shares of stock to its subscribers through a cash sale.

Two of the Subchapter S corporations had the offices of president, vice president, and secretary-treasurer. Two corporations had the offices of president, vice president, and secretary. One corporation had the offices of president, vice president, secretary, and treasurer, while another had the offices of president and secretary-treasurer. Corporations created in Alabama must have a president and a secretary, although both offices may be held by the same person. All officers of the Subchapter S corporations were shareholders, and each officer held only one office.

All of the regular corporations issued only one class of stock (common), although regular corporations may issue more than one class. Two of the corporations issued 100 shares of stock each, one issued 450 shares, and another issued 800 shares. The shareholders of one of the corporations did not know how many shares of stock had been issued. Family members were the only shareholders in the regular corporations interviewed. There were 2.8 shareholders per regular corporation and only voting stock was issued. Two of the corporations issued par value stock with a value of \$100 per share.

Three of the regular corporations did not have stock transfer restrictions. The two that had stock transfer restrictions required stockholders who wished to sell shares to offer the other family shareholders the right of first refusal to purchase the stock. One of the other corporations planned to adopt stock transfer restrictions requiring stockholders who wish to sell shares of stock to offer the other family shareholders the right of first refusal. If the seller and buyer could not agree on the selling price of the stock, the seller would appoint an appraiser, the corporation would appoint an appraiser, and the seller and corporation would agree on and appoint a third appraiser. The average of the three appraisals would then serve as the selling price of the stock.

Three of the regular corporations issued shares of stock to its subscribers in a nontaxable exchange for assets transferred to the corporation. A nontaxable exchange of property for shares of stock in the corporation occurs if the transferrers are in control of the corporation immediately after the exchange. The transferrers are considered to be in control of the corporation if, as a group, they own at least 80 percent of the combined voting power of all classes of stock with voting rights and own at least 80 percent of the total number of shares of each of the other classes of stock of the corporation. The other two regular corporations issued shares of stock to their subscribers through cash sales.

Three of the regular corporations had the offices of president, vice president, secretary, and treasurer. Two of the corporations had the offices of president, vice president, and secretary-treasurer. All the officers of four of the regular corporations were shareholders and held only one office. A family member, nonshareholder held an office in the other regular corporation. One corporation had two shareholders who held two offices each.

Fringe Benefits

Fringe benefits provided to the shareholders or employees by the partnerships and corporations are listed in table 6. More fringe benefits were offered to the employees by the corporations than by the partnerships. The shareholder-employees enjoy benefits paid for by the corporation, and payments made by the corpo-

TABLE 6.	FRINGE BENEFITS PROVIDED TO EMPLOYEES, BY PARTNERSHIPS AND	,
	Corporations, 23 Alabama Farms, 1978	
		_

	Cui	rrently ha	ve	Plan to have			
Fringe benefits	Partner- ships	Sub. S corp.	Regular corp.	Partner- ships	Sub. S corp.	Regular corp.	
	No.	No.	No.	No.	No.	No.	
Pension/profit sharing plan	0	3	0	0	1	0	
Employee medical insurance	1	. .3	3	1	0	0	
Employee accident insurance	3	3	5	ì	.0	ő	
Employee life insurance	0	3	2	0	0	Ó	
Life insurance to purchase deceased partner's interest or deceased stockholder's shares	3	1	0	<u>J</u>	2	.0	

ration for shareholder-employee benefits were tax deductible to the corporations.

ADVANTAGES AND DISADVANTAGES OF THE VARIOUS FORMS OF BUSINESS ORGANIZATION

The three basic forms of business organization are the sole proprietorship, the partnership, and the corporation. A partnership may consist of both general and/or limited partnership agreements. The corporate form of business organization may be subdivided into the Subchapter S (tax option) corporation and the regular corporation.

Sole Proprietorship

The sole proprietorship is a form of business organization in which one individual (the owner) owns or controls all equity interest in the business, receives all business income, absorbs all business losses, and assumes full liability for all obligations of the business.

Advantages

The sole proprietorship is the easiest form of business organization to begin or end and is subject to fewer government regulations than any other form of business organization. The sole proprietorship can have the most flexible purposes for its business operations and needs no government approval except for certain activities ruled by government regulations, such as applying restricted pesticides. The organization of a sole proprietorship does not involve any formalities or expenses of organization.

A sole proprietor has absolutely no formalities regarding management, thus providing a high degree of management flexibility. Theoretically, the sole proprietor can make a management decision and implement it more quickly than when several individuals are involved in the decision-making process. The sole proprietor is not subject to the disadvantages inherent in other types of business organization where other business associates may adopt business policies that he does not agree with.

The sole proprietorship requires less bookkeeping and formal reporting than other forms of business organization. There are no minimum capital statutory requirements, legal fees, organizational expenses, or franchise taxes involved.

Even though a separate set of accounting records may be kept for the business, the business is not taxed as a separate entity apart from its owner. Thus, double taxation does not occur as in the regular corporation, where the corporation is taxed and its shareholders pay income tax on dividends received.

Disadvantages

There is no separation of a farmer's personal assets and business assets in a sole proprietorship. A creditor with a claim against a farm business organized as a sole proprietorship may legally force payment from the sole proprietor's personal assets if the assets of the farm business are inadequate to meet the business claim. Likewise, the assets of a sole proprietorship farm may be required to pay off personal debts incurred by the sole proprietor.

The capital and credit of a sole proprietorship are limited by the individual resources of the sole proprietor. The sole proprietor is constrained by his own solvency and is limited in his ability to attract investment capital. As the sole proprietor grows older, credit may be harder to obtain without sufficient security because creditors realize that the business operation will be termi-

nated upon the death of the sole proprietor.

A farmer and his wife may jointly transfer \$20,000 in gifts per year to each child for estate planning purposes. However, actual title to each gift must be transferred to each child. The farmer loses all control over the gift once the title is transferred. Shares of stock in a corporation are more easily transferred than the actual physical assets of the business. As long as the farmer retains 51 percent of the stock, he still has control of all the assets of the business.

The sole proprietor's business income and other personal income are summed together. This may put the sole proprietor in a higher income tax bracket.

Partnership

A general partnership is an association of two or more persons to carry on as coowners of a business for a profit. Unless otherwise specified, each partner in a general partnership has an equal right to participate in management and deal with third parties. A limited partnership is composed of (1) one or more general partners who assume management responsibility of the business and are personally liable for all obligations of the partnership as

are the participants in a general partnership, and (2) one or more limited partners who supply capital inputs and share in profits, but are not liable for partnership losses or obligations beyond their capital contribution.

Advantages

A general partnership may be organized with little or no expense or formality whatsoever. Although a written partnership agreement is the best insurance against later misunderstandings that might occur between partners, a verbal agreement is legally acceptable. However, a limited partnership agreement must be written, signed by the partners, and recorded in the office of the judge of probate of the county in which the principal place of business of the partnership is located.

A partnership may encourage expansion. It is usually formed to combine capital resources and management ability. In this aspect, the partnership has an advantage over the sole proprietorship because it has additional capital and more managerial depth. Credit may be easier to obtain due to the combined capital resources and management abilities of the individual partners.

A limited partnership agreement insulates the limited partners against unlimited liability for the firm's obligations. A limited partner loses his limited liability status if he acts as an agent for the partnership in any way.

Although a partnership does not pay federal income taxes, it is required to file an informational tax return. Since the taxable income of the partnership is divided among the partners, it may be subjected to lower income tax rates. This depends on the tax rates of the individual partners.

A general partner cannot legally transfer ownership interest with management or administrative rights without the unanimous consent of all the partners unless the right to do so is stated in the partnership agreement. Thus, a general partner has the distinct advantage of not having an unwanted partner interfering with the management or administrative duties of the firm without consenting to the new agreement. A general partner may legally transfer an interest in the partnership to a third party without the unanimous consent of the copartners and without dissolving the partnership. However, such a transfer does not entitle the third party to participate in the management or administration of the partnership's business affairs, to require any information regard-

ing the business transactions of the partnership, or to inspect the partnership books. A limited partner's interest is assignable at will.

Disadvantages

Each general partner has an equal right to actively participate in the management and control of the partnership. Continuity in management may be difficult if several partners are involved because unanimous agreement for major decisions is usually required from all the general partners and personal conflicts may arise. Unless otherwise stated in the partnership agreement, majority rule refers to one vote per partner and not to a majority interest in the partnership.

All general partners have unlimited liability, which extends to the personal assets of each general partner. Since each general partner has the power to legally bind the partnership in agreements, a high level of confidence is needed among the copartners. A general partner may bind the partnership (and thus the personal assets of the other general partners) by seemingly conducting the business of the partnership in the usual manner, even though the action taken may be contrary to the expressed authority of the majority.

The death or withdrawal of a general partner, unless otherwise provided for in the partnership agreement, dissolves a general partnership. If no definite term is stated in the general partnership agreement regarding the withdrawal of a partner, any partner may withdraw at will, forcing the dissolution of the partnership. This could cause the business operation to be prematurely terminated. If a general partner withdraws contrary to the terms stated in the general partnership agreement, the remaining partners have the right to buy out the interest of the withdrawing general partner. The continuation of the partnership as a business unit can only be assured through effective provisions in the general partnership agreement.

Corporation

A regular corporation is a body of natural persons formed and authorized according to state law, to act as a separate legal entity (having a personality and existence distinct from that of its human agents), with its own rights and responsibilities. A corporation is viewed as a legal "person" although it must act through its human

agents who act as owners, managers, and/or employees. A regular corporation is a separate taxpayer from its shareholders. If a corporation meets certain requirements, the stockholders may elect to become a Subchapter S (tax option) corporation. A Subchapter S corporation is taxed in the same manner as a partnership for federal income tax purposes. Therefore, a Subchapter S corporation pays no federal income tax.

Advantages

The limited liability aspect of the corporate form of business organization is the primary reason that many Alabama farm businesses choose to incorporate. The shareholders are liable for the action and obligations of the corporation only to the extent of their investment in the corporation. Limited liability of the shareholders of a corporation is only beneficial to the shareholders who have assets that were not transferred to the corporation. Also, if a shareholder personally guarantees an open account or loan, that shareholder's personal assets may be required to satisfy the personal guarantee if the corporation does not have sufficient assets to do so.

The life of a corporation is not closely linked to the lives of individuals unless the articles of incorporation tie the life span of the corporation to the lives of the shareholders. Most states permit perpetual life for corporations. The perpetual existence is not interrupted by the death of a shareholder or by the transfer of stock in the corporation. The perpetual nature of the corporation offers a method of maintaining the farm business as a productive economic unit and avoiding the problems of business interruption or termination that results upon the death of a sole proprietor or a general partner. The shareholders of a corporation can make more long range plans and decisions concerning the operation of the corporation since the life of the corporation is not closely tied to the lives of the individual shareholders.

Flexibility and ease of ownership transfer are the major reasons that many Alabama farm businesses choose to incorporate. If executed properly, the corporate form of business organization can be used to minimize estate taxes, thus conserving more of the estate for the heirs. It is much easier to transfer shares of stock, either by gift or sale, than assets such as land, livestock, and equipment. Upon the transfer of title to land, livestock, or equipment, the farmer legally loses all control over the transferred property.

However, retention of at least 51 percent of the stock in a corporation preserves control over all the assets of the corporation, even though the other 49 percent of the stock may have been transferred as gifts or sold.

The corporation is the traditional form of business organization used for attracting capital from outside investors. Lending institutions may be more willing to loan money to a corporation, whose continuity of business is assured, than to another type of business whose continuity may be tied to the life of an individual.

A corporation may also be able to provide shareholder-employees certain fringe benefits, such as retirement plans, medical and accident insurance, and group life insurance, in a tax-free manner. Employees of a corporation may even receive tax-free meals and lodging, if they are furnished as a convenience for the employer.

A Subchapter S corporation is taxed the same as a partnership for federal income tax purposes. Thus, the Subchapter S corporation avoids the double taxation that may occur in the case of a regular corporation. However, a regular corporation may reduce the effect of double taxation by disbursing earnings as salaries to the employee-shareholders. A corporation may deduct salaries paid to employee-shareholders for services rendered as business expenses.

The federal income tax rate for regular corporations is much lower than the individual tax rate. While individuals may fall into a tax bracket as high as 50 percent, the maximum corporate tax rate is 46 percent, table 7. Due to the difference in federal income tax rates, a farmer who has a profitable farming operation and files as a sole proprietor, partner, or shareholder of a Subchapter S corporation is likely to pay thousands of dollars more in

Taxable income		Taxable income		Federal incom	ne tax
Over-	But not over	of the amount or	ver		
\$ 0	\$ 25,000	17%	\$ 0		
25,000	50,000	\$4,250 + 20%	25,000		
50,000	75,000	9,250 + 30%	50,000		
75.000	100,000	16,750 + 40%	75,000		
100 000		26.750 + 46%	100.000		

TABLE 7. FEDERAL INCOME TAX RATES FOR REGULAR CORPORATIONS, 1981

Source: Tax Information on Corporations, Department of the Treasury, IRS Pub. 542. Revised, November, 1981.

TABLE 8. FEDERAL INCOME TAX AND SOCIAL SECURITY TAX COMPARISON BETWEEN A SOLE PROPRIETORSHIP AND A REGULAR CORPORATION AT VARIOUS INCOME LEVELS, 1981 TAX YEAR

¥					Ta	ax by to	tal net i	ncome	(dol.)		,		
Item	12,000	16,000	20,000	25,000	30,000	35,000	40,000	50,000	70,000	90,000	110,000	130,000	150,000
Sole proprietorship Self employment tax ¹ Federal income tax ² Total tax	698	1,412	2,243	3,460	4,899	6,535	8,410	12,658	22,632	33,316	44,969	\$ 2,762 57,441 \$ 60,203	72,609
Tax as percent of income.				23.1	25.5	26.6	27.9			-	43.4		50.2
Regular corporation Salary paid owner-manager Corporate retained earnings	\$ 7,400 4,600		\$ 7,400 12,600			\$ 7,449 27,551			\$11,549 58,451		\$ 24,299 85,701	\$ 39,249 90,751	
Federal income tax paid by owner-manager ² Total FICA tax paid ³ Federal income tax paid by corporation	_		\$ 984	\$ 984	\$ 984	\$ 990	\$ 990	\$ 990	\$ 1,536	1,222 \$ 1,995 \$16,750	_		
Tax as percent of income.	14.7	15.3	15.6	15.9	16.1	16.4	16.9	17.5	19.9	22.2	25.0	27.0	28.9
Total tax savings by incorporating	\$ 48	\$ 454	\$ 977	\$ 1,809	\$ 2,835	\$ 3,544	\$ 4,419	\$ 6,666	\$11,462	\$16,111	\$ 20,216	\$ 25,132	\$ 32,004

1Self-employment tax for 1981 tax year was 9.3 percent of net income of \$29,700 and less. Net income in excess of \$29,700 is not subject to self-employment tax. Maximum self-employment tax is \$2,762.

²Personal income tax was calculated for married taxpayers filing joint returns with standard deductions for a family of four. Personal income tax was obtained from the 1981 tax table.

³FICA tax for 1981 tax year was 6.65 percent of annual earnings of \$29,700 or less. Annual earnings in excess of \$29,700 are not subject to FICA tax. Employers match, dollar-for-dollar, each Social Security tax deduction paid by each employee. Therefore, 13.3 percent of a firm's payroll was used to pay FICA taxes. The maximum FICA tax per employee is \$3,950.

federal income taxes over a period of several years than a farm owner who incorporates his farm business.

For example, a farmer with a net farm income of \$25,000 in 1981, who declared personal exemptions for a family of four and used the standard deduction for married taxpayers filing jointly, would have had to pay \$5,785 or 23.1 percent of net farm income in personal income and Social Security taxes. However, a farm corporation with a net farm income of \$25,000 in 1981, that split the farm income between the salaried owner-manager and the farm corporation in the most favorable manner, would have lowered the total tax obligation to \$3,976, or 15.9 percent of the net farm income. This would amount to a tax savings of \$1,809. Total tax savings that incorporation can offer at various income levels are illustrated in table 8.

Disadvantages

The process of incorporation involves many formalities: reserving a corporate name; adopting a preincorporation agreement; drafting, signing, and filing the articles of incorporation; issuing shares of stock; adopting bylaws; and electing officers and directors. A corporation is also legally required to maintain minutes and reports of meetings, file public reports, and maintain an adequate set of records. The board of directors is required to formally meet at least once a year.

A regular corporation must pay federal income taxes on its corporate income and the shareholders must pay individual federal income taxes on the distributed dividends received from the regular corporation. Thus, if a corporation distributes dividends to its shareholders, there is double taxation. Double taxation is not imposed on Subchapter S corporations since they are taxed the same as partnerships. Regular corporations are not allowed as large a long term capital gain deduction as individuals. Corporations must withhold Social Security taxes from employees' salaries and wages, and are required to match the amounts withheld. The combined Social Security tax rates that the corporation and its employees must pay are higher than the self-employed rate.

Management of a corporation may be more formal than the management of a sole proprietorship or a partnership. The powers of corporate management are vested in three decision-making groups—the shareholders, the board of directors, and the officers. Shareholders of a large corporation usually give up the active

management and control of the corporation because it would be virtually impossible for each shareholder to participate in day-to-day management. However, in a small farm corporation, the same individuals usually serve in all three capacities, thus simplifying the decision-making process. Due to this commonality in membership, the shift in entrepreneurship is usually negligible.

SUMMARY AND CONCLUSIONS

Farm businesses are growing larger, including more multipleperson operations, and becoming more highly capitalized. This makes it difficult to begin and transfer larger, highly capitalized farming operations. Thus, more attention is now being given to credit acquisition, ownership liability, and intergenerational transfers of both management and ownership. The proper form of business organization can aid in each of these areas.

The purpose of this study was to examine the various forms of business organization used by Alabama farmers. Specific objectives were to determine the effects of the different forms of business organization on credit acquisition, farm income taxes paid, and capital accumulation of Alabama farmers, and to determine how alternative forms of business organization can be used as income tax management tools.

Personal interviews were conducted with Alabama farmers to determine how each farmer began his farming operation and how he financed his farm business. Federal income tax records were obtained to analyze annual taxable income and amount of income taxes paid. The oldest net worth statement available, as well as a net worth statement for the current year of operation, was obtained so that the amount of capital accumulation could be calculated.

There was little difference in total acres operated by type of business organization. There was a tendency of the families that incorporated the farming operation not to transfer land to the corporation. Three of the Subchapter S corporations and two of the regular corporations did not own land.

Gross profit, total expenses, and net farm profit or loss for each type of business organization for the tax years 1973 through 1978 were obtained. The sole proprietorships and partnerships averaged making a net farm profit 2 out of the 6 years. The Subchapter S corporations had a net farm loss for each of the 6 years. The

regular corporations averaged making a net farm profit 3 out of the 6 years. Five of the partnerships, four of the Subchapter S corporations, and four of the regular corporations paid the partners, officers, or shareholders a salary. These salaries were deducted as an expense of the farm business, which had a negative effect on the net farm profit.

All of the farms that participated in this study paid little federal income tax due to low net farm profits. State income tax was a larger burden on the farm businesses than federal income tax because the State of Alabama does not recognize long term capital gains (only 40 percent taxable) or investment credit.

There was little difference in the sources of credit by type of business organization. Most creditors require shareholders to personally guarantee corporate loans. The corporations had fewer intermediate term loans outstanding than did the sole proprietorships and partnerships.

Most of the partnerships were formed to combine management, labor, and capital resources. A majority of the partners said a partnership can more efficiently utilize labor, machinery, and equipment than a sole proprietorship.

Most of the corporations were formed for limited liability, estate planning, and federal income tax purposes. A majority of the shareholders placed more emphasis on estate planning than on the other reasons cited for incorporating. It is much easier to transfer shares of stock than partial interest in land and physical assets.

All of the corporations had less than five shareholders, issued only one class of stock, and had only family shareholders. Most of the corporations issued shares of stock in a nontaxable exchange for assets transferred to the corporation.

Objectives of both the business entity and the owner (s) must be considered when choosing a form of business organization. Some of the objectives to be considered are estate planning, business management, liability, duration of the business, and income tax planning. The objectives of a business are closely intertwined; therefore, all objectives must be considered.

Although the choice of a business organizational structure is limited from a legal standpoint, the existing forms can be considerably modified to meet individual needs. The services of an attorney and/or a certified public accountant can be invaluable

in modifying a form of business organization to best achieve the objectives of the business entity and the owner (s).

A form of business organization only provides the means of achieving the objectives of the entity and the owner(s). Management must utilize the attributes of the form of business organization to best achieve the objectives specified.

The costs associated with the formation of a corporation are usually higher than for the other forms of business organization. However, a farmer who has a profitable farming operation and files as a sole proprietor, partner, or shareholder of a Subchapter S corporation is likely to pay thousands of dollars more in federal income taxes over a period of several years than a farm owner who incorporates his farm business, due to lower corporate tax rates. A corporation also has the distinct advantages of easier intergenerational property transfer and limited liability.

Alabama's Agricultural Experiment Station System AUBURN UNIVERSITY

With an agricultural research unit in every major soil area, Auburn University serves the needs of field crop, livestock, forestry, and horticultural producers in each region in Alabama. Every citizen of the State has a stake in this research program, since any advantage from new and more economical ways of producing and handling farm products directly benefits the consuming public.



Research Unit Identification

- Main Agricultural Experiment Station, Auburn.
- ☆ E. V. Smith Research Center, Shorter.
 - 1. Tennessee Valley Substation, Belle Mina.
 - 2. Sand Mountain Substation, Crossville.
 - 3. North Alabama Horticulture Substation, Cullman.
 - 4. Upper Coastal Plain Substation, Winfield.
- 5. Forestry Unit, Fayette County.
- 6. Chilton Area Horticulture Substation, Clanton.
- 7. Forestry Unit, Coosa County.
- 8. Piedmont Substation, Camp Hill.
- 9. Plant Breeding Unit, Tallassee.
- 10. Forestry Unit, Autauga County.
- 11. Prattville Experiment Field, Prattville.
- 12. Black Belt Substation, Marion Junction.
- The Turnipseed-Ikenberry Place, Union Springs.
 Lower Coastal Plain Substation, Camden.
- 15. Forestry Unit, Barbour County.
- 16. Monroeville Experiment Field, Monroeville.
- 17. Wiregrass Substation, Headland.
- 18. Brewton Experiment Field, Brewton.
- 19. Solon Dixon Forestry Education Center, Covington and Escambia counties.
- 20. Ornamental Horticulture Field Station, Spring Hill.
- 21. Gulf Coast Substation, Fairhope.