LEGAL KITTY™ CHEAT SHEET

LLC vs. S Corp for Creators

The wrapper, the tax election, and the salary the IRS expects.

KEY PRINCIPLES

1 **An LLC is a wrapper; tax is a choice.**
By default the IRS treats a one-member LLC as "disregarded" and a multi-member LLC as a partnership, unless it elects otherwise (Form 8832).

2 **Self-employment tax is the pain point.**
12.4% Social Security plus 2.9% Medicare on net self-employment earnings, generally once they reach $400 (IRS Topic 554).

3 **The S election has a deadline and gatekeepers.**
File Form 2553 within 2 months and 15 days after the tax year starts, or the year before. Up to 100 owners, one class of stock, no nonresident aliens.

4 **Pay yourself a reasonable salary first.**
An S corp must pay owner-employees reasonable compensation before non-wage distributions (IRS). Courts recharacterize the rest.

KEY EXAMPLES

Real decisions, from primary sources

Watson v. United States
8th Cir. 2012

A CPA paid himself $24,000 while taking about $200,000 in distributions. The court treated $91,044 a year as wages.

FOR YOU **Benchmark your salary against your market.**

Spicer Accounting v. U.S.
9th Cir. 1990

Payments to an owner for substantial services were wages, not dividends.

FOR YOU **Labels don't control. Services do.**

Radtke v. United States
7th Cir. 1990

A lawyer took a $0 salary and $18,225 in dividends. The dividends were wages for FICA and FUTA.

FOR YOU **A $0 salary invites the question.**

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KEY CLAUSES

Red flag, green flag

Push back on the red. Ask for the green.

	RED FLAG · PUSH BACK	GREEN FLAG · ASK FOR
SALARY	$0 salary, all “distributions”	Reasonable salary for your services
ELECTION	Form 2553 filed “whenever”	Within 2 months 15 days, or year before
OWNERS	Foreign co-owner or another company	Only eligible shareholders
STOCK	Side deals paying one owner more	One class of stock
RECORDS	No payroll, no comp support	Payroll run; comp support documented
ASSUMPTION	“The LLC saves tax automatically”	Tax status is a separate election

Built from IRS guidance, Treas. Reg. §301.7701-3 and the cases. Sources: see the source map. Teaching examples, not forms.

GO DEEPER

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Every sheet: DM **CHEAT**
This sheet: DM **SCORP**

Don’t sign it till you read it.

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