



Get in FORMATION: Setting your
business up the right way

Entity Formation Overview

- What is an entity and why do you need one?
- The different types of entities explained
- Tax considerations
- DBAs and trade names
- Insurance
- Maintenance and staying in good standing

Entity Formation -purpose

- Why is entity formation so important?
 - liability protection is the main purpose of forming an entity
 - think about insurance—home, auto, business, the purpose is to protect your investment in the event something goes way wrong
 - think of entity formation as business insurance for your business
 - without it, personal assets are at risk

Entity Formation- types of entities

- What are the options to choose from?
 - Corporation
 - C-corp
 - S-corp
 - Non profit
 - Limited Liability Company
 - Partnership
 - Sole proprietorship

Entity Formation

- What should be considered when choosing a type of entity
 - liability protection
 - ease of formation
 - taxation
 - the type of business to be conducted
 - plans for future expansion
 - ease of sale, liquidation, transfer, and dissolution

C-Corporation

- Offers the strongest protection to owners from personal liability
- Costs more to set up
- More complex to maintain (board of director meetings, records, and reporting)
- Managed by Board of Directors
- Double taxation
 - Corporation pays tax on profits
 - shareholders also pay tax on dividends

S-Corporation

- All the same benefits of a C-corp
- Provides a way to avoid double taxation
- Allows profits and losses to pass through to the owner without the corporate tax
- Must file a form to make the election
- Can't have more than 100 shareholders and they all must be US citizens
- No federal income tax at corporate level
- Owner paid a salary therefore doesn't have to pay self-employment tax

Nonprofit Corporation

- Organized to do charity, education, religious, literary, or scientific work
- Tax-exempt
- Must file for tax-exempt status at state and federal level
- Structure and management similar to C-corp

Limited Liability Company

- Most common type
- Easy to form - everyone's "go-to" entity
- Separates business assets from personal assets
- Profits and losses pass through to personal income without corporate taxation
- Still have to pay self employment tax (Medicare and Social Security)
- Have the ability to be taxed as an S-Corp in some states
- Best for:
 - Medium-higher risk businesses
 - Owners who have significant assets to protect
 - Owners who want to pay a lower tax rate than they would in a corporation

Partnerships

- General partnerships - voluntary contract between 2 or more persons form a business and share in profits and losses
- No tax returns filed on behalf of partnership
- All profits and/or losses pass through to the partners' individual tax returns
- Remains in effect until there is only one owner
- No liability protection for partners - each partner liable to the extent of their assets for liabilities of the partnership
- Limited liability partnerships - a partnership can elect to be treated as a limited liability partnership to reduce liability for acts of partners
- Partnership between spouses increases liability exposure for joint assets

Sole Proprietorship

- Presumes one owner
- Easy to form - no filing required
- No separate tax return is filed
- All income and expenses reported on Schedule C of the 1040 individual tax return of the owner
- All liability flows to the owner
- All assets (business and personal) are subject to the claims of creditors
- ***Don't settle for this one.

Get familiar with documents

- Articles of Organization, Articles of Incorporation, Certificate of Registration - filed with the State to form the entity
- Governing documents
 - Bylaws - governing document for daily behavior of the corporation
 - Corporate Minutes - record of all actions and decisions made by directors and stockholders
 - Shareholder Agreement - sets forth the shareholders' rights and obligations
 - Management/Operating Agreement - sets forth the operating and management rules of an LLC
 - Partnership Agreement - sets forth the operating and management rules of a partnership
 - Stock Certificate - given to all shareholders as evidence of their ownership interest in the corporation
- Articles of Dissolution - filed to dissolve the entity
- Business Transfer Agreement - used to transfer or sell an entity or interest in an entity
- Exit Agreement - sets forth the terms of an exiting member or officer

EIN Number

- What is an EIN? - your business' social security number
- Why do we need them?
- How do we use them?
- What happens if we don't get one?

Taxes-best practices

- Laying a proper foundation will save you time and money in the long run
- Get an EIN number from the IRS
- Make sure all employees fill out an I-9 and a W-4 form
- Make sure all vendors/independent contractors that you pay \$600+ in one year fill out a W9 form so you can issue them a 1099 at the end of the year
- Make sure you have opened all accounts necessary with your state, including sales tax accounts, if your business requires you to charge sales tax.
- Hire an accountant to review your books and file your business taxes regularly
- Meet with a tax professional at the beginning to discuss your business and get advice on how to set things up properly from the very beginning. Repeat this meeting annually.

DBAs and Trade names

- DBA stands for “doing business as.”
- A DBA or a trade name is separate from the business’ legal name.
- This can be the name of a program, service, event, or some other name.
- The reason we register these names is to notify the public that you are doing business under a name other than your legal name.
- A DBA or trade name is NOT A TRADEMARK.
- A DBA or trade name is NOT A LEGAL ENTITY.
- If you register a DBA or trade name before you file your entity, you will be treated as a sole proprietor.

Insurance

- When starting a small business, consider business insurance
- General liability insurance - protects against property damage and bodily injury
- Worker's compensation insurance - medical care, lost wages, funeral expenses for employees with work-related injuries
- Business income insurance - also known as business interruption insurance, protects against loss of revenue due to fire, theft, or wind.
- Data breach insurance - if sensitive information is lost or stolen
- Professional liability insurance - if your business makes a mistake in your services
- Auto/property insurance - company vehicles or other property

Business Succession Planning

- Planning for the unexpected
- You should have a written agreement that sets forth:
 - How and under what terms a transfer of ownership will take place
 - If and when certain triggering events occur:
 - Disability
 - Death
 - Departure of a member
 - Divorce
- If you are the sole owner, naming a person to step in for you in case of disability or death is very important.

STAYING GOOD STANDING

- All states have filing requirements to keep your entity active and in good standing.
- Be sure to file your annual report, and pay any fees associated with maintaining your entity.
- Filing both state and federal taxes must be done annually.
- If you change your address, or your resident agent, you will need to notify your state business office and file any amendments
- If you decide to close the business, you should file the appropriate paperwork to dissolve the business.
- If you decide to do business in another state, be sure to look into the new state's foreign entity requirements.



Take action NOW!