

By Willy Campbell

Choose the Best Legal Structure for Your New Business

When it comes to setting up the legal structure of a new business, there is no one-size-fits-all solution. As the founder of the business, you will be considering one of three legal forms – sole proprietorship, partnership or corporation (which has several forms – “C” corp., “S” corp., and Limited Liability corp.). Your selection will depend on answers to questions such as these:

- Will I be the only owner? If so, you may choose to be a sole proprietorship. Easy to form, this structure also enjoys relative freedom from most government control and reporting requirements. It is also the simplest to set up and maintain.
- How important is it to me to limit personal liability for debts or claims against my business? If it is highly important, you should probably incorporate the business.
- Which legal form of business organization will result in the least amount of taxes? There is no clear cut answer here, which is one reason any small business owner should seek professional advice based on the circumstances of the owner and the business.

The greatest disadvantage to a sole proprietorship is that your personal assets and those of your family are not protected. Should there be financial problems or a lawsuit, your assets are at risk. Additional insurance can help to minimize the risk and cover liability up to a certain dollar amount; however, you also assume greater personal liability. Using this form of legal structure presents serious issues of risk that must be carefully addressed.

With more than one owner, the business can form as either a partnership or a corporation. Partnerships come in two varieties: general or limited with both giving all partners a say in the decisions. General partnerships do not require a formal written agreement, although not having one would be a serious mistake. Limited partnerships do require a formal written agreement and also the filing of a certificate with the state. The general partnership stipulates that all partners have unlimited personal liability, but in a limited partnership, partners are typically liable only to the extent of their investment.

The main advantage of incorporation is the limited financial liability of the owner. Personal assets cannot be attached and ownership is transferred through the sale of stock shares. The corporation is a legal entity and will continue to exist until its legal dissolution, even if one of the principals in the business should die.

There are different types of corporate structures. A “C” corporation has government control and reporting requirements; additionally, corporate earnings are subject to double taxation –first profits, and then the shareholders’ earnings through dividends. As an owner, you may draw a salary which, of course, will be taxed at an individual rate. However, an

“S” corporation provides the limited liability of the regular corporate structure and earnings are flowed through to the individual owners being then taxed at their individual rates. These are two significant benefits to this structure. A Limited Liability Company (LLC) offers the benefit of limited liability without being as complex as a corporation.

To learn more about legal structure options or to discuss other business issues, contact the Sandhills Chapter of SCORE “Counselors to America’s Small Business”. SCORE is a nationwide nonprofit association of expert business counselors who provide free and confidential business counseling to small business owners. The Sandhills Chapter is very active in counseling, mentoring and presenting free business seminars. It is currently expanding these activities and is seeking motivated volunteers. You can reach the Chapter via the web at www.sandhillsscore.org or at 910-692-3926.

Remember – send your business questions to me at www.info@sandhillsscore.org and don’t forget to provide a way to contact you. I may not be able to answer all of them in this column but every one will receive a personal answer from one of our Sandhills SCORE counselors!