



SHOULD YOU #INCORPORATE YOUR #BUSINESS?

#Corporation#Incorporate#Business#LimitedLiability#Taxes



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SHOULD YOU INCORPORATE YOUR BUSINESS?

You have a great business already going, and you'd like to expand. Or you have a dream to have your own business. Maybe you have a product or service you believe has a terrific chance for success. You may have a strong desire to join the millions of entrepreneurs who have gone into business for themselves.

Congratulations! You have the right spirit.

But you are unsure of whether you should run your business as a corporation or as some other entity. You've heard that with a corporation you can protect your personal assets from lawsuits. You've also heard there is a lot of paperwork involved in running a corporation versus other kinds of entities, like a sole proprietorship.

When a client comes to me with the intentions of incorporating a business—either a new one or an established venture—I like to review the pros and cons of incorporating. Let's consider them, shall we?

WHAT IS A #CORPORATION?

A **Corporation** is a legal entity separate and apart from its owners (shareholders). It has its own legal structure, accounting systems, and management structure separate and apart from a sole proprietorship or a partnership. The law treats it differently than those forms of business. It may also provide more assurance to potential customers of the value of dealing with it.

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#LIMITED LIABILITY

The Sole Proprietor or the members of a General Partnership are **personally** liable for the debts, torts (injuries caused by the business to third parties), taxes, and all other claims by others against the business. Their personal credit ratings may be affected.

With a Corporation, the personal assets and credit ratings of its shareholders are **protected** against the claims and debts of the corporation. The most its shareholders can lose, even if the corporation files for bankruptcy, is the value of their shares in the corporation.

There are, generally speaking, three exceptions to the limited liability shield of the Corporation. First, if it is a Closely Held Corporation and the shareholders are also its employees, they may be sued personally for the torts (private injuries) they cause as employees of the corporation.

Second—and this one is very important — they may be liable if the plaintiff (the party suing) can pierce the “**corporate veil.**” Generally the corporate veil (shield) can be pierced if the dominant shareholders have ignored the statutory requirements of maintaining separate books and records, failing to conduct annual meetings of the shareholders, or commingling their personal funds with the corporation’s funds. I emphasize this as a warning: many shareholders in close corporations frequently commit one or more of these corporate “sins.”

Third, many lenders may require the shareholders to personally guarantee loans to a close corporation. While this may occur, it is not by itself a reason to elect not to form a corporation.

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#TAX CONSIDERATIONS



Income of a **“C” Corporation** will be taxed to it, separate and apart from the incomes of the shareholders. If the Corporation makes a lot of money, it will be liable for the taxes, but it won't increase the shareholder's personal taxes.

The downside is that any losses by the Corporation affect only its taxes. The shareholders can't apply those losses to their own taxes, as they can in a sole proprietorship or a partnership.

However, it is possible to create a **“Subchapter S” Corporation** in which the profits and losses can be passed through to the shareholders, so they can declare them on their own taxes, while still retaining the limited liability protections of the Corporation. This subject is far too complicated for me to explain here, but I would happy to help you decide whether it is the right course for you.

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SELLING SHARES OF #STOCK IN THE CORPORATION



One of the biggest benefits of the corporate structure is its **ability to sell shares of stock** to other persons. This gives it the ability to raise money for expansion, operating costs, and other needs, thus helping it to grow.

In a Partnership, one can also sell shares to other persons. But then those persons become equal partners in the business, with the right to direct and manage its affairs. The founder of the business may not want to share ownership and control with others.

With a corporation, the shareholders do **not** have the unfettered right to manage the business—unless they are also majority shareholders and/or members of the board of directors. Of course, if they don't like the way the business is being run, they can always elect new management.

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ANONYMITY

One big advantage of Incorporating is that you can run your business anonymously. While you can also operate a sole proprietorship or a partnership under an assumed name, a Corporation can give you a higher measure of anonymity so that few people know that you are the true owner. In addition to hiding your name, you can also hide your personal home address, as well as other identifying information. These days, when Google and the internet make so much of everyone's information public, the privacy advantages of being incorporated are all the more valuable.

DISADVANTAGES OF INCORPORATING

- Initial Costs of Incorporating
- Yearly franchise fees to the state of incorporation
- Increased paperwork
- Double Taxation (Possibly avoidable under Subchapter "S")
- Need to comply with government regulations
- Corporation must file its own tax returns to federal, state & possibly local.
- May be difficult to dissolve upon closing up of the business.
- May have to relinquish some control of the business.

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RETIREMENT FUNDING

With a corporation, you can establish qualified retirement plans, like a 401 (k), to help you put away money for retirement. There are substantial tax benefits by creating and contributing to such plans.

TYPES OF CORPORATIONS

Corporations may be “C,” “Subchapter S,” “LLC,” “Professional Corporations,” “Professional Limited Liability Company.” Each has advantages and disadvantages. It is important to know which form of corporation is best for your business.

IS INCORPORATION RIGHT FOR YOUR BUSINESS?

There is no right or wrong answer. Every situation, every business goal, is different.

Incorporation may be the perfect way to run your business. But there are other alternatives that may work even better for you. It is important to explore all possible alternatives, with our guidance.

I have counseled many clients on the formation of corporations, as well as their alternatives. I myself have created several corporations, including New Lincoln Theatre, Inc., a commercial theater company, and Grippo Stage Company, a 501 (c) (3) public charity.

Please contact me and I will review your needs, goals, and options.



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