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LEGAL CONSIDERATIONS WHEN STARTING A NEW BUSINESS

By Jessica H. Miller

Starting a new business brings with it a host of legal and tax considerations as well as numerous practical issues that must be addressed to create and operate a successful business.

PLANNING FOR A NEW BUSINESS

One of the most critical components to successfully build a new business is planning. At this initial juncture, it is important to plan for the management of your business, the financial needs of your business, your business model, your own personal and professional goals and the goals of the business. One of the most useful means to address these issues is a business plan. The creation of a business plan can be a valuable process as it forces you to spell out how you will go about forming your new business and requires you to do the necessary advance planning needed when considering the formation of a new venture. It also will be a valuable tool to generate interest from perspective investors, management, key employees or strategic partners as well as to provide a guide for you in carrying out your plan.

CHOOSING A BUSINESS STRUCTURE AND FORMATION

From a legal and tax perspective, one of the most important aspects in starting a new business is the selection of your business structure. Companies can form as sole proprietorships, corporations, partnerships, or limited liability companies. Within these four basic categories for business structures, there are also a variety of sub-categories, such as s-corporations, limited partnerships, limited liability partnerships, joint ventures, etc. No one single business structure is right for every business, and the proper choice of a business structure will vary greatly depending on the your businesses' specific needs and goals. Your choice of a business structure will significantly affect your liability associated with the business, how the business must be legally operated, and how the business (and the income you receive from it) will be taxed. Therefore, it is vital that any new business consult with an attorney and a tax professional such as a CPA to provide advice on the selection of a business structure.

LEGAL & TAX IMPLICATIONS

Once a decision has been made about the business structure, the new business will need to complete the steps necessary to form the selected business structure, which typically involves filings with a state to form the business and the drafting of legal documents governing the businesses operations. Certain businesses, depending on their type of business and location, will need to obtain a variety of other governmental licenses, permits or approvals, dealing with issues such as local business licenses, sales tax, employee taxes and withholding, special licenses or registrations (such as liquor, health department, regulatory licenses). Also, the business will need to be properly operated in accordance with state laws and its own governing corporate or other documents. Businesses will also need to consider tax implications of its business operations and ways to help minimize tax burdens. An attorney and tax professional can provide significant assistance in properly establishing and

operating your chosen business structure and obtaining necessary governmental licenses, permits and approvals.

EMPLOYEES AND OPERATIONAL CONSIDERATIONS

If your new business will have employees, there are an assortment of further considerations and steps involved in starting a new business, such as obtaining an Employer Identification Number (EIN) from the IRS, setting up payment of employee withholding, unemployment and other taxes, employee benefits, worker's compensation insurance, payroll and creating employment contracts and manuals. In operating your business, there are many other considerations such as obtaining adequate insurance coverage for your type of business, acquiring or leasing business locations and equipment, drafting or review of contracts for clients or vendors, and equipment leases or acquisition. There will also be numerous financial considerations for start-up capital, such as investor funds, business loans and government or other business incentives.

RESOURCES AVAILABLE FOR NEW BUSINESSES

There are a variety of resources available for starting a new business. If you are starting a local business, local business organizations such as the local chamber of commerce can be a helpful resource. One of the most beneficial resources for those starting a small business is the U.S Small Business Association (SBA) (www.sba.gov). The SBA provides a tremendous amount of information and tools for starting and operating small businesses, including, personal counseling and assistance, online training, listing of contract and business opportunities, specialty groups for women, young entrepreneurs, minorities, etc., and online resources and references. In addition, the SBA also offers financial assistance, in the form of grants, surety bonds, and government-backed small business loans.

PROFESSIONAL ASSISTANCE

If you are starting a new business or are in the planning stages, you should consult with an attorney and a tax professional given the complexities associated with starting a new business, selecting a business structure, obtaining necessary permits and licenses, and legally and properly operating your business. In many instances, a small initial expenditure on professional advice at the time you start your business can save you significant future problems and cost, can ensure your business complies with all relevant laws, and can ensure your business provides the best protection from liability and lawsuits available.

HOW CAN I GET HELP STARTING A NEW BUSINESS?

If you have questions about starting a new business or need legal representation for your existing business, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

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