

TAKING CARE OF BUSINESS

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as appeared in the Alamance Magazine

Perhaps you are among the many citizens of Alamance County who lost jobs in this uncertain and sluggish economy. Conversely, you may be gainfully employed but still worried about job security or committed to parlay your workplace experience and entrepreneurial skills into a business of your own. Anyone contemplating establishing his or her own business should consider the selection of a business entity structure as an integral part of the Business Plan. The decision regarding the most appropriate legal entity structure for your business depends in large part upon (i) the number of individuals having a business ownership interest and the relationship between those people, (ii) the goals and objectives of the business owner and (iii) the type of business to be operated.

The form of business entity selected should obviously meet the needs of the business owner. Before examining the critical factors in choosing a business structure, the reader must be aware of the choices available to North Carolina start-up businesses. The four basic categories of entities available under North Carolina law for the operation of a for-profit business are (i) the sole proprietorship, (ii) the partnership, (iii) the limited liability company and (iv) the corporation. What follows is a list of general factors which I contend should be considered when selecting a structure for your start-up business.

Sole Proprietorship

1. Single business owner;
2. Little possibility of adding additional owners in the short to intermediate term;

3. Business is not inherently dangerous nor one in which there is an above average likelihood of liability;
4. The owner seeks the least expensive mode of business formation and the one that requires little maintenance or periodic reporting; and
5. The goal of the proprietor is to form the business quickly and at little expense.

Partnership

1. Multiple business owners;
2. The potential for expeditious business formation is present since no formal regulation is required;
3. The business is not inherently dangerous and the potential for litigation and liability is average or less; and
4. The business formation costs can vary greatly depending on how sophisticated one makes the partnership arrangement. It has the potential for quick and low cost formation (including an oral arrangement) if the partners are willing to assume the accompanying risks.

Limited Liability Company

1. May be used in situations involving one or multiple member/owners;
2. Provides greater flexibility and opportunities for tax planning;
3. Offers limited liability protection to member/owners so it may be used in businesses that are inherently dangerous or result in above average litigation and liability;
4. Allows for multiple owners to enter and leave the entity in a more orderly fashion; and
5. Is a form of ownership that provides flexibility for innovative tax planning and a wide variety of employee benefits and compensation alternatives.

Corporation

1. May be used in situations involving one or multiple shareholders;
2. Provides greater flexibility and opportunities for tax planning;
3. Offers limited liability protection to shareholders, officers and directors so it may be used in businesses that are inherently dangerous or result in above average litigation and liability;
4. Allows for multiple owners to enter and leave the entity in a more orderly fashion;
5. Is a form of ownership that provides flexibility for innovative tax planning and a wide variety of employee benefits and compensation alternatives;
6. Ownership interests are more easily marketable;
7. Offers a wider range of traditional and nontraditional capitalization and loan options;
8. Owners must be willing to assume a greater level of regulation and maintenance activities and filings;
9. Offers the ability to retain earnings;
10. Can have perpetual existence; and
11. Shareholders need not be compatible since business operations entrusted to officers and directors.

Entrepreneurs considering starting a business should not leave the choice of the business structure to chance or whimsy. A well-reasoned decision during the business formation stage can save a great deal of expense and effort down the road. Converting from one business structure to another can often cause adverse tax consequences and the loss of certain benefits and flexibilities. This is an area in which the business owner would be well advised to seek advice and

consultation from professionals such as attorneys and accountants. If you are either just starting a business or thinking about doing so, I hope you will find this information helpful. Good luck.

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