

Starting a Business in Hawaii

The ABC's of business registration & other info you MUST know

Business Structures



Which Entity is "The Best"?

- No one entity type is better than another.
- Selection depends on the needs of your business.
- Let's look at the factors to consider...



Factors to Consider:

- Ask yourself:
 - Will you be self-employed?
 - How many owners?
 - What kind of liability protection do you want/need?
 - Who will have managerial control of your business?
 - How will the business be taxed?

What is "Self-Employment"?

- You are not an employee.
- Self-Employment Taxes:
 - Social security and Medicare tax
 - Tax rate is 15.3% (12.4% + 2.9%)
 - Max of \$113,700 (2013) of earnings subject to social security (12.4%)
 - You can deduct half of your SE Tax to figure AGI for net income tax purposes

How Many Owners Do You Have?

- Number of owners may drive your decision on business type.
- One owner: sole proprietorship, corporation (depends on state law), or LLC
- More than one owner: partnership, corporation, or LLC



Liability Protection

- How much do you need and how do you get it?
- What kind of activity are you engaged in?
- Do you have co-owners?
- Limited by entity selection and/or insurance



Management: Power Structure

- Who controls operations? Signs legal documents? Makes business decisions? Signs checks?
- Will you have investors (silent "partners")?
- Will all owners have decision making powers?



Tax Planning

- Who is responsible for paying the tax?
- Will you be subject to self-employment taxes?
- The type of entity you select determines the tax forms you need to complete.



Sole Proprietorships

- Easiest form of doing business.
- Optional: Trade Name registration.
- Self-Employment Tax
- Estimated Tax (for Net Income Tax)
- Liability protection: unlimited; only through insurance coverage.

General Partnerships

- Two or more self-employed owners called "partners."
- Equal control and equal liability (jointly/severally liable for debts/obligations of business).
- Winds down upon death, disability, etc.
- Unlimited liability (option: insurance)
- SE and Estimated Taxes
- Partnership is disregarded for NIT purposes

Limited Partnerships

- Two classes of partners
 - General Partner (at least one)
 - Limited Partner
- Other features same as general partnership

Corporations

- Corporate formalities
- The cast: shareholders, board of directors, officers
- Lifespan: unlimited
- Liability: limited to investment
- "Double taxation"
- Wages are deductible



A Word About Liability

- Two types of liability
 - Contractual
 - Tort
 - Intentional: no escape
 - Negligence: may claim respondeat superior
 - Piercing the corporate veil
 - Vicarious liability (torts committed by your partners/co-owners)



S Corporations

- Registered as regular corporations, but not as flexible
- Make a tax election with IRS
- Limitations:
 - 100 or less shareholders
 - No foreign investors (nonresident aliens)
 - Only one class of stock
 - Subject to close scrutiny by IRS
- Taxation: income flows-through, but entity is not "disregarded"

Limited Liability Partnerships

- Partners are insulated from vicarious liability of other partners
- Partners are not liable for debts/obligations of business solely because they are partners
- Other features similar to general partnerships

Limited Liability Companies

- Single-Member or Multiple Member?
- Control: member-managed or manager-managed
- Liability: limited to investment
- Lifespan: at-will or termination date
- Taxation: sole prop/partnership vs. Corporation & S Corp



Business Registration

- Business name & entity formation is a matter of state law.
 - DCCA-BREG filings: REQUIRED
 - Formation of business entities, except sole proprietorships
 - DCCA-BREG filings: OPTIONAL
 - Trade marks/service marks
 - *Trade Names* -- optional most of the time

Business Registration; Trade Name

- Sole proprietors can register trade name; not required (unless specific law or your bank says so)
 - TRADE NAME = fictitious name.
 - Registration doesn't mean you own the name
 - Then why register?

Business Registration; Marks

- There are 2 different kinds of marks you can register on the State level:
 - Trade Marks: represent the goods sold (like the Nike "swoosh")
 - Service Marks: represent a kind of service sold (like Jiffy Lube; UPS Delivery Service)



Business Registration Marks; Con't

- State level marks can be made of words and/or a symbol that distinguish the goods or service



Federal Business Registration Info

- **The U.S. Patent and Trade Mark Office** registers marks (includes "untraditional").
 - Patents grant property rights for inventions
 - There is **no** federal Trade **Name** registration
- **U.S. Copyright Office:** for original works of authorship like music, books, movie scripts, art, etc.

Other Biz Reg. Notes

- Remember to file DCCA annual reports if you registered a business entity (e.g., anything other than sole proprietor)
 - Bad things happen if you don't!
- You may convert entity type

Tax Licensing with DOTAX

- General Excise Tax License
 - This is Hawaii's basic business license.
 - Every business that conducts activity in Hawaii must have a GET license.
- Other tax licenses may apply
 - Examples: retail tobacco, transient accommodations, etc.



Department of Labor

- Register as an employer
 - Unemployment Insurance Tax
- Information on what kinds of insurance you need to provide or offer to your employees
 - Worker's compensation
 - Temporary Disability
 - Prepaid Health Care



Federal Internal Revenue Service

- Federal Employer Identification Number (FEIN)
 - It's a federal tax ID number for businesses
 - Required for certain businesses
 - Recommended in certain situations; better to use than a social security number



Business Action Center Highlights

- Government Requirement Sheets
- Small Business Administration Business Loans every Monday
- SCORE Hawaii business counselors
- HSBA Volunteer Attorney Program every Thursday

WE UNDERSTAND
THAT SMALL
BUSINESS IS
Big Business
IN HAWAII.



**MAHALO FOR YOUR
ATTENTION!**

Any questions?
Call us on Oahu:
586-2545



*Business***Action**Center

