

WHEN TO INCORPORATE

An Article by William A. Taylor One of the Business Lawyers

If a person is "doing business," it is reasonable to expect the normal ups and downs of the business cycle. "Downs" are obligations (bills) that are greater in amount than the income during the same period. A prolonged period of downs will cause the business owner to declare bankruptcy.

A business owner can be an individual (including a husband/wife combination), a partnership, a corporation or a limited liability company (LLC). If the business is one where people could be hurt, the owner of the business should be a corporation or an LLC. If the business is one where no one would ever be harmed, e.g., providing a telephone number to call where, for \$1.00 the caller hears a recording, "Here's wishing Good on You," there is no one who will be harmed, except possibly the phone company - if not paid.

All other businesses carry the potential of harming someone or something. Insurance is one answer before incorporation. However, depending on the activity, enough insurance may not be affordable, i.e., the insurance premiums are so high that paying them takes all of the profit of the business. Physicians have been facing that for years now.

Forming a corporation or an LLC is similar to buying an inexpensive (cheap) insurance policy. The \$800 franchise fee, that is required to be paid each year by a corporation or an LLC, is used by the state to pay the system to protect the corporation owner or LLC owner from personal liability - the same as an insurance policy. The corporation and LLC are good for absorbing liabilities in excess of the insurance purchased for the business; they will absorb that excess liability, leaving untouched the houses and personal assets of the owners of the corporations doing the business (and the accidental hurting).

When to incorporate or form an LLC? My answer is "as soon as one starts doing business." However, since most corporations will initially elect S corporation status, they and most LLCs will have December 31 year end dates. It would be a waste of \$800 to incorporate or form an LLC now, before January 1, if you can wait a month. As far as the tax people are concerned, your corporate year of one month requires an \$800 payment, just as much as a 12 month corporate year.

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