

LLC or Corporation: Which Legal Structure is Better for Your Business

By Peter Russel

When starting a business, choosing the best legal form is a serious matter. If you don't want your personal assets to be at risk, your choices are between a Limited Liability Company (LLC) and a Corporation. Both entities provide the limited liability protection that you want. What other criteria should you examine before making that decision?

Two major criteria come to mind: taxes and record keeping. Which legal structure will minimize the taxes that you owe the federal government and keep administrative paperwork to a minimum as well?

According to the Georgia Secretary of State, the LLC has been the entity of choice for most business owners by about two to one over the past two years. The reasons for it are varied. It appears that many people choose the LLC because it costs less to set up and there is little administrative paperwork involved in maintaining it; no required annual meetings, no required minutes to keep. There are no company taxes, only personal taxes on the profits. The profits of the LLC are typically considered to be earned income and subject to the social security portion of the self-employment tax.

By contrast, a regular corporation (C-Corporation) is subject to being taxed twice on its profit; at the corporate level and when the profits are distributed to the shareholders. Furthermore, if your company shows a loss in any one year, those losses can only be used against past or future profits of the business, not as a personal tax deduction.

To avoid paying corporate taxes, apply for the IRS S-Corporation status. Additionally, the dividends that you take from the S-Corp are not subject to the social security portion of the self-employment tax and any losses incurred by the business will be a personal tax deduction for you.

A corporation is required to have by-laws, annual board meetings and shareholder's meetings, and keep corporate minutes, among other required activities. These activities are called corporate formalities and are required under state law to be followed otherwise the limited liability protection may be in jeopardy under the legal concept of "piercing the corporate veil."

To minimize the administrative activities, you can set up a statutory close corporation in Georgia. According to the Georgia Business Corporation Code, a corporation having fifty or less shareholders may become a statutory close corporation. This means that the corporation can eliminate the board of directors and all board meetings. It does not have to adopt by-laws. No annual meetings need take place. There will be no

need for corporate minutes. Making the corporation a statutory close corporation can be as simple as including a statement to that effect in the articles of incorporation.



Still uncertain which structure to use? Be sure to weigh the advantages and disadvantages of each entity and seek competent legal and tax advice before making your decision.

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