

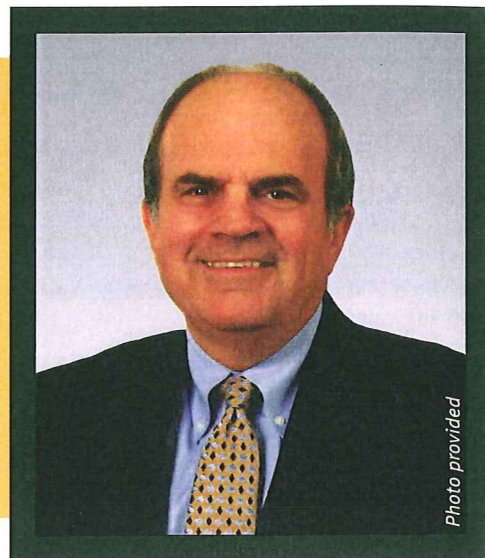
TO GO ONLINE OR NOT TO GO ONLINE?

ATTORNEYS ARE KEY ENTITIES IN STARTING A BUSINESS

BY KATE BUDDENHAGEN

One of the first steps in starting a business is determining what type of business entity to be. Unless you have gone through the start-up process before or are educated in law and finance, you probably aren't certain of your options or what the implications of your decision might be. With the various online resources about starting a business, it can be easy to get sucked in to trusting the Internet to provide you the information you need. But should you take the Web's advice?

Charles Schaefer



Charles Schaefer, attorney at Walter & Haverfield LLP, feels it is important to consult an attorney before making the leap into business ownership. "Sure you can go online as long as you know how to use a computer. Should you? Probably not," he states.

When starting a business, there are a lot of factors that play into the decision on whether or not to be a Corporation (Corp.), Limited Liability Company (LLC), S Corporation (S-corp), Partnership, Limited Liability Partnership (LLP), etc. For the average entrepreneur, according to Schaefer, "There are basically two options: a corporation and a limited liability company." And when making the decision between them, he says there are usually two influential concerns: limiting personal liability and exposure and minimizing the taxes you have to pay.

"There are two major kinds of liability. Contractual - if you sign up and promise you're going to do something; or depending on your business, tort liability - someone slips and falls on the premises or your delivery truck runs into something."

Schaefer also breaks down the tax options into two types. You can be taxed at the entity level, meaning the business files its own separate taxes, or you can pass through all the tax consequences on to the owner. "Pass through tax characteristics means that as the owner of the business, whatever earnings or losses go onto your personal tax return, so that you pay taxes in your own personal tax bracket."

According to Schaefer, the fundamental difference between an LLC and a Corp. is an LLC has limited liability and pass through tax characteristics, whereas a Corp. has limited liability with no pass through tax characteristics.

There are a number of other options, but some of them are specialized and include variations to liability and taxation. "It's not a simple answer, but that's what you need a lawyer for," he states.

According to Schaefer, Congress is changing the tax consequences of it all the time. "Just look McCain's and Obama's health care programs. McCain says 'I'm going to give tax credits' and Obama says 'I'm going to have universal health insurance.' Well both of those will affect whether you're an LLC or Corp. But my crystal ball doesn't tell me how," he says.

Not only can't his crystal ball tell us who the next President is going to be, it and Schaefer don't know yet how the new leader will change the taxes. "All these little things are examples of what's

not online," he says. "Yes the forms are online. But every action has a reaction. Every step you take has a consequence that is not necessarily described online."

Schaefer backs up his opinion using an analogy. "You can go online and find out what your medical ailment is, but how do you know what medicine to take unless you talk to someone that knows the side effects and the interactions of the medicine?" he asks. "But you could figure out your own medicine, and assuming it's all over the counter, you could go buy all your medicine at the drug store. And it could kill you if mix the wrong medication. That's kind of how I feel about going online and picking and choosing."

Schaefer further notes the accountability factor. "If I give that medicine to a client, I know what I've given them," he says. "And there is somebody that is responsible if it's the wrong medicine. If you pick it yourself, you only have yourself to blame. You may be sick, dead, who knows."

He compares legal advice to insurance. He feels lawyers are selling advice, time and knowledge, and that is an insurance policy. "You're being told how to do it right," he says. "You never get a return on your insurance." And Schaefer feels if the legal advice is given properly, you should never have to make a claim. ■

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