

Should You Incorporate Your Business?

By:

Harry G. Gordon, Attorney

Gordon Law Offices
Foundation Place, Suite 300
330 S. Greene St.
Greensboro, NC 27401

tel. (336) 275-9910

fax. (336) 275-8797

EMAIL: gordonhg@bellsouth.net

WEBSITE: www.hggordon.com

*Harry G. Gordon is admitted to practice in New York, Virginia, and
North Carolina*

Should You Incorporate Your Business?

by Harry G. Gordon, Attorney-at-Law

Perhaps the best reasons to incorporate a start-up business or an existing business are:

1. **Limited liability**—Limit your personal risk of loss or being sued;
2. **Tax savings and tax planning;**
3. **Avoiding partnership risks;** and
4. **Flexibility, transferability, credibility, anonymity, and more.**



1. Limited Liability—Limit Your Personal Risk of Loss or Being Sued – Think poker. In the game of poker, you risk only what you put in the pot. Surely you would never put all of your assets—furnishings, cars, clothing, jewelry, and so forth “at risk” when you play a hand of poker. As a general rule, a corporation allows you to limit what you are willing to put “at risk” in a business venture.

Claims and lawsuits – If your business is sued for breach of contract or breach of warranty, you can avoid liability if you have incorporated and your corporation signed the contract or made the warranty. Many business ventures do fail. When that happens, there are often monies owed to suppliers, landlords, advertisers, telephone companies, utility companies, and much more. Unless you have personally guaranteed those obligations, they are the obligations of the corporation, not your obligations as the owner of the corporation.

2. Tax Savings and Tax Planning

Save on Social Security Taxes – The use of an “S” corporation, with proper planning, can avoid substantial Social Security taxes. Social Security taxes are fast becoming the most onerous tax of all. Sometimes an owner can easily save \$3,000 to \$4,000 per year in Social Security taxes with very little planning or paperwork.

Medical Expense Reimbursement Plans; Medical and Life Insurance – As a general rule, a “C” corporation can offer better benefits in this area. However, you must be careful to avoid “double taxation” when dealing with a “C” corporation as the entity itself must pay taxes before it pays dividends to you—which dividends are taxable (again) in your hands.

Should You Incorporate Your Business?

Page 2 of 3

Additional Tax Write-offs; “Presumption” re Expenses – If you are doing a startup business that was begun as a hobby, the simple act of incorporating will increase your credibility with customers as well as the IRS. Having a corporation, a corporate bank account, and expenses paid by the corporation greatly increases the likelihood that the IRS will believe you are in a business and entitled to write-off items and expenses the IRS might otherwise challenge. And, your customers no longer will be required to send you (and the IRS) a 1099 each time they pay you more than \$600 in one year.

Tax Benefits to the “Capital Partner” are More Assured – Buying stock in a corporation or having a “capital account” in an LLC is much easier to do and much less likely to lead to confusion than the typical partnership. Indeed many partnerships are little more than oral agreements that can present serious title disputes when a partner leaves. The LLC is particularly well suited for “unequal contributions of control.” It allows for example, two “partners” each to own 50% of an LLC, but one, say, has a “capital account” of \$100,000 and the other has a zero balance in his capital account, having put in only labor and having never put any capital in the business.

3. Avoiding Partnership Risks – If more than one person is involved, the roles and ownership interest are more clearly defined if you incorporate or form an LLC. Partnerships and loosely-defined joint ventures place your personal assets at risk. Under partnership law, all of your assets can be placed at risk because your “partner” makes a bad deal or has an on-the-job accident. Incorporation better facilitates a distinction between the “investor” who merely puts up capital and the “worker” who only puts up labor.

4. Flexibility, Credibility, Transferability, Anonymity, and more – A corporation easily allows for multiple owners, multiple roles (active versus passive, capital contributor versus labor contributor), transferability of interest, differing risks to stockholder, and so forth.

For small business ventures, the creation of a corporation or LLC enhances credibility. Furthermore, many large corporations prefer not to deal long-term with unincorporated entities as they are required to provide IRS Form 1099 to unincorporated entities. They also run the risk that, with a long-term relationship, the small-business “doing business as” or in the individual’s name can be considered an employee under labor law, federal income tax withholding laws, state income tax laws, pension laws, worker’s compensation laws, negligence law, and more. For these and other reasons, your business customers often prefer to deal with incorporated entities and LLCs.

Should You Incorporate Your Business?

Page 3 of 3

Collection Actions; Counterclaims – Business owners often worry about the risk of being sued. However, many times it is your own need to sue to collect on accounts that can be an equally important reason to incorporate. When you yourself face the need to collect from others, suing in the corporate name rather than in your own name is much preferred, for reasons of anonymity and in case of potential counterclaims.

Minority/Female Business Qualification – It is often easier to qualify as a minority or female-owned business by incorporating and clearly defining ownership and control.

Employee Problems—Sexual-harassment Suits, Discrimination, etc. – Many of these risks can be substantially reduced or avoided altogether by incorporating. Many a million-dollar claim has been stymied by the fact that the owner, who did nothing wrong, simply collapses the corporation or LLC and starts another business.

Who should incorporate my business? Because of the complexities involved in the choice of corporate form and the many issues discussed above and elsewhere, statutory law in many states declares it unlawful for anyone other than a licensed attorney to incorporate a business. Attorneys take courses in incorporation, contracts, tax law, property law, and much more, and many spend hundreds of hours perfecting forms and dealing with the issues addressed above. Many attorneys charge relatively low fees to do all that is required to incorporate and are quite competitive with non-attorney offerings that are not actually permitted in many, perhaps most, states. Unless you are prepared to devote similar amounts of time and attention to becoming an expert in these matters, not only should you have an attorney do your incorporation, but you should insist that the attorney you select have substantial experience in corporate matters. Many, many small businesses improperly incorporate or “partially incorporate,” only to learn later they made critical errors. When years later they get sued or otherwise need the protections offered by a corporation, they learn that mistakes made at the outset permit creditors or others to “pierce the corporate veil” and deny to the owners most or all of the benefits of incorporation. (See *Most Common Mistakes in “Self-Incorporating”*)

Costs to incorporate – For initial consultation and advice; tax analysis and advice; name reservation; certificate of incorporation; filing with Secretary of State; By-Laws; Minutes; Organizational Meeting of Board of Directors; issuance of initial shares; capital pay-in; authorize opening of bank accounts; corporate book with seal, shares, and sample minutes. Approximately \$200.00 in filing fees, taxes, corporate kit, and expenses, and \$475.00 in legal fees. Total cost: \$675.00 in most cases. (The Secretary of State charges an additional \$100.00 to \$200.00 for expedited filing, when a very prompt turn-around is needed.) The fee for a Limited Liability Company (“LLC”) ranges from \$875.00 up, depending on the amount of tailoring required, persons involved, and so forth.



Harry G. Gordon
Attorney At Law