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CHOICE AND LOCATION OF ENTITY

Choice and Location of Entity: Sole proprietorships, Partnerships, limited liabilities companies (LLC's) tax as partnerships, S & C - Corporations;

THE ADAMS LAW OFFICES, LLC would be glad to assist you in determining what business entity is right for you and provide you with exceptional Incorporation Services from beginning to end. We will also assist and guide you through all matters related to this important process. Please see the general information below regarding the best business entity for you. Please contact THE ADAMS LAW OFFICES, LLC today to discuss how incorporating your business can provide substantial benefits to you and your business.

What is the right business entity for you? Where should you incorporate your business?

Choice of business entity can be a vexing problem even among experts. Fortunately, from a tax viewpoint there are really only four types of entities to choose from:

- (1) Sole proprietorships (SP)**
- (2) Partnerships (Pshps), including limited liabilities companies (LLC's) tax as partnerships;**
- (3) S-Corporations (S-Corps)**
- (4) C-Corporations (C-Corps)**

The right entity for you will depend on many competing considerations. We can help you make the right decision. We offer the following summary of our general recommendations to clients on choice and location of business entity:

1) No one should operate a business as a proprietorship or general partnership:

- a. In an increasingly litigious society, the limitation of one's personally liability for business debts and obligations is usually paramount. The SP offers no protection from personal liability for business debts;
- b. SP's file Form Schedule C to report business income or loss on their personal income tax return. In our experience, Schedule C is the form most audited by the Internal Revenue Service and the form most likely to cause you to pay the maximum income and self-employment tax on your business earnings;
- c. Income you earn as a SP must be reported to you by the payor on Form 1099-MISC. No such reporting is required if you operate as a Pship/LLC, S-Corp or C-Corp.

The information in this document is for informational purposes only and shall not be construed as legal advice.

2) Most closely-held businesses should operate as S-Corporations if they can qualify:

- a. As with the C-Corp and LLC, the S-Corp provides its shareholders/owners with limited liability protection. Your liability as a shareholder is limited to the amounts you invest in the company;
- b. An S-Corp pays no income tax. Each shareholder reports his proportionate share of the company's profit or loss on his personal income tax return. This avoids the possible double-taxation of earnings that can occur in a C-Corp;
- c. Shareholder/Employees of an S-Corp pay NO self-employment tax on earnings distributed to them as dividends. With the SE Tax rate at 15.3% of wages or self-employment income, this can result in a substantial tax savings;
- d. If the S-Corp initially operates at a loss, these losses could be deductible on a shareholder's personal tax return to offset other income and reduce overall personal income tax;
- e. An S-Corp may provide opportunities for shifting family income to lower bracket taxpayers (children or grandparents) so as to limit a family's overall tax burden;
- f. An S-Corp may use the cash method of accounting without the limitations that apply to C-Corps;
- g. An S-Corp incurs NO corporate level tax upon the eventual sale of its assets or businesses;
- h. If the S-Corp should no longer be desirable, it can easily be converted to a C-Corp.

3) A C-Corp may be desirable under certain circumstances:

- a. You already have a business operating as an S-Corp and you want to obtain the benefits of a C-Corp with another or new business you own;
- b. A C-Corp allows you to accumulate up to \$50,000 of income annually at a federal rate of 15%;
- c. Shareholders/Employees of a C-Corp are entitled to deduct certain corporate benefits not available to S-Corp Shareholder/Employees, most notably expenses incurred under a Medical Reimbursement Plan;
- d. The business is interested in raising money from investors and eventually pursuing a public offering of its stock or desires to establish an ESOP;
- e. C-Corps receive a "dividend received deduction" for dividends paid on their investments other companies;
- f. With limitations and certain exceptions, C-Corp shareholders can exclude 50% of the gain recognized on the sale of their stock;

4) An LLC or Limited Partnership is desirable when:

- a. The owners desire more flexibility in the allocation of income and losses among the member owners than is available in an S-Corp;
- b. The entity holds real property for rental or investment;
- c. If you already have a business operated in an S-Corp, you can segregate other businesses in an LLC for further limitation of liability reasons or to segregate dealer and investment properties.

5) Once I have decided on the right entity, what state should I incorporate in?

- a. You should incorporate in the state where most of your operations take place;
- b. There could be advantages to operating a company formed in Delaware or Nevada or even offshore. In Nevada:
 - 1. 1. Nevada has no corporate or individual income taxes;
 - 2. 2. Shareholders of the corporation (or LLC Members) need not be publicly disclosed;
 - 3. 3. The corporate articles of incorporation can eliminate any liability for directors of the company to shareholders and outside parties;
 - 4. 4. Nevada does not have an information sharing arrangement with the IRS.