



Incorporating Takes Work, But It's Worth It

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If you're like many who own small businesses, you might have started out as a sole proprietorship. But as your business has grown, you may be thinking about whether it's time to incorporate.

One of the biggest advantages of incorporating is the personal liability protection it can provide, but it does require more work on your part and an investment to get started, say experts.

"It's not a lot of money and time to incorporate, but it is money and time," says Scott Shane, a professor of entrepreneurial studies at Case Western Reserve University in Cleveland and author of "The Illusions of Entrepreneurship: The Costly Myths that Entrepreneurs, Investors & Policy Makers Live By" (Yale University Press; \$26).

To be sure, some entrepreneurs just don't want to deal with the extra paperwork or fees involved in incorporating their businesses, explains Shane, who advises companies to consult with an accountant or attorney to see whether incorporation makes sense.

But overall, he thinks it's worth the extra effort.

For one, it can help protect your personal assets by shielding them from business-related lawsuits, explains Michael Hanley of Merl & Hanley LLP, a Smithtown accounting firm and president of Corp-4-U, an incorporation service. A corporation is a separate legal entity from its owners, explains Hanley, who offers free incorporation services for up to 25 businesses a month.

Of course, there are certain circumstances where you may not be protected, such as if you personally guarantee a corporate bank loan, which most banks require a borrower to do, and on personal claims such as harassment or intentional and fraudulent actions, explains David J. DePinto of the Melville law firm of DePinto Nornes & Associates LLP.

Still, it's an extra layer of protection between your business activities and you personally, says DePinto.

Beyond that, corporations have longevity because they exist beyond the life of an individual owner; they carry a certain credibility factor; are able to raise equity by selling shares; and can potentially offer certain tax advantages, according to the Service Corps Of Retired Executives (SCORE) in Washington, D.C.

Specifically, payroll taxes paid by the corporation can be lower than self-employment taxes paid by a sole proprietor under certain circumstances, notes Hanley.

That was the case for Scott Comer, a licensed real estate agent for Prudential Douglas Elliman Real Estate in Smithtown, who set up a corporation last May. He markets himself solely under the Prudential name but, largely for tax purposes, set up a corporation called House Sparrow Home Sales Inc. All his business expenses flow through that corporation, as well as his income.

"I saved about \$10,000 in taxes this year by being incorporated," says Comer, who worked with Hanley and paid \$300 to incorporate. (Incorporation fees can generally range between \$300 and \$1,200, depending on whether you use an attorney or incorporation firm and on the level of service required.).

The potential for tax savings, if any, must be looked at on a case-by-case basis and can vary depending upon income and the type of corporation you establish, explains Hanley.

Comer elected for subchapter S tax status, which is limited to 100 owners. You must make this formal election with the IRS very soon after filing for incorporation, otherwise you're automatically considered a C corporation, explains DePinto.

Many small businesses opt for subchapter S tax status because C corporations can be subject to double taxation on profits and dividends stockholders receive, says DePinto.

Just remember that as a corporation, you'll have to adhere to more formalities, explains Ivan Szanto, a counselor and assistant district director for SCORE for the New York City district. This includes holding board of director and annual shareholder meetings, he notes. Also, expect to pay higher accounting fees, as corporate tax returns are more complex.

For more on requirements and getting started, check out dos.state.ny.us/corp/busguide.htm.

Steps to incorporate

Pick a corporate name that's not in use by someone else.

File articles of incorporation with the state you're incorporating in.

Open a corporate bank account, but first file form SS4 with the IRS for a federal tax identification number and purchase a corporate kit that includes a corporate seal.

Decide whether you will be treated as a regular C corporation or as an S corporation for tax purposes.