New Business Kit

A Guide to Financial, Tax and Accounting Considerations of Starting a New Business.

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CHAPTER 1

SELECTING A LEGAL ENTITY FOR YOUR ENTERPRISE

SELECTING A LEGAL ENTITY FOR YOUR ENTERPRISE

One of the first major decisions you will have to make as you start your new business is the form of legal entity it will take. To a large degree this decision may be dictated by the way you have organized your operations and whether you intend to work on your own or in conjunction with others.

The form of entity you choose can have a significant impact on the way you are protected under the law and the way you are affected by income tax rules and regulations. There are five basic forms of business organizations. Each has its own benefits and drawbacks and is treated differently for legal and tax purposes.

Sole Proprietorship

A sole proprietorship is typically a business owned and operated by one individual or very often by a husband and wife. A sole proprietorship is not considered to be a legal entity under the law, but rather is an extension of the individual who owns it. The owner has possession of the business assets and is directly responsible for the debts and other liabilities incurred by the business. The income or loss of a sole proprietorship is combined with the other earnings of an individual for income tax purposes.

A sole proprietorship is perhaps the easiest form of business to own and operate because it does not require any specific legal organization, except of course, the normal requirements such as licenses or permits. A sole proprietorship typically does not have any rules or operating regulations under which it must function. The business decisions are solely the result of the owner's abilities.

Partnerships

Partnerships can take two legal forms, general or limited. In a general partnership two or more individuals join together to run the business enterprise. A partnership must usually file a fictitious business name statement to operate a business under the partnership name. Each of the individual partners has ownership of company assets and responsibility for liabilities, as well as authority in running the business. The authority of the partners and the way in which profits or losses are to be shared can be modified by the partnership agreement. The responsibility for liabilities can also be modified by agreement among the partners, but partnership creditors typically have recourse to the personal assets of each of the partners for settlement of partnership debts.

A limited partnership is comprised of one or more general partners who are personally liable for partnership debts and for one or more limited partners who contribute capital and share in the profits or losses of the business. The limited partners do not take a part in running the business and are not liable for the debts of the partnership.

The rights, responsibilities and obligations of both the limited and general partners are typically detailed in a partnership agreement. It is a good idea to have such an agreement for any partnership, whether limited or general.

A partnership is a legal entity recognized under the law and as such it has rights and responsibilities in and of itself. A partnership can sign contracts, obtain trade credit and borrow money. When a partnership is small most creditors require a personal guarantee of the general partners for credit. A partnership is required to file an income tax return for federal purposes (Form 1065). A limited partnership is generally also required to file a tax return in the state of Tennessee and is subject to the Franchise and Excise tax. A partnership typically does not pay federal income tax; the information from the tax return is combined with the personal income of the partners to determine the overall tax liability.

Corporation

A corporation is a separate legal entity which exists under the authority granted by state law. A corporation has substantially all of the legal rights of an individual and is responsible for its own debts. It must also file income tax returns and pay taxes on income it derives from its operations. Typically, the owners or shareholders of a corporation are protected from the liabilities of the business. However, when a corporation is small, creditors often require personal guarantees of the principal owners before extending credit. The legal protection afforded the owners of a corporation can far outweigh the additional expense of starting and administering a corporation.

A corporation must obtain permission from the Secretary of State to use or do business under a fictitious name. A corporation must also adopt and file articles of incorporation and by-laws which govern its rights and obligations to its shareholders, directors, and officers.

Corporations must file annual income tax returns with the IRS (Form 1120), the Tennessee Department of Revenue, and possibly other states in which it does business.

Incorporating a business allows a number of other advantages such as the ease of bringing in additional capital through the sale of equity, or allowing an individual to sell or transfer their interest in the business. It also provides for business continuity when the original owners choose to retire or sell their interest.

S Corporation

An S corporation is a corporation that has made an election to be taxed similar to a partnership. There is no entity level federal income tax paid; rather the profits and/or losses flow through to the shareholders and are included with their other income on their individual income tax return. A Tennessee return still must be filed, and the Franchise and Excise tax paid; Tennessee does not differentiated between an S corporation and regular corporation for tax purposes.

Limited Liability Company

A limited liability company (LLC) is usually the entity of choice. It operates and is taxed as a partnership but provides the same liability protection of a corporation. The LLC, like a limited partnership, is also subject to Franchise and Excise tax in the state of Tennessee. In order to be taxed as a partnership, an LLC must have more than one member. An operating agreement determines how profits and losses are split, how management decisions are made, what happens upon death, retirement, or disability of a member, and other matters.

An LLC with only one member is referred to as a single-member LLC. For federal tax purposes, a single-member LLC is taxed a sole proprietorship on Form 1040, Schedule C. A single-member LLC is still subject to the Tennessee Franchise and Excise tax.

Tennessee Individual Income Taxes

In making a choice of entity for your business, taxation by the state of Tennessee needs to be considered. Income that is considered self-employment income or salary and/or other compensation paid to an individual is not taxed by Tennessee. The only income that an individual pays tax on in Tennessee is dividend income and certain interest income (interest income from banks, credit unions, etc. are not taxed by Tennessee). Distributions from a corporation, whether from an S corporation or a dividend from a regular corporation, will be taxed at a 6% rate to the individual.

A final thought on entity selection:

You will probably save yourself a lot of money and anxiety getting proper legal counsel to help you organize your business venture. Although, you can set up any of the entities we have discussed yourself, there are many pitfalls for the unwary. Any time there is more than one person involved in a business, it is very important to have a shareholders agreement (if a corporation), a partnership agreement (if either a general or limited partnership), or an operating agreement (if an LLC). These documents would detail how profits and losses are split and how management decisions are made. More importantly, the agreement would determine what happens upon death, disability, or retirement of a partner/shareholder and what procedures have to be followed if one person wants to sell their interest. These things need to be decided on the front-end of the business while all parties are still friends.

CHAPTER 2

DEVELOPING A BUSINESS PLAN

DEVELOPING A WRITTEN BUSINESS PLAN

Why do I need a written Business Plan?

Financial backing is the only use many people see for a written business plan. However, if you are just starting a business, a written plan may also serve as a "blueprint" to help you organize and think out all of the aspects of your future business. While many entrepreneurs begin with only an informal plan for their operations, writing the plan down will ensure that nothing "slips through the cracks" in the planning process. It will also serve as a tool to measure the success and progress of your business.

What do I include in my plan?

Plans will vary according to your specific line of business, however, the basic format will be the same for most businesses. The basic outline is as follows:

A. Executive Summary
   -This section should be no more than two pages in length and should be written last in order

   to summarize your entire business plan.
   1. The Opportunity and the Solution
      - Describe the level of need in the marketplace and how you propose to fill that need.
   2. Management
      - Describe the qualifications of yourself and other members of your management team (if applicable).
   3. Market Size and Share Expectations
      - Describe the size of the market and how much of that market you intend to capture.

B. Company Summary
   1. Company Ownership
   2. Start-up Summary
   3. Company Locations and Facilities

C. Products/Services
   1. General Description
   2. Competitive Comparison
   3. Sales Literature
   4. Sources
   5. Technology
   6. Future Products

D. Market Analysis
    1. Market Segmentation
    2. Target Segment Strategy
        a. Market Needs
        b. Market Growth
        c. Market Trends

E. Strategy and Implementation
    1. Strategy Pyramid
    2. Value Proposition
    3. Competitive Edge
    4. Marketing Strategy
        a. Marketing Positioning Statements
        b. Pricing Strategy
        c. Promotion Strategy
        d. Programs/Activities
    5. Sales Strategy
        a. Sales Forecast
        b. Sales Programs
    6. Milestones

F. Management Team
    1. Organizational Structure
    2. Management Team
    3. Management Team Gaps
    4. Personnel Plan

G. Financial Plan
    1. Important Assumptions
    2. Key Financial Indicators
    3. Break-even Analysis
    4. Projected Profit and Loss
    5. Projected Cash Flow
    6. Projected Balance Sheet
    7. Business Ratios

CHAPTER 3

CASH PLANNING AND FORECASTING

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CASH IS KING! The life-blood of any business is its ability to collect cash and pay bills as well as pay its employees, particularly its owners. Far too often, small businesses are profitable, but they do not have enough operating capital to meet their current needs. Consequently, they may be forced to sell out to a stronger competitor, sell a portion of the company to investors at an undesirable price, or close the doors and put the company out of business. None of these alternatives are typically what the owners intended when starting the business.

The ability to forecast cash resources and uses is an art and is by no means a well-defined science. None of us have a crystal ball, and any cash forecast prepared by the management of a company or an outside consultant can be no more than a guess as to when the customers will pay and when your business will pay its obligations. Hopefully, the more effort that is put into cash forecasting, the better will be the educated guess, and the more accurate the resultant picture of the future operations of your business.

Starting the Analysis

One of the most significant factors to be considered in your cash flow forecast is the volume of sales which will be generated in the next several months and for the rest of the period for which you intend to forecast. Your sales forecast must be as fine-tuned as possible. It is typically unrealistic to assume that there is a million-dollar market for your product in your area and you will be able to capture a specified percent of it. A sales forecast needs to be based upon specific facts. These might include your sales history or the history of similar businesses you have owned or operated or the competition. In your area of industry, what has been the experience of similar operations?

Some of the questions which should be addressed would include: what other factions can I control such as adding new product lines, deleting unprofitable operations, adding a new salesperson, or terminating one that is not producing to quota? In preparing a forecast, you must also take into consideration items such as the seasonality of your business, the relative state of the economy, and the period over which you will forecast.

Obviously, your ability to forecast sales for the next month is better than it is for three to five years from now. The amount of detail included in the cash forecast is really a matter of preference. It can be based on per-unit sales extended out by the sales price of each type of unit or on an average sales volume per day, week, or month of your type of business in its current environment.

Cash Collections

Once you have determined a reasonable level of sales and you are comfortable with the forecast you have made, you must address questions such as: what percentage of my sales are received in cash, and what portion are credit sales for which I will have to carry accounts receivable? For those that are receivable based, how soon is the cash collected? Do I have to wait for customers to pay me or do third parties such as Visa or MasterCard take the customers account and convert it to cash for me with an appropriate discount?

If you are relying on customer payments for collection of receivables, you must determine what portion of the receivables will be collected in thirty days, sixty days, ninety days and thereafter, and what portion, if any, may never be collected. To assume that 100% of your sales will ultimately be converted to cash is probably unrealistic, especially considering the current economic environment and the tight cash situations that may face some of your customers.

Other sources of cash may be available in addition to sales. Do you expect to bring in a partner or other investors, or can you borrow money from a bank? When will you receive the cash and how much will you get? Part of your cash flow analysis may be to determine how much investment money or borrowings will be required to operate your business.

Once you are comfortable with the cash receipt side of your business, and the timing of the collections of funds from your sales and other sources, it is necessary to consider the expenses and other cash needs of your business operation.

Disbursements

Certainly if your business entails sales of inventory you will have to purchase the merchandise from others or purchase the component parts and pay employees to assemble it. This may require a significant outlay of cash before the first dollar of sales is generated and received. You should consider how often and how much your employees must be paid and when their payroll taxes must be deposited.

Additionally, you need to know the credit trade terms your vendors are willing to advance to you. Do you have to pay for inventory items on a C.O.D. basis or can you pay for them thirty or forty-five days after receipt? What expenses must be paid to allow you to convert purchased merchandise to saleable inventory? If your production requires utilities to run machines or supplies that are required such as dispensable chemicals or packing materials that must be purchased prior to the sale of the inventory, you should factor the timing of payment.

In addition to the cost of manufacturing, you should consider whether your productive capacity will allow you to generate enough inventory to support the level of sales which you are predicting. If the volume of sales you forecast is above and beyond your ability to produce today, what changes in your operating environment must be made to meet the production levels? Will you need additional employees, if so, how much will they cost? Do you have to acquire additional machinery for your shop operations? What is the cost of the machinery, and when will you have to pay for it?

Once you have determined the cost of operating your production or service facilities, you need to consider what other expenses must be paid to keep the doors of the business open. Typically, you will have to pay rent for your office or manufacturing facility, so consider how much the monthly payment is and when it has to be paid. Ask yourself if there will be other cash requirements such as a deposit on first and last month's rent. If you are opening a new business, you must consider what your cash requirements are to make your facility ready for your specific needs and purposes. Will you have to buy or rent furniture? Will you need to make tenant improvements or pay deposits for utilities and other services?

Consider many of the overhead items and costs to open a new business that will hopefully be one-time expenses; this may be an attorney’s fee for drafting partnership agreements or incorporating your business, as well as the cost to obtain business licenses, authorization from the taxing authorities, setting up an accounting system, stationary costs, costs of signs, or logos.

It may seem like the list of costs and expenses to be incurred is endless, and it may even discourage you in moving forward with your business endeavor. However, it is imperative to make the list as detailed as possible to ensure that you have sufficient funds to make your operation ready for business prior to running out of cash. The more detailed the list and the more sufficient information you can provide, the less chance there is of unpleasant surprises as you move down the stream to opening your business.

In addition to determining the amount and volume of expenses and cash outlays you will have to make, it is critical to determine the timing of such payments. As we will discuss in other chapters, there may be a variety of financing alternatives available to you. Most of the start-up costs, which you incur, can be delayed or deferred until you can generate the cash from your operation to help pay them. This needs to be carefully analyzed and factored into your cash flow analysis. However, a good rule of thumb is to assume that you are going to have to pay your expenses sooner than you think, and that you will collect your cash slower than you anticipate. If you work with this attitude, any surprises should be favorable ones.

Cash flow projections can be very slow, time consuming, and tedious to undertake. It is often very tempting to hire someone else to prepare the projections for you. There are a variety of individuals who can help you do this, but the critical factor is that they only help. You, as the owner and operator of the business, are the only one truly qualified to develop your cash flow projections. You know what it takes to open and operate your business. Certainly a trained professional can offer guidance and ask pointed questions to be sure you are considering all of the necessary and sometimes hidden costs of operating a business. Nevertheless, the more effort you put into developing the cash flow projections, the more accurate they will tend to be. This exercise may also help to pinpoint areas of potential cash savings not otherwise considered.

We have included a worksheet as an exhibit following this chapter which may assist you in developing a cash flow analysis. Bear in mind this worksheet does not include all of the items that should be considered in preparing your cash flow analysis, but it should help raise many of the questions you need to ask yourself before deciding how much cash will be required to establish and operate your business and what period of time must elapse before you can expect to pay back the lender or return profits to your investors.

Exhibit 3.1

PROJECTED STATEMENT OF CASH FLOW
(for one year)

	Projected Quarter Ending			
	1st	2nd	3rd	4th
Net income per books				
Add to (subtract from) net income those items not requiring cash: ex. Depreciation				
Net cash provided				
Add to (subtract from) net cash decreases (increases) in asset accounts other than cash. ex. Accounts Receivable				
Add increases (subtract decreases) in liability and equity accounts: ex. Accounts Payable				
Net change in cash				
Cash at beginning of period				
Cash end of period				

CHAPTER 4

OBTAINING CREDIT AND FINANCING FOR YOUR BUSINESS

OBTAINING CREDIT AND FINANCING FOR YOUR BUSINESS

If not independently wealthy and perhaps even if you are, eventually you will probably need to obtain some outside capital for your business. In some instances, you may need to obtain capital for the initial expenses prior to opening your business or for instance, the funds you require may be for expansion or working capital during the off season.

Generally, business financing can take two forms, debt or equity. Debt, of course, means borrowing money. The loans may come from family, friends, banks, other financial institutions, or professional investors. Equity relates to selling an ownership interest in your business. Such a sale can take many forms such as the admitting of a partner or if you are in a corporation, issuing of additional common stock, options or warrants to investors. It is typically a prudent idea to consult with your attorney as there are many significant legal ramifications to such a step.

How Do I Get the Money?

Irrespective of the type of financing you need and are able to obtain for your business, the process of obtaining it is somewhat similar. There are several questions that must be answered during the course of raising money for your business. The ability to answer these questions is critical to your success in obtaining financing as well as the overall success of the business. Remember, in raising capital you have to sell the ability of your business to potential investors in much the same way as you sell your product to your customers.

1. How much cash do I need?

   To answer this question, you will have to do some serious cash planning which will require estimates of future sales, the related costs, and how quickly you must pay your vendors. You will also have to factor into your planning some assumptions about when you will generate enough cash to pay the money back. However, if you raise cash through equity you probably don't need to pay it back, but your investors will want to know how the value of the business will grow, and how they will benefit through dividends or selling their shares.

2. What will you do with the money?

   One of the most important questions you will have to answer for a potential investor is how the money will be spent. Will you use it for equipment or to hire additional employees or perhaps for research and development for a new improved product? Again, part of the answer on how you spend the money is how it will benefit the company.

3. What experience do you have in running your business?

    One of the primary reasons for business failure is lack of experience and management. You will need to convince your investors that you have the knowledge, experience, and ability to manage your business and their money at the level at which you expect to operate.

4. What is the climate for your type of business and your geographic location?

    Few investors will want to put money into your business if you have not completed sufficient "homework" to determine that you have a reasonable chance of success. If your business is based on existing economic or legal conditions, which are subject to change in the near future, your risk is substantially increased. Even if your business has great potential, if the local economy is sluggish to the point that it cannot support your venture, you need to be aware of this before moving ahead.

Once you have developed concrete answers to these and other pertinent questions, you can begin looking for financing. One of the first steps is to determine whether to raise funds through debt or equity. There are positive and negative aspects to each type of capital. The cost to your company of each type of funding is different as is the way in which they are treated for income tax purposes. The interest on borrowed money is deductible by a business for income tax purposes which reduces the effective cost to your company. Dividends, which you might pay on the same investment in stock, would typically not be tax deductible by your company. In selling stock there usually is no firm commitment by your company to pay the money back, but your stockholder will want and generally will have a legal right to have a voice in the management of your company. When you have made the decision as to the type of financing you think is appropriate to fit your desires and needs, it is a good idea to consult with your accountant as to alternative types of debt or equity financing available.

Financing Alternatives

Whether you determine that debt or equity financing is the best choice for your company, there are a number of alternative types of financing available. Depending upon the nature of your business the financing may be a combination of debt and equity and may be tailored to fit the specific needs of your company.

In the summary we will only mention a few of the more conventional methods for a young company to obtain capital, though the possibilities are many. A good business oriented accountant can discuss these and other alternatives in greater detail.

Debt Financing Sources

Banks. The first source of funds which typically comes to mind when borrowing money is a bank, which is why they are in business. Banks typically lend to small businesses on a secured basis using equipment, inventory, or accounts receivable. The more liquid and readily saleable the assets you have to offer as security, the more acceptable they are likely to be to a banker. Loans from a bank may take several forms such as:

1. A line of credit which reviews annually and allows you to borrow up to a predetermined maximum as you need it and pay it back as funds from sales and receivables are collected.

2. A short term demand note which is payable in full on a specified date.

3. A term loan for the purchase of a specific asset such as a computer or a machine.

As your relationship with your banker becomes better and your business becomes established, you may consider a long-term (3 to 5 years) loan which will be payable in monthly installments.

Lease financing. In today's business environment it is quite common to acquire equipment through lease agreements. Leasing packages come in a variety of types through many sources. Leasing companies typically will accept a somewhat higher degree of credit risk because they are looking to the value of the equipment for collateral if your business cannot make the agreed upon payments. For this reason, leasing companies generally prefer to finance new equipment of a general purpose nature which can be resold if necessary. Leases often run for a period of three to five years and because of the risk that leasing companies are willing to take, they are somewhat more expensive than commercial bank loans.

Trade credit. A very important source of financing for your company may be from the vendors and suppliers with whom you do business. Many suppliers will originally ask for cash on delivery or in some instances they want payment before starting on your order, depending on the nature of your purchase. Most suppliers will quickly establish trade credit with you once you have gained their confidence by continuing to do business with them and paying as requested. Establishing good relationships with trade creditors is essential because it allows you to use the goods and services in your operations and sell your product to your customers, in some instances before you pay for them. The trade credit you build today will be relied upon by other vendors as you attempt to establish yourself with other vendors in the future. Trade credit terms will vary depending on the type of purchase you make, the industry you are buying from, and the industry you are in.

Equity Financing Sources

Equity financing usually means selling a portion of your business. This can be accomplished in a number of ways including the sales of common or preferred stock or stock warrants. Equity sales are usually carefully tailored to meet the needs of both the company and the investor.

Venture capital companies. A venture capital company or fund is typically a company that is in the business of taking risks. A venture capital fund is often backed by a group of investors which may be individuals or corporations. The investors are often represented by a management group which evaluates potential investments and manages the existing investment portfolio.

The price of venture capital financing is usually very high when compared to borrowing money from a bank, but it must be remembered that venture capitalists are dealing with much higher risk situations than commercial banks will finance. This cost of venture capital is measured in terms of the portion of your company you must sell to obtain the level of financing you require. A venture capital firm sometimes requires a 300 to 500 percentage return on its investment over a four to five year investment period. While this may seem like an enormously high return, a venture capitalist is in the risk business and the return on a good investment must help offset those companies that do not meet their projections or fail altogether. To determine the price of such financing, a venture capitalist will start with the amount of financing you require and calculate what he must receive at the time his investment will be sold to allow him to achieve the rate of return he deems necessary.

Based upon the operating projections you provide, discounted based on his experience, he will estimate what your company might be worth at the time his investment will be liquidated. This might be at the point of a public offering or a sale to a corporate investor. The last step for a venture capital company in determining pricing is to calculate what percentage of the company he must own to realize the return he desires. At this point, the "horse trading" generally begins. As a general rule, you will want to retain as much of the ownership of the company as you can. The venture capitalist wants enough ownership to achieve his investment goals and have some control over how his money is spent. This will often be achieved by voting power and representation on the Board of Directors. At the same time a venture capitalist wants to be sure there is sufficient reward in the company for you and your management team to be motivated and achieve the projections in your business plan.

A venture capital company is often managed by an individual or group of individuals with a strong background in business and management. They can often provide depth of experience and management assistance in areas where your management team may be weak. A venture capital group can very often provide contacts and valuable introductions in your industry. Remember, a venture capital investor becomes a member of your team.

Private individuals. Very often, individuals who are successful in their own right and have accumulated substantial wealth may be looked to for investment in your business venture. Such individuals may believe that the success of your business may enhance theirs as well as help increase their personal wealth. These individuals, like a venture capital company, very often want to participate in the management activities of your firm and help guide your progress through representation on the Board of Directors. The business acumen and contacts of these individuals can often be a valuable asset of your business. An individual investor can react to opportunity much quicker than a venture capital firm and typically has only his own interests to serve as opposed to a financial backer or group of limited partners.

Individual investors can be more flexible in the type of investment structure they can deal with and often have personal, financial, and tax motivations to consider.

CHAPTER 5

REGISTERING WITH THE TAX AUTHORITIES

REGISTERING WITH THE TAX AUTHORITIES

A significant task for the new business owner is assuring that the business is properly complying with the extensive tax and information filing requirements imposed by various governmental agencies. Stiff penalties are commonly assessed if the required forms and returns are not properly prepared and timely filed. There are several forms required to be filed when the business is started. While this chapter is not intended to be an all-inclusive list of the filing requirements, it summarizes some of the more prominent requirements common to most businesses. Many industries have specific filing requirements which are not part of this text but nevertheless must not be overlooked. Professionals with experience in your industry should be consulted to assure that any such filings are properly handled.

Internal Revenue Service

All tax forms filed with the Internal Revenue Service require the use of a Federal Employer Identification Number (FEIN). This number is obtained by filing a Form SS4 with the Internal Revenue Service. A new business that is either a corporation, LLC, or a partnership should file a Form SS4. If the hiring of employees is anticipated, a sole proprietorship will need to file an SS4. An example of Form SS4 follows this section.

There is no deadline for filing Form SS4; however, to avoid substantial confusion file your Form SS4 early. If an income tax form is filed without an FEIN, the Internal Revenue Service will assign one. It is not uncommon for the Internal Revenue Service to assign more than one FEIN to a business, which can result in notices for delinquent tax returns that have been filed using a second FEIN.

Most filings with the Internal Revenue Service come under the headings of income and payroll taxes. Payroll tax requirements are detailed in Chapter Four. Income tax filing requirements and tax planning are discussed in Chapter Six.

Business License

To operate a business, you must obtain a business license in both the city and county you are located. Applications can typically be obtained at the city hall and county courthouse where your business is located. At the time of filing, the $20 application fee must be paid, and then the license is issued immediately and must be posted in plain sight at your place of business. The license, with the related fee, must be renewed annually.

Tax Calendar

The following summarizes some of the more significant filing dates for a corporation using a calendar year-end. Many of these requirements also apply to partnerships and sole proprietorships. Naturally, if a year-end other than December 31 is used (see Chapter Five), some of these dates will vary.

Date	Return
January 15 January 20 January 31	TN Excise Estimated Payment Sales Tax Return* Payroll Tax Return, W-2s and 1099s
March 15	Income Tax Return
April 1 April 15 April 15 April 15 April 30	Corporate Annual Report TN Franchise and Excise Tax Return TN Excise Estimated Payment Estimated Income Tax Payment Payroll Tax Return
June 15	Estimated Income Tax Payment
July 15 July 31	TN Excise Estimated Payment Payroll Tax Return
September 15	Estimated Income Tax Payment
October 15 October 31	TN Excise Estimated Payment Payroll Tax Return
November -December	Year-end Tax Planning
December 15	Estimated Income Tax Payment

There are also numerous other tax filing deadlines if you deal in certain regulated industries such as utilities or petroleum.

*Larger companies have to file sales tax returns on a monthly basis.

Exhibit 5.1 - Form SS4

Exhibit 5.1 - Form SS4

(1) This is the official corporate name if you are a corporation; if a partnership, the partnership name as shown on the partnership agreement; or if you are a sole proprietor - the owner's full name.

(2) Sole proprietors and partnerships will generally be required to use a December 31 year-end. However, a regular "C" corporation can select a fiscal year end. (This is discussed further in Chapter Five.) Although you are asked to report your year-end on this form, this election is not binding. The binding election of a year-end is made on your first income tax return.

(3) Estimate the first day you will pay wages. To avoid confusion, this form should be filed as far in advance of this date as possible.

(4) This number can be estimated.

(5) This question refers to the entity, not the owner. Normally, a partnership or corporation will have only one FEIN; however, a sole proprietor may have several businesses.

Form **SS-4**

(Rev. December 2001)

Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

► See separate instructions for each line. ► Keep a copy for your records.

EIN

OMB No. 1545-0003

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested

2 Trade name of business (if different from name on line 1)

3 Executor, trustee, "care of" name

4a Mailing address (room, apt., suite no. and street, or P.O. box)

5a Street address (if different) (Do not enter a P.O. box.)

4b City, state, and ZIP code

5b City, state, and ZIP code

6 County and state where principal business is located

7a Name of principal officer, general partner, grantor, owner, or trustor

7b SSN, ITIN, or EIN

8a **Type of entity** (check only one box)

- ☐ Sole proprietor (SSN) ______
- ☐ Partnership
- ☐ Corporation (enter form number to be filed) ► ______
- ☐ Personal service corp.
- ☐ Church or church-controlled organization
- ☐ Other nonprofit organization (specify) ► ______
- ☐ Other (specify) ►
- ☐ Estate (SSN of decedent) ______
- ☐ Plan administrator (SSN) ______
- ☐ Trust (SSN of grantor) ______
- ☐ National Guard
- ☐ Farmers' cooperative
- ☐ REMIC
- ☐ State/local government
- ☐ Federal government/military
- ☐ Indian tribal governments/enterprises

Group Exemption Number (GEN) ► ______

8b If a corporation, name the state or foreign country (if applicable) where incorporated | State | Foreign country

9 **Reason for applying** (check only one box)

- ☐ Started new business (specify type) ► ______
- ☐ Hired employees (Check the box and see line 12.)
- ☐ Compliance with IRS withholding regulations
- ☐ Other (specify) ►
- ☐ Banking purpose (specify purpose) ► ______
- ☐ Changed type of organization (specify new type) ► ______
- ☐ Purchased going business
- ☐ Created a trust (specify type) ► ______
- ☐ Created a pension plan (specify type) ► ______

10 Date business started or acquired (month, day, year)

11 Closing month of accounting year

12 First date wages or annuities were paid or will be paid (month, day, year). **Note:** *If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year)* . . . . ►

13 Highest number of employees expected in the next 12 months. **Note:** *If the applicant does not expect to have any employees during the period, enter "-0-."* . . . . ►

Agricultural	Household	Other

14 Check **one** box that best describes the principal activity of your business.

- ☐ Construction
- ☐ Real estate
- ☐ Rental & leasing
- ☐ Manufacturing
- ☐ Transportation & warehousing
- ☐ Finance & insurance
- ☐ Health care & social assistance
- ☐ Accommodation & food service
- ☐ Other (specify)
- ☐ Wholesale–agent/broker
- ☐ Wholesale–other
- ☐ Retail

15 Indicate principal line of merchandise sold; specific construction work done; products produced; or services provided.

16a Has the applicant ever applied for an employer identification number for this or any other business? . . . . ☐ **Yes** ☐ **No**
Note: *If "Yes," please complete lines 16b and 16c.*

16b If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above.
Legal name ► Trade name ►

16c Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known.

Approximate date when filed (mo., day, year)	City and state where filed	Previous EIN

Third Party Designee

Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.

Designee's name

Designee's telephone number (include area code) ( )

Address and ZIP code

Designee's fax number (include area code) ( )

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Applicant's telephone number (include area code) ( )

Name and title (type or print clearly) ►

Applicant's fax number (include area code) ( )

Signature ► Date ►

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.[1] **See also the separate instructions for each line on Form SS-4.**

IF the applicant...	**AND...**	**THEN...**
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a–6, 8a, and 9–16c.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a–6, 7a–b (if applicable), 8a, 8b (if applicable), and 9–16c.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1–5b, 7a–b (if applicable), 8a, 9, and 16a–c.
Changed type of organization	Either the legal character of the organization or its ownership changed (e.g., you incorporate a sole proprietorship or form a partnership)[2]	Complete lines 1–16c (as applicable).
Purchased a going business[3]	Does not already have an EIN	Complete lines 1–16c (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust[4]	Complete lines 1–16c (as applicable).
Created a pension plan as a plan administrator[5]	Needs an EIN for reporting purposes	Complete lines 1, 2, 4a–6, 8a, 9, and 16a–c.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits[6]	Complete lines 1–5b, 7a–b (SSN or ITIN optional), 8a–9, and 16a–c.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1, 3, 4a–b, 8a, 9, and 16a–c.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file **Form 1042,** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a–5b, 7a–b (if applicable), 8a, 9, and 16a–c.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581[7]	Complete lines 1, 2, 4a–5b, 8a, 9, and 16a–c.
Is a single-member LLC	Needs an EIN to file **Form 8832,** Classification Election, for filing employment tax returns, **or** for state reporting purposes[8]	Complete lines 1–16c (as applicable).
Is an S corporation	Needs an EIN to file **Form 2553,** Election by a Small Business Corporation[9]	Complete lines 1–16c (as applicable).

[1] For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. **A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.**

[2] However, **do not** apply for a new EIN if the existing entity only **(a)** changed its business name, **(b)** elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or **(c)** terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. (The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).)

[3] Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

[4] However, IRA trusts that are required to file **Form 990-T,** Exempt Organization Business Income Tax Return, must have an EIN.

[5] A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

[6] Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. **See Rev. Proc. 2000-12.**

[7] See also *Household employer* on page 4. (**Note:** State or local agencies may need an EIN for other reasons, e.g., hired employees.)

[8] Most LLCs **do not** need to file Form 8832. See **Limited liability company (LLC)** on page 4 for details on completing Form SS-4 for an LLC.

[9] An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

CHAPTER 6

METHOD OF ACCOUNTING

METHOD OF ACCOUNTING

Most operators of a new and growing business have a flair for the environment in which the business operates. They may be a great salesperson, an outstanding mechanic, carpenter, lawyer, or inventor. Unfortunately, most people do not like to keep the books. As an owner of a business you must remember that your company's books and financial statements represent a score sheet which tells how you are progressing, and can act as an early warning system which lets you know when and why the business may be going amiss. Financial statements and the underlying records will provide the basis for many management decisions and decisions made by outsiders such as banks, landlords, potential investors, and trade creditors as well as taxing authorities and other governing bodies. The necessity for good, well organized financial records cannot be over emphasized. One of the greatest mistakes made by owners of small businesses is not keeping good financial records and making improper or poor business decisions based on inadequate information.

Quality financial information does not necessarily translate into complicated bookkeeping or accounting systems. Far too often, owners of businesses become overwhelmed by their accounting system to the point where it is of no use to them. An accounting or bookkeeping system is like any tool used in your business; it needs to be sophisticated enough to provide the information you need to run your business and simple enough for you to run it (or supervise the bookkeeper). Questions you should ask in developing an accounting and financial reporting system are:

1. Who will be the users of the financial information?

2. What questions do I need answered to manage the business?

3. What questions should be answered for government or regulatory taxing authorities?

As your business grows, you should work closely with your accountant to ensure that your accounting system is providing you with appropriate information.

Chart of Accounts

The basic road map into any accounting system is the chart of accounts. It is this chart which helps establish the information which will be captured by your accounting system, and what information will subsequently be readily retrievable by the system. This tool, like the rest of the accounting systems, needs to be dynamic and should grow as the size and needs of your business changes.

To help establish a good working chart of accounts, you need to answer some questions in conjunction with your accountant as to how your business will operate and what is important to you. Some of these considerations might be:

1. Will your business have inventory to account for? If so, will it be purchased in final form or will there be production costs?

2. Are fixed assets a significant portion of your business?

3. Will you sell only one product or service or will there be several types of business?

4. Will you have accounts receivable from customers for which you will have to track?

5. Are you going to sell in only one location or will you do business in several states?

6. Are the products you sell subject to sales tax?

7. Do you need to track costs by department?

8. What type of government controls or regulatory reporting are you subject to?

Each one of these questions can have several answers and will probably generate more questions. Each answer will have an impact on how the chart of accounts is structured. It may seem that developing a chart of accounts is not particularly high on your list of priorities as you start a new business. The amount of time and money in which a well-organized accounting system may save you can be significant as the need to generate information for various purposes increases. An example of a basic chart of accounts follows this section.

Cash or Accrual Accounting

One of the decisions to be made as you start a business is whether to keep your records on a cash or accrual basis of accounting. The cash basis of accounting has the advantage of simplicity and almost everyone understands it. Under the cash basis of accounting, you record sales when you receive the money and account for expenses when you pay the bills. The increase in the money in "the cigar box" at the end of the month is how much you made.

Unfortunately, as we all know, the business world is not always so easy. Sales are made to customers and you sometimes must extend credit. Your business will incur liabilities which are due even though you may not have received the invoice or have the cash available to pay them.

Most users of financial statements such as bankers and investors are used to accrual basis statements and expect to see them. Once you become familiar with them, they provide a much better measuring device for your business operations than cash basis statements.

Whether you use the cash or accrual basis, it is possible to keep books for income tax purposes on a different basis than for financial statements. It may be more advantageous (less tax) for you to do so. Your accountant can advise you on the advantages and feasibility of doing this in your particular circumstances.

Illustrative Chart of Accounts

Current Assets:

101	Cash
110	Accounts Receivable
112	Allowance for Uncollectibles
113	Notes Receivable
120	Inventory
130	Prepaid Expenses

Long-Term Investments:

135	Investments

Property, Plant, and Equipment:

140	Land
141	Office Equipment
142	Accumulated Depreciation- Office Equipment
143	Equipment and Machinery
144	Accumulated Depreciation- Equipment and Machinery
145	Buildings and Improvements
146	Accumulated Depreciation- Buildings and Improvements

Intangible Assets:

160	Patents
161	Goodwill
162	Organizational Cost
163	Accumulated Amortization

Current Liabilities:

201	Accounts Payable
202	Deferred Income
205	Salaries Payable
206	Income Tax Payable
207	Sales Tax Payable
208	Payroll Tax Payable
220	Notes Payable – Current Portion

Long-Term Liabilities:

230	Notes Payable

Stockholder's Equity:

360	Capital Stock
361	Retained Earnings
362	Capital in Excess of Par Value

Sales and Related Accounts:

400	Sales
500	Cost of Goods Sold

Operating Expenses:

601	Office Salaries
602	Payroll Tax Expense
603	Taxes and Licenses
604	Rent
605	Selling Expenses
606	Office Expenses
607	Advertising
608	Depreciation
609	Insurance
610	Bad Debts
611	Dues and Subscriptions
612	Amortization
613	Freight

Other Revenue:

701	Miscellaneous
702	Interest Revenue

Other Expenses:

750	Interest Expense

Income Tax:

990	Income Tax

SELECTING A YEAR-END

If the new business is a sole proprietorship or a partnership, the company will usually be required to use a calendar year-end. However, if the business is incorporated, the corporation is often allowed to select a fiscal year-end using a month end other than December.

Which Month to Choose

The selection of a year-end involves several considerations. The most important factor is the ease by which data is accumulated. For this purpose, most companies prefer to use a quarter-end as the last day of the fiscal year (e.g. March 31, June 30, September 30, or December 31). Many companies not using a quarter-end date find that it complicates several government filings and can be confusing to shareholders and others when disclosing quarterly data.

A second consideration involves the nature and seasonal fluctuations of the business. As a general rule, the year-end causes a disruption to the normal course of business, especially if a physical inventory is required. It is usually better to have this disruption occur during the off-season. Also, since the periods just before and just after year-end often involve an additional time commitment by the key officers, a year-end that does not conflict with normal vacation schedules is preferable. For this reason, a calendar year-end is often not selected.

There are also tax reasons to select a year-end other than December 31. If the company has, for example, a June 30 year-end, it is possible for the corporation to pay bonuses in June and obtain a tax deduction. The employee then has six months to decide whether to pay tax currently on the income or attempt to shelter it.

Proper planning in selecting a year-end can also defer the payment of taxes at the corporate level. Suppose the company incorporated in July and operated at break-even through the next April, but expected May and June to be big income months. By selecting a March or April year-end, the company can delay for ten months the payment of taxes on the May and June income. Since cash is often scarce for a start-up company, this deferral can be a significant benefit.

How to Make the Election

The election of a year-end is made on the first tax return of the corporation. Even though the corporate by-laws disclose the fiscal year and the request for Federal Identification Number (Form SS-4) asks for the year-end, a final election is not made until the tax return is filed. There is not a separate form for making the election. The corporation merely states the fiscal year on page one of Form 1120. There are two important requirements for making the election. First, it must be made on a timely filed (including extensions) return. If the first return is not timely filed, the year-end of the corporation is by default December 31. Secondly, the first year can not be longer than twelve months. For example, if a company is incorporated on June 25, and wants to select a June year-end, it must file a return for the five day period, June 25 through June 30. Otherwise, the first return would be for twelve months and five days which is not allowed.

Changing the Year-end

Once a year-end is selected, it may be changed under certain conditions without the prior approval of the Internal Revenue Service. If the conditions are not met, it can only be changed if permission is obtained from the Internal Revenue Service. In considering a request for change of year-end, the Internal Revenue Service will look closely at the business or economic reasons for the change. The absence of a tax avoidance motive is generally a requirement.

Certain corporate events will require a change of year-end. For example, if the company's stock is acquired by another corporation, the acquired corporation will be required to use the same year-end as the parent company. Also, recent tax law changes mandate that S-Corporations and many personal service corporations use a December 31 year-end.

CHAPTER 7

ACCOUNTING SYSTEM

ACCOUNTING SYSTEM

Accounting Records and Record Keeping

Another question which the owner of a business must answer is "Who will keep the books of the business?" Will you do it yourself or out source it? Will the receptionist or a secretary double as a part-time bookkeeper, will you have a bookkeeper that comes in periodically, or will the volume of activity be such that a full-time bookkeeper will be required?

Very often the owners of a business decide to keep the books themselves and underestimate the commitment they have made to other phases of the operation and the time required to maintain a good set of financial records and books of account. As a consequence, the recordkeeping is often low priority and must be caught up later. This approach, though rarely planned, can require a substantial expenditure of time and money. While it is important for the owners of a business to maintain control and stay involved in the financial operations of the enterprise, this can be achieved by maintaining close control over the check signing function and scrutinizing certain records. Your company's accountant can help develop a good program of record keeping duties for you, your employees, and any outside bookkeepers or accountants you may engage.

A Word About Computers

The computer is probably the single most valuable invention for bookkeeping and accounting since the advent of double entry bookkeeping. If your business includes any of the following, then a computer would be a useful tool in your business.

1. Many repetitious or routine tasks
2. Lots of paperwork; i.e., payroll checks, invoices, purchase orders, mailing labels
3. Lots of general correspondence
4. Written reports, contracts, newsletters, catalogues or brochures.

Your accountant knows both your business and computers so he can take much of the confusion out of the selection process by assisting you in the purchase and installation of your computer.

There are a number of very good, easy to use accounting software systems which are commercially available, but none of them will solve the problems of inaccurate or poor quality financial records. All they will do is generate bad information faster. This is one of the reasons that the computer has also probably caused more headaches for the owners of modern businesses than any other single cause. If you want to use a computer based accounting package, either in your own business, with a service bureau or through your accountant, it is imperative that you generate accurate information to be entered into the system.

The real value of the computer becomes apparent once it is running smoothly in your business. Your accountant can then function in the capacity for which he was trained not as a "number cruncher", but as your business advisor, consultant, and strategist. Both of you can focus not on producing reports for various regulatory agencies but on analyzing your business to make it more profitable.

Internal Control

What is internal control? It is the system of checks and balances within a business enterprise which helps to ensure that the company's assets are properly safeguarded and that the financial information produced by the company is accurate and reliable. When you are operating as a "one man shop" or at least handling all of the company's financial transactions, maintaining good internal accounting control is relatively straightforward.

However, when your company grows to the size where you must delegate some of the functions, it becomes more difficult to ensure that all the transactions are being accounted for properly.

No matter the size of your business, you should always be able to answer "yes" to the following questions:

1. When my company provides goods or services to our customers, am I sure that the sale is recorded and the revenue is recorded in accounts receivable or the cash is collected?

2. When cash is expended by my company, am I sure we received goods or services?

The method used to ensure that these two questions can be answered affirmatively will be widely varied. They are essential stepping-stones to maintaining good control in your business. The solution in your particular instance may be as simple as numbering the sales tickets and being sure all tickets are accounted for or reviewing all invoices and timecards before signing company checks. These are fundamentals in a well-run business. As the company grows, you will need to consider concepts such as segregation of authority as well as employee fidelity bonds or controlled access storerooms.

No matter what the size of your enterprise, you should consider controlling your business and safeguarding hard-earned assets as a priority from the outset.

CHAPTER 8

INCOME TAXES

INCOME TAXES

Eventually you will have to deal with income taxes. The income tax laws are extensive and can be confusing for an individual starting a business. This chapter does not cover all the tax ramifications of a new business; however, it provides some guidance on complying with the laws. A qualified CPA should be consulted when you are dealing with income taxes. Income taxes have a direct result and a potentially significant impact on the cash flow of your business.

Income Tax Forms

Each type of legal entity is required to file a different type of income tax form.

Corporation. A corporation is considered a taxable entity and is required to file a federal Form 1120 and TN Franchise and Excise tax return.

Partnership. A partnership is not a taxable entity. It is treated as a conduit through which taxable income is passed to the individual partners for inclusion in their respective tax returns. The partnership is required to file Federal Form 1065. No tax is due with these forms; however, included with the forms is a schedule K-1 which lists the various items of income and credits to be included on the individual partner's return. Limited partnerships and limited liability companies can also be subject to the Tennessee Franchise and Excise tax.

S-Corporation. An S-Corporation is a type of corporation that is specially treated under the tax laws. The government taxes this type of entity in the same manner as a partnership with certain exceptions. The tax forms required are federal Form 1120S and TN Franchise and Excise tax return.

Sole Proprietorship. A sole proprietorship is considered to be a component of the individual's personal tax situation. The tax form required is the Schedule-C which is included with the owner's Form 1040. In addition, if the business has net taxable income, then a Schedule 1040SE must be prepared to determine the amount of self-employment tax that is due.

Estimates

In addition to the regular tax forms the law requires if an estimate of the tax is not properly prepaid on a quarterly basis, a non-deductible underpayment penalty will be levied. Since an estimate is based on forecasting the future and liable to human error, the tax laws provide two safe-harbors to avoid the penalty for underpayment. If your payments for each quarter equal the lesser of 100% of the prior year's tax or 90% of the current year's tax, then the penalty can be avoided. Estimates are filed using the following forms:

Corporate	Federal-Tax deposit form deposited with your bank.
Individual	Federal-Form 1040ES

Due Date	The due dates of the various forms are:
Corporate	Form 1120 is due the 15th day of the 3rd month after the end of the tax year. The deposit form is due the 15th day of the 4th, 6th, 9th, and 12th months of the tax year.
Partnership	Form 1065 is due the 15th day of the 4th month after the end of the tax year (April 15 for most partnerships).
Sole Proprietorship	Form 1040 is due April 15th. Estimated tax payment Form (1040ES is due quarterly on April 15th, June 16, September 15, and January 15).
Extensions	The business owner may request an extension of time to file the tax returns. However, these extensions do not extend the time for paying the tax.

First Corporate Return

The first tax return a corporation files is very important. As part of that return, elections are made which will dictate the way the corporation is taxed for many years to come. Some of the more significant elections that may need consideration are outlined below:

1. Election to capitalize and amortize costs incurred to organize the business. These can be legal, accounting, or similar fees paid to commence operations. Such costs are not normally considered expenses of the corporation and are not deductible unless this election is made.

2. Election to accrue vacation pay earned but not taken by employees at the end of the tax year. Without this election, vacation pay is not deductible until the year it is taken.

The elections discussed above are only a few of those that may need to be considered in an initial return. A qualified tax practitioner can help plan how to best utilize elections taking advantage of some of the following provisions of the tax laws including:

a. Net-operating loss carryovers
b. Research and development tax credits
c. Business energy tax credits

Tax Planning

Proper tax planning is essential in order to make the most of the income tax laws. You will probably need to develop a relationship with a qualified professional who has experience with the taxation of your type of business. Tax planning is not a one-time shot right before the return is due. Tax planning is a year-round endeavor requiring communication on both sides - you and your CPA. Proper planning ensures that there are no surprises when the return is filed.

State Taxes

If your company will be doing business in more than one state, it is essential that you familiarize yourself with the tax laws and filing requirements of those states. Each state has its own rules and regulations; if you are in non-compliance, you may be barred from doing business in that state.

Conclusion

Income tax laws are quite complicated. The amount you may save by attempting to tackle your own taxes, particularly as they relate to a business, can be greatly overshadowed by the expense you may incur if you make a mistake. This axiom takes on greater significance when the return is for a corporation-especially the first return. However, a far greater consideration than potential mistakes is missing opportunities which may be available to you and your business.

CHAPTER 9

PAYROLL TAXES

PAYROLL TAXES

Regardless of the form of business in which you operate, if you are going to have employees then you will have to contend with payroll taxes. The brief summary which follows will give you some guidance in the rules and regulations of the various taxing authorities.

Available Publications

Circular E, Publication 15, Employer's Tax Guide, covers the payroll tax reporting and deposit requirements and can be obtained through the local office of the Internal Revenue Service.

Tax Deposit Requirements

Federal withheld income and FICA taxes (employer and employee portion).

1. Employers are classified as either monthly depositors or semiweekly depositors. All new employers are monthly depositors in the year in which they become employers. Monthly depositors must deposit federal withholding and employment taxes on wages during a calendar month by the 15th day of the following month. Deposits are made with a federal tax deposit coupon at an authorized financial institution or federal reserve bank.

2. $1,000 Exception. If at the end of the calendar quarter your total accumulated employer taxes are less than $1,000, you may pay the taxes when you file Form 941, Employers Quarterly Federal Tax Return.

Federal Unemployment Taxes

To determine your quarterly liability for FUTA, multiply by .008 that part of the first $7,000 of each employee's annual wages that you paid during the quarter. If the resultant liability for the quarter is $100 or less, there is no requirement to deposit it currently, you merely add it to your liability for the following quarter.

If your liability for any calendar quarter (plus any undeposited taxes for an earlier quarter) is more than $100, you are required to deposit the taxes with a federal tax deposit coupon at an authorized financial institution or federal reserve bank by the end of the following month.

If the tax reported on your Federal Unemployment Tax Return, Form 940, less deposits for the year:

1. Is more than $100, you must deposit all of the tax on a quarterly basis when more than $100 is owed or

2. Is less than $100, you may pay the taxes when you file Form 940.

Supplemental Wages

If supplemental wages, such as bonuses, commissions, and overtime pay, are included in the same payment with regular wages, tax to be withheld is determined as if the total of the supplemental and regular wages were a single payment for the regular payroll period.

If supplemental wages are not paid on the same payment as the regular wages, the employer may:

1. Withhold at a flat rate of 28% for federal tax or

2. Combine the supplemental wage with the last regular wage, determine the tax on the total wage, and subtract the amounts already withheld on the regular wage payment.

Fringe Benefits

As of 1985, gross income does not include any fringe benefits that qualifies as one of the four categories listed below. Fringe benefits that qualify for the exclusion are exempt from income tax and Social Security tax withholding (FICA and payment of Federal Unemployment Tax (FUTA)). Conversely, benefits which do not qualify are subject to these taxes. An example of a common non-qualifying benefit subject to tax is the automobile allowance.

No additional cost service. This is a service provided to an employee that is excludable from wages. The service must be offered for sale to the public in the ordinary course of the line of business of the employer. For example, if employers furnish airline travel or hotel rooms to employees working in these lines of business in such a way that the non-employee customers are not displaced, they incur no substantial additional cost in providing those services to the employees.

Qualified employee discount. Any employee discount is an excludable qualified employee discount if: (1) in the case of property, it does not exceed the gross-profit percentage of the price at which the property is being offered to customers; (2) in the case of service, it does not exceed 20% of the price at which the service is being offered.

Working condition fringe. Any employer-provided property or services are excludable benefits to the extent that they are deductible as ordinary and necessary business expense had the employee paid for them. Under certain conditions, the fair market value of a qualified automobile demonstration used by a full time auto salesperson is an excludable working condition fringe.

De minimis fringe. Property or services not otherwise tax-free are excludable if their value is so small as to make accounting unreasonable or administratively impractical. An operation of any eating facility for employees is an excludable de minimis fringe if it is located on or near the employer's business premises and the revenue derived normally equals or exceeds the direct operating costs of the facility.

Other Tax Requirements

Whenever a wage payment is made, the employer must provide the employee with a statement of the gross wages and specific deductions (if any). Use the W-4 Form submitted by the employee and the tax tables provided in the employer's tax guides to determine the correct income tax to withhold. If the employee fails to submit a W-4 Form, the employer must withhold at the rate applicable to a single person who has no withholding exemptions. A continuing requirement exists for employers to submit, with their quarterly payroll tax returns, a copy of any W-4 Form on which an employee is claiming an equivalent of 10 or more withholding exemptions.

When making a reimbursement or payment of moving expenses to or for an employee, the employer must complete and furnish the employee with a Form 4782 for each move.

The employer must also furnish a Form W-2 to each employee showing remuneration and withheld taxes for each calendar year. Flat rate expense account allowance, disability insurance paid by the employer, and moving expense reimbursements are among the items to be included as other compensation on a W-2 Form. Upon request, a W-2 Form must be furnished to a terminated employee within 30 days after the request or the final wage payment whichever is later. All other W-2 Forms should be given to the employees by January 31 of the following year.

The payroll tax requirements and the work related to compliance are quite cumbersome and complicated. Once a business employs more than a few people, we recommend that a qualified payroll service be used because it has generally been our experience that the cost of the service is far outweighed by the personnel and management time required to operate the payroll system in house.

Tax Rates

The following charts contain tax rates and the taxable wage basis for employers and employees.

Social Security rate for employee	6.20% (annual limit applies)
Social Security rate for employer	6.20% (annual limit applies)
Medicare rate for employee	1.45%
Medicare rate for employer	1.45%
Gross Federal Unemployment rate	6.20% (annual limit applies)
Less Credit for State Unemployment	5.40% (payment must be timely)
Net Federal Unemployment rate	0.80%

Tennessee Unemployment

To determine your quarterly liability for SUTA, multiply by your assigned rate that part of the first $7,000 of each employee's annual wages that you paid during the quarter.

New employer premium rate for the tax year beginning July 1, 1996, are as follows:

Mining Industry	10.0%
Construction Industry	6.0%
All Other Industries	2.7%

CHAPTER 10

INSURANCE

INSURANCE

Business insurance, like many types of expenditures, is one of those items which business owners typically do not like to pay. You must remember that sufficient insurance can be as critical to the success of your business as a good product or service. Without proper insurance you could lose all of the money, time, and effort you put into your company. The types and amounts of coverage you purchase must be evaluated on a cost-benefit basis like any other commodity which you purchase. Your accountant and insurance agent can help you review the amount of coverage you may wish to purchase for various purposes. Usually, you will want to insure against risks which could have significant detrimental impact on your business. This normally would include such items as fire, storm damage, theft, general, and product liability. Depending on the nature and size of your business, it is often a good idea to self-insure for all or a portion of certain losses. Self insurance can be accomplished by not buying coverage for incidental risks or increasing the deductions on policies which you do buy. Often, raising the deductible can have a very favorable impact on policy premiums. The administrative cost to the insurance company to process small claims is quite high, consequently the rates typically go down substantially if they are relieved of this expense by insuring for losses in excess of a sizable deductible amount. An insurance broker can provide you with comparative costs for various types of coverages with varying degrees of deductible amounts.

Required Policies

Very little insurance coverage is mandatory. The only insurance coverage typically required by law is workman's compensation which covers injuries to employees while on the job. Your insurance agent can explain the required coverage, the rating systems, and help you purchase a policy.

You must also be aware that the terms of your building, office lease, or mortgage may require you to carry certain kinds of insurance coverage in specified minimum amounts. If you have leased equipment or have borrowed money from a bank or other lenders, there will usually be insurance requirements in the agreements relating to these transactions. There are many other types of policies which you may wish to consider. The specific coverage provided by each and the related costs can be explained in depth by a qualified insurance broker.

Some of the types of insurance coverage which you might consider for your business are listed below:

Business Interruption. This coverage, as the name implies, covers the loss of revenues your business would generate if you were forced to shut down for reasons beyond your control. While this is obviously valuable insurance, the policy premium must be carefully considered relative to the potential profits your business might lose during a short shut-down of operations.

Employee Fidelity Bond. This type of insurance typically covers the risk of loss from theft by employees. If your business deals in large amounts of cash, negotiable securities, or similar types of assets, you may be well advised to consider this coverage. Certain industries are required to carry this insurance by Regulatory Authorities.

Umbrella Coverage. This type of insurance covers losses above and beyond the limits of other policies which you carry. Umbrella policies usually pertain to liability of various sorts and are usually valuable if your business or you have a net worth which requires protection in the event of a catastrophic loss.

Insurance is like any other product which you purchase. Before purchasing it you should consult with more than one broker as to your needs for protection. You should discuss insurance needs with acquaintances in the same or related business as yours. Before buying coverage you should check out the reputation of the company that is underwriting the policy. Insurance companies are regulated in Tennessee by the Commissioner of Insurance and are licensed to do business in the state. Companies are rated by the A. M. Best Company and such ratings are available through your insurance broker.

CHAPTER 11

SELECTING PROFESSIONAL ADVISORS

SELECTING PROFESSIONAL ADVISORS

Starting your own business obviously entails a multitude of decisions-decisions which can seem overwhelming without the right players on your team. In order to succeed, you need to equip yourself with every tool at your disposal.

One of the most cost effective tools you can utilize is the expertise of a specialist. The right accountant and attorney can eliminate a host of problems and potentially costly errors you might make as you build the financial foundation of your successful business.

As any coach can tell you, having a first rate quarterback (you) will not guarantee a winning team without a first rate line of defense. The right accountant and attorney are your best defense; their expertise can help save you money which in turn can be used to increase profits.

When enlisting the expertise of an accountant and attorney, you want a specialist suited to meet your specific needs-you want a specialist who will listen to you. More importantly, you need someone you can and will listen to as they devise strategies to help you succeed.

You want to succeed - and you can. By taking the time to make key decisions and enlisting the right players on your team - you will succeed!

CONCLUSION

You now have a handy reference guide to starting a business. With it you should be able to successfully handle many of the problems encountered in starting and running a business. The key to starting a new business is planning. Many innovative people have created very successful companies with meticulous planning. The first step is to select the proper legal entity in which to operate. This depends greatly upon individual and industry circumstances. The next step is to develop a business plan. This plan is the road map for the new business, and it includes industry and competitor analysis, operation, and marketing strategies for the new business and financial forecasts. Due to the wholistic nature of a business plan, many of the issues in this booklet would be addressed at this stage.

After the business plan has been developed, the focus of the venture is turned to obtaining credit and financing the business. For many companies, this can be the moment of truth. This point echoes the importance of a good business plan, because it is the primary tool used in obtaining financing. Once financing is obtained, the business plan will also dictate a course of action. Always remember to seek professional advice in areas which you are not sure. The benefit will far outweigh the cost. We wish you success and welcome you to the wonderful world of free enterprise. Good luck!