

**SMALL BUSINESS FORMATION FOR  
AMERICAN INDIAN ENTREPRENEURS  
(NEW MEXICO)**

2013

# Disclaimer

- **The information provided is for informational purposes only, does not constitute legal advice or create an attorney-client relationship, and may not apply to all circumstances. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.**

# Be Aware

Business License and Permit Requirements  
Along with Tax Rules Applicable to Indian  
Owned Businesses Vary.

## Whether Business Is Located or Doing Business Within or Outside of Indian Country Is Important

- **Indian Country** is broadly defined as:
  - trust or restricted land reserved formally or informally for an Indian Nation, Tribe or Pueblo;
  - dependent Indian communities; and
  - Indian allotments, whether restricted or held in trust by the United States.

# Topics

- **PART 1**: Getting Started
- **PART 2**: Types of Business Structures
- **PART 3**: City/County Business License Requirements
- **PART 4**: Financial Literacy
- **PART 5**: Employer Issues
- **PART 6**: Asset Protection Planning
- **PART 7**: Miscellaneous
- **PART 8**: Forms (Local, State, Federal)
- **PART 9**: Resources and Contacts
- **PART 10**: Choice of Entity Chart Summary

# Part 1

## Getting Started

- Define the business (Who is doing what, how, when and where).  
Business Plan; Marketing Plan; Financial Plan.
- Select a business name not already registered with State or Federal government. Keep it simple.
- Select and register your legal structure.
- Determine legal requirements, such as office building compliance with Title III of Americans with Disabilities Act.
- Establish a relationship with a bank and open a business bank account.
- Determine and secure necessary insurance coverage.
- Network with other small business owners.

# Factors Affecting Business Structure

## Selected

- Personal needs (desire to work alone)
- Location (In or Outside of Indian Country)
- Competition (profit feasible?)
- Product/Services offered (risk level) (In or Outside of Indian Country)
- Labor pool
- Financing (easier to obtain with more parties in business)
- Flexibility in decision-making
- Future of the business (sole proprietorship v. corporation)

# Five Critical Factors

- 1. Legal liability – risk of proposed business
- 2. Tax implications – personal income tax rate v. corporate tax rate; preemption of certain state taxes within Indian Country
- 3. Cost of formation and recordkeeping
- 4. Flexibility
- 5. Future needs (impact of retirement, death or sale of business)

# Federal and State Tax Rates

- Applicable rates, unless exemption applies:
- Federal corporate tax rate - 15-35%
- NM corporate tax rate – 4.8% - 7.6%
- Federal personal income tax rate – 10%-39.6% - 39.6% rate goes into effect Jan. 1, 2014
- NM personal income tax rate – 1.7-4.9%
- Federal self-employment tax – 12.4% of \$110,100 of SE income for Social Security in 2012; in 2013 will increase to 12.4% of \$113,700 of SE income for Social Security. That's a 3.2% hike over the 2012 wage base of \$110,100. SE income gets taxed at 2.9% for Medicare. Total rate: 15.3%.

# **Tax Changes in 2013**

- **The Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA)**
  - PPACA and HCERA add a new Medicare Tax on employees
  - PPACA and HCERA add a new Net Investment Tax on individuals
- **Long Term Capital Gains and Qualified Dividends**

# Medicare Tax on Employees

- The Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA) make significant changes to the treatment of compensatory income starting in 2013. The PPACA effectively increases the Medicare tax (HI) on employees, but not employers, by .9% for taxpayers over the threshold amounts.

# Medicare Tax on Employees (con't.)

- This additional HI will be paid entirely by the employee and is to be withheld from employees, but only to the extent the employee's wages from the employer exceed \$200,000 in a year. This means the employer may disregard the employee's spouse's wages. The employee is liable to the extent the amount is not withheld.

# Net Investment Tax on Individuals

- PPACA and HCERA add a new Net Investment Tax on individuals regardless of whether the individual is employed, self employed or not employed, trusts and estates. The tax is 3.8% of the excess of the (a) lesser of (i) Net Investment Income or (ii) modified adjusted gross income over the threshold amount. The threshold amount is \$250,000 for married taxpayers, filing joint, \$125,000 for married individual filing separate and \$200,000 in any other case.

# **Net Investment Tax on Trade or Business**

- In the case of a trade or business, the tax applies if the trade or business is a passive activity with respect to the taxpayer or the trade or business consists of trading financial instruments or commodities. None of the Net Investment Tax is eligible for deduction.

# Long Term Capital Gains and Qualified Dividends

- The special tax rates on long term capital gains and qualified dividends will expire December 31, 2012. Starting in 2013, the tax rate on long-term gains will be 20% (or 10% if the taxpayer is in the 15% bracket), up from 15% and 0%. Also beginning in 2013, capital gain income for higher bracket taxpayers will be subject to an additional 3.8% Medicare tax.

# NM State Gross Receipts Tax Rates

- The NM gross receipts tax rate varies throughout the State from 5.125% to 8.6875%. Exemptions may apply. The total rate is a combination of rates imposed by:
  - 1. The State,
  - 2. The counties, and
  - 3. The municipalities.

# State Permit/Licensing Requirements

- If by lawful statute or case law, state permit or license requirements apply to businesses in Indian Country, they must be secured. For example, by case law, state liquor licenses may be required regardless of ownership of or location of the business. Permit/licensing requirements may also vary based on State-Tribal agreements. Further, businesses may elect to voluntarily secure same.

# Choice of State for Registering Business - Delaware

## – Delaware

- Many investors will only invest in a Delaware C corporation
- Most notably, venture capitalists
- Delaware's Court of Chancery is in business for one purpose only. This court hears business decisions and its judges have extensive knowledge of Delaware business laws
- Delaware has no state income tax for Delaware corporations that operate out of the state
- No business license required for Delaware corporations not operating in Delaware
- No inheritance tax on stock held by non-residents of Delaware
- No state sales tax on intangible personal property
- Shares of stock owned by nonresident aliens are not subject to Delaware taxes
- Filing in Delaware is fast

# Choice of State for Registering Business - Nevada

## – Nevada

- Nevada took a page from Delaware to attract corporations, even going a step further
- Delaware taxes the proportion of corporate profits earned in Delaware
  - Nevada is tax free, no matter where profits are earned
- Delaware and most other states have an annual franchise tax on corporations. Nevada has none.
- However, because Nevada laws may be perceived as an attempt to evade taxes, Nevada corporations are more frequently audited

# Choice of State for Registering Business - Wyoming

## – Wyoming

- Wyoming shares information with the IRS, but only the information given by companies with real assets inside the state. Since most businesses do not have real assets inside Wyoming, in reality, no information is shared
- No state corporate income tax
- No franchise tax
- Stockholders not revealed to the state
- Unlimited amount of stock is allowed
- Share certificates are not required

# Choice of State for Registering Business – Home State

## – Home State

- For most small to medium sized business, particularly those that derive their income from one state, it makes sense to incorporate in that state
  - One filing fee
  - One state to file a report
  - No multi state income tax forms
  - Convenience
  - Attorney's knowledge of home state laws

## Part 2

# Types of Legal Structures

- Sole Proprietorship
- General Partnership
- Limited Partnership
- Limited Liability Partnership
- General (C) Corporation
- S Corporation

# Types of Legal Structures (Continued)

- Foreign Corporation
- Professional Corporation
- Not-for-Profit Corporation
- Cooperative Association
- Limited Liability Company

# Types of Legal Structures (Continued)

- Businesses may be formed under state law or preferably under tribal law if the tribe has statutes in place for creating type of business structure desired. For example, Jicarilla Apache Nation has Limited Liability Code.

# Types of Legal Structures (Continued)

- State-chartered entities are not as desirable as entities created under tribal law, due to questions of state governing and taxation authority. As a result, in the future, more tribal business structure codes will be enacted.

# Sole Proprietorship

- Business owned by single individual.
- **In community property state such as NM, husband and wife may be sole proprietorship.** IRS Revenue Procedure 2002-69. File Schedule C with 1040.
- **Advantages**
- Easy and inexpensive to start-up.
- Sole proprietor has full control over all business decisions.
- Minimal legal restrictions or requirements.

# Sole Proprietorship

- All profits are considered income to owner and are taxed at personal income tax rate (unless exemption applies, e.g., income derived directly from Indian allotment by Indian allottee exempt from personal income tax).

# Sole Proprietorship

- Disadvantages
- Sole proprietor is personally liable for all business debts.
- May have difficulty obtaining long-term financing.
- Success depends solely on owner.
- Illness, injury or death of sole proprietor will threaten business.

# Sole Proprietorship

- Requirements
- Secure city or county business licenses if Indian business will be located in city/county (outside of Indian Country).
- Obtain any required state/tribal licenses or permits.
- Report and pay required taxes.
- If you will operate sole proprietorship under name different than your own (“dba”), you must register business or trade name with Secretary of State.

# City of Santa Fe Business Licenses/Permits

- Accounting License
- Alcohol License
- Barber Shop License
- Collection Agency License
- Contractor's License
- Cosmetology Shop License
- Finance License
- Food Establishment Permit
- Meat License
- Nursery License
- Pesticide Business License
- Pharmacy License
- Real Estate License
- Salon License
- Security License
- Swimming Facility License
- Tax Registration
- Tobacco License
- Vehicle Dealer License

# Business NAICS Code and DUNS Number

- For Small Business Administration participation, need North American Industry Classification System code (“NAICS”). Visit NAICS website - <http://www.census.gov/eos/www/naics/>
- Federal contractors or grantees need Data Universal Numbering System (DUNS) number. Nine digit business identification number. <http://www.dnb.com/get-a-duns-number.html> or call 1-866-967-6654.

# General Partnership

- Association of two or more persons who have agreed to operate business for profit.
- Advantages
- Easy to start-up.
- More than one person to shoulder responsibilities.
- Financing easier to obtain than for sole proprietorship.

# General Partnership

- All profits are considered income to partners and are taxed at personal income tax rate (unless exemption applies, e.g., income derived directly from Indian allotment by Indian allottee exempt from personal income tax).

# General Partnership

- No written agreement necessary, but is advisable. Address amount, type and value of property to be contributed; how profits and losses will be allocated; how to admit new parties; dissolution; etc.

# General Partnership

- Disadvantages
- May be difficult to find compatible business partners.
- More expensive to initially set up – written Partnership Agreement advisable.
- Partners personally liable for all business debts.
- Each partner bound by acts of other partners (hiring or firing employees, contracting for services, committing to sales).

# General Partnership

- Disadvantages (Continued)
- Decision-making authority is divided.
- Loss of one partner may dissolve business.
- May be difficult to end.

# General Partnership

- Requirements
- File statement of partnership authority with New Mexico Secretary of State or other state or tribe.
- Secure city or county business licenses **if** Indian business will be located in city/county (outside of Indian Country).
- Obtain any required state/tribal licenses or permits.
- Report and pay required taxes.

# Limited Partnership (LP)

- Association of two or more persons who have agreed to operate business for profit.
- **Limited partner is primarily an investor, a silent partner, relying on business expertise of general partner.**
- **Must have at least one general and one limited partner.**
- **Limited partner may (i) not be involved in management; and (ii) exposure for partnership debts is limited to amount of his/her capital investment.**

# Limited Partnership (LP)

- Advantages
- Easy to start-up.
- More than one person to share start-up expenses.
- Financing easier to obtain than for sole proprietorship.
- Limited partner's personal assets are not at risk.
- Limited partnership interests may be a security subject to regulation.

# Limited Partnership (LP)

- All profits are considered income to partners and are taxed at personal income tax rate (unless exemption applies, e.g., income derived directly from Indian allotment by Indian allottee exempt from personal income tax).

# Limited Partnership (LP)

- Disadvantages
- More expensive to initially set up – written Partnership Agreement required.
- General partner personally liable for all business debts.
- Limited partner may not participate in management or risk losing shield from personal liability.

# Limited Partnership (LP)

- Requirements
- Business shall contain, without abbreviation, the words name 'limited partnership'.
- Must file limited partnership agreement and certificate of limited partnership with New Mexico Secretary of State or other state or tribe and pay fee.
- Secure city or county business licenses if Indian business will be located in city/county (outside of Indian Country).
- Obtain any required state/tribal licenses or permits.
- Report and pay required taxes.

# Limited Liability Partnership (LLP)

- General partnership for licensed professionals that provide professional services, such as doctors, lawyers, accountants, etc.
- LLP partners have same limited liability as professional corporation.
- In service LLP, partners are not liable for acts of malpractice committed by other partners.
- Business Name must end with 'Registered Limited Liability Partnership' or 'Limited Liability Partnership' or R.L.L.P. or RLLP, L.L.P. or LLP.

# Limited Liability Partnership (LLP)

- Requirements
- Must file limited liability partnership agreement and certificate of limited liability partnership with New Mexico Secretary of State or other state or tribe and pay fee.
- Secure city or county business licenses if Indian business will be located in city/county (outside of Indian Country).
- Obtain any required state/tribal licenses or permits.
- Report and pay required taxes.

# General (C) Corporation

- Most formalized and complex type of business structure (usually large number of investors).
- Separate legal entity from its owners (shareholders). Continues without regard to death, retirement or sale of stock by shareholder.
- Ownership based on shares of stock. Shares of stock must be paid for.

# General (C) Corporation

- Legally liable for its actions. May sue or be sued in its own name.
- No limit on number of shareholders.
- Heavily regulated by state and federal governments.
- Business name must contain the designation Corporation or Corp., Company or Co., Incorporated or Inc., or Limited or Ltd.
- **Advantages**
- **Personal assets of shareholders are protected from business liabilities.** Sole amount at risk is investment in shares of stock.
- Lifespan independent from shareholders.

# General (C) Corporation

- Advantages (Continued)
- Ownership can be transferred through sale of stock.
- May be easier to raise operating capital through sale of stock.
- Ownership can change without affecting management.
- Fringe benefit costs to employees are tax-deductible for corporation (health and life insurance, etc.).

# General (C) Corporation

- Disadvantages
- Many legal formalities.
- Profits subject to dual taxation – as profits of corporation at corporate tax rate and as dividends to shareholders at personal income tax rate, unless exemption applies.
- Activities limited to those in corporate charter. For example, if corporate charter is for housing business, cannot be retail clothing business.

# General (C) Corporation

- **“Piercing the corporate veil” (Legal Term)**
- Action taken by court that removes protective shield of corporation, including shielding of personal assets of officers, directors and shareholders, due to:
- Treatment of corporate assets as one’s own (commingling of funds);
- Failure to observe corporate formalities;
- Grossly undercapitalizing corporation;
- Manipulation of assets or liabilities (falsely booking revenue, etc.);

# General (C) Corporation

## ✦ “Piercing the corporate veil” (Legal Term)

- Solvency of the corporation;
- Failure to issue stock;
- Absence of corporate records;
- Diversion of assets;
- Failure to maintain arm’s-lengths relationships in conducting business.

# General (C) Corporation

## Requirements

- File Articles of Incorporation with New Mexico Public Regulation Commission Corporation Division or other state or tribe and pay fee (\$100-\$1000).
- Secure city or county business licenses **if** Indian business will be located in city/county (outside of Indian Country).

# General (C) Corporation

- Obtain any required state/tribal licenses or permits.
- New Mexico state corporate tax **not** applicable to corporation with 51% or more Indian ownership, located in Indian Country of Indian owners who have 51% or more ownership. See *Eastern Navajo Industries, Inc. v. Bureau of Revenue*, 552 P.2d 805 (N.M.App. 1976), *cert. denied*, 430 U.S. 959 (1977).
- Report and pay required taxes.

# General (C) Corporation

- Pay annual \$50 New Mexico Corporate Franchise Tax.
- Other Corporate Formalities:
  - Biennial Report and filing fee of \$25.
  - Issue official stock certificates.
  - Maintain an official Corporate Seal.
  - Create By-Laws, hold Annual Meeting and maintain minutes of meetings.

# S Corporation (Sub-chapter S of the IRS Code)

- Small, closely held or family business.
- Separate legal entity from its owners (shareholders). May sue or be sued in its own name. Indian Nation/Tribe/Pueblo may not be an owner in an S corporation.
- Ownership based on shares of stock.
- **Personal assets of shareholders are protected from business liabilities.** Sole amount at risk by shareholder is investment in shares of stock.

# S Corporation

- **No double taxation** – losses and profits passed through to shareholders. Shareholders taxed at personal income tax rate, unless exemption applies.
- General corporation may be converted to S corporation, subject to certain requirements.
- Business must contain the designation Corporation or Corp., Company or Co., Incorporated or Inc., or Limited or Ltd.

# S Corporation

- Can be terminated if:
- Exceed 100 shareholders.
- Transfer stock to a corporation, partnership, ineligible trust or nonresident alien.
- Create a second class of stock.
- Acquire an operational subsidiary.

# S Corporation

- Disadvantages
- Must closely follow tax requirements to avoid loss of S corporation status – may not be reactivated for five years after losing S corporation status.
- Even if no dividend distributed, shareholder obligated to pay tax on his/her share of profit.

# S Corporation

- Disadvantages (Continued)
- Must operate on calendar year for tax reporting.
- Fringe benefits to employees taxable (life and health insurance).
- Cannot be financial institution or insurance company.
- Not have more than 25% of gross receipts from passive sources (e.g., interest, dividends, royalties, rent.)

# S Corporation

- Requirements
- File Articles of Incorporation with New Mexico Public Regulation Commission Corporation Division or other state or tribe and pay fee.
- Secure city or county business licenses if Indian business will be located in city/county (outside of Indian Country).
- Obtain any required state/tribal licenses or permits.
- Report and pay required taxes.

# Self Employment Income

## Subchapter S Corporation

- With respect to self employment income and its corresponding taxes, subchapter S corporation provides opportunity to by pass self employment taxes. Self employment taxes are the amounts paid by employer and employee for Medicare and social security. Corporation can pay shareholders “reasonable” salary upon which deductions for social security and Medicare are taken. But thereafter, money can be distributed from corporation to shareholders as distributions, not earnings, which would not be subject to self employment taxes. Key is to make sure income represents a “reasonable” salary.

# Foreign Corporation

- Corporation doing business outside of jurisdiction in which it is formally incorporated. Must qualify in all jurisdictions where you are doing business. File an application for certificate of authority with New Mexico Public Regulation Commission Corporation Division and pay fee.

# Professional Corporation (P.C.)

- For individuals whose services require professional licenses – doctors, lawyers, accountants, etc.
- Fringe benefits to employees not taxable (life and health insurance).
- Limited Liability Partnership is another option for licensed professionals.
- Business name shall included ‘limited,’ ‘chartered,’ ‘professional association,’ or ‘professional corporation,’ or an abbreviation of those words.

# Professional Corporation (P.C.)

- Disadvantages
- Corporation is limited to single profession.
- Only licensed professionals may be shareholders.
- Shareholders are liable to their clients as a group; however, personal assets are not at risk.

# Not-for-Profit Corporation

- Business formed for religious, charitable, scientific, literary, or education purposes; testing of public safety; fostering amateur sport competition; prevention of cruelty to animals or children.
- **Advantages**
- Contributions are tax-exempt.
- Exempt from (1) gross receipts tax on sales of property or services or leases by not-for-profit and (2) compensating taxes. Gross receipts tax on purchases of tangible personal property **by** not-for-profit is reportable but deductible by seller. Gross receipts on services to not-for-profit is taxable transaction (e.g., legal or accounting services).

# Not-for-Profit Corporation

- Disadvantages
- Must qualify for Section 501(c)(3) status with IRS and State. File Form 1023 with IRS with fee of \$400 if anticipated income not more than \$10,000 or \$850 if greater than \$10,000. File federal qualification with State.
- Must file Articles of Incorporation with State whether non-profit corporation will be located in or outside of Indian Country.
- Must have a Board of Directors.
- Must have By-Laws.

# Cooperative Association

- Requires two or more associations or five (5) or more individuals (farmers, artists, grocers).
- State sets maximum rates one can earn.
- Members own cooperative.
- Quality discount purchasing of goods and services main benefit – savings are passed on in proportion to volume of one's purchases.
- Name shall include 'Cooperative' or an abbreviation of that term.

# Cooperative Association

- Each member has one vote, regardless of volume of business or investment in cooperative.
- May use corporate form for business.
- Requires Board of Directors.

# Limited Liability Company (LLC)

- Limited Liability Company
  - Relatively new hybrid entity
  - Wyoming
    - 1977
  - Florida
    - 1982
  - IRS published Revenue Ruling 88-76
    - Classified a Wyoming LLC which met certain factual criteria as a partnership for federal income tax purposes



# Limited Liability Company (LLC)

- Owners are referred to as Members.
- May have one Member (owner) or more.
- Business name must contain the words limited liability company, L.L.C. or LLC, L.C. or LC, Limited and Company may be abbreviated as Ltd. or Co.
- Advantages
- Personal assets are protected from business liabilities.

# Limited Liability Company (LLC)

- Advantages (Continued)
- Profits and losses pass through LLC to Members who are taxed at personal income tax rate, unless otherwise exempt. No double taxation. Even if no profits are distributed (i.e., kept as retained earnings to grow business), Member obligated to pay personal income tax on his/her share of profit as if distributed, unless otherwise exempt.

# Limited Liability Company (LLC)

- Advantages (Continued)
- No limit on number or nature of Members (owners).
- Simpler to operate than corporation.
- May be perpetual or limited to specific term.
- Members (owners) may participate in management of business.
- Sole proprietor may convert to LLC. File Form 8832 with IRS and comply with state statutory requirements.

# Limited Liability Company (LLC)

- Disadvantages
- Written operating agreement highly recommended or state of organization's statutory default rules apply. Internal management document. Sets out management of LLC and economic relations of Members.

# Limited Liability Company (LLC)

- Requirements
- File Articles of Organization with New Mexico Public Regulation Commission Corporation Division or other state or tribe and pay \$50 fee.
- Secure city or county business licenses if Indian business will be located in city/county (outside of Indian Country).

# Limited Liability Company (LLC)

- Obtain any required state/tribal licenses or permits.
- Securities exemption for private and intrastate LLC offerings.
- Report and pay required taxes.

## **LLC Member (Owner) Subject to Personal Liability for Certain Actions**

- Personally and directly injuring someone when unrelated to LLC business;
- Personally guaranteeing a bank loan or a business debt on which the LLC defaults;
- Failing to deposit taxes withheld from employees' wages; or
- Treating the LLC as an extension of his or her personal affairs, rather than as a separate legal entity.

# Avoid Personal Liability Exposure as LLC Member (Owner)

- **Act fairly and legally.** Do not conceal or misrepresent material facts or the state of your finances to vendors, creditors, or other outsiders.
- **Fund your LLC adequately.** Invest enough cash into the business so that your LLC can meet foreseeable expenses and liabilities.
- **Keep LLC and personal business separate.** Get a federal employer identification number, open up a business-only checking account, and keep your personal finances out of your LLC accounting books.
- **Create an operating agreement.**

# Series LLC

- Allows an investor to hold assets and liabilities within separate compartments or "series"
  - Effectively operate as sub companies under one master LLC, which acts as an umbrella
  - The individual sub “series” can each own individual assets separate and apart from the other series and the master LLC
  - Beginning in 1996, the Delaware LLC Act was amended to provide for a series LLC

# Series LLC (con't.)

- Use of a Series LLC for asset protection
  - Should be considered only within states that have a statute specifically authorizing this type of business entity
  - These include Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, Utah, and Wisconsin

## Part 3

### City/County Business License Requirements for All Business Entities Located in City or County (Not Applicable to Indian Country)

- Obtain City or County Business License
- Secure city or county business licenses if Indian business will be located in city/county (outside of Indian Country).

# City of Santa Fe Business License Requirements

- For the City of Santa Fe:
- Prior to filing your Business Registration License Application you need to secure information below:
  - Check with landlord/property manager to determine if a business is allowed and request written permission (e.g., commercial lease).
  - Check the covenants for any restrictions limiting businesses.
  - Have the name of your business selected.
  - Determine the legal structure for your business and file any necessary forms.

# **City of Santa Fe Business License Requirements**

- Secure a Federal Tax Employer Identification Number (“EIN”). File IRS Form SS-4. May be done by telephone or online. If you are a sole proprietor and have no employees, you may use your Social Security Number.

# EIN Procedures

- **TO APPLY ONLINE**

**Internet EIN** application is preferred method for customers to apply for and obtain an EIN. Once application is completed, information is validated during online session, and an EIN is issued immediately. Online application process is available for all entities whose principal business, office or agency, or legal residence (in case of an individual), is located in United States or U.S. Territories. Principal officer, general partner, grantor, owner, trustor, etc. must have a valid Taxpayer Identification Number (Social Security Number, Employer Identification Number, or Individual Taxpayer Identification Number) in order to use online application.

# EIN Procedures

- **APPLY BY EIN Toll-Free Telephone Service**

Taxpayers can obtain an EIN immediately by calling Business & Specialty Tax Line at (800) 829-4933.

Hours of operation are 7:00 a.m. - 10:00 p.m. local time, Monday through Friday. An assistor takes information, assigns EIN, and provides number to an authorized individual over telephone.

# EIN Procedures

- **APPLY BY FAX**

Taxpayers can FAX completed [Form SS-4](#) application to their state FAX number (see [Where to File - Business Forms and Filing Addresses](#)), after ensuring that Form SS-4 contains all of required information. If it is determined that entity needs a new EIN, one will be assigned using appropriate procedures for entity type. If taxpayer's fax number is provided, a fax will be sent back with EIN within four (4) business days.

# EIN Procedures

- APPLY BY MAIL

Processing timeframe for an EIN application received by mail is four weeks. Ensure that [Form SS-4](#) contains all of required information. If it is determined that entity needs a new EIN, one will be assigned using appropriate procedures for entity type and mailed to taxpayer.

# City of Santa Fe Business License Requirements

- Secure a Business Tax Identification Number from the State Taxation and Revenue Department. Form ACD-31015. Requires your name, address, telephone number, type of business entity (e.g., sole proprietorship or LLC), start date, accounting method (cash or accrual), income tax treatment of entity (corporate or personal income tax filing status) and type of business (e.g., restaurant, lodging, arts, real estate, etc.).

# City of Santa Fe Business License Requirements

- Secure any necessary licenses (medical, legal, accounting, engineering, architectural).
- Secure any necessary permits, such as a food purveyor's permit from the State Environment Department.
- A non-profit corporation must have their IRS 501(c)3 Number.

# City of Santa Fe Business License Requirements

- File your Business Registration License Application.
- Obtain a Certificate of Occupancy (Home and Commercial Sites). City will inspect your business location, whether it is a home or commercial site. You will need a letter of application describing your business; a floor plan to scale showing the residence and the business location within the home if business is in your home; and a vicinity map.
- **For the County of Santa Fe:** Similar Business Registration Application, Development Permit Application (Home and Commercial Sites).

# NM License and Tax Requirements for Special Events (Outside of Indian Country)

- Event Sponsors
  - Obtain Certificate of Occupancy for event location.
  - Obtain Sponsor Business License for event.
- Vendor/Exhibitor for Special Event
  - Obtain a New Mexico Business Tax No. (CRS No.).
  - Obtain a Special Event License (Form may be obtained from Event Sponsor).
  - Food vendors must have temporary food purveyor's permit from State Environment Department.

# Part 4

## Financial Literacy

- Become familiar with:
- Balance Sheet (Assets and Liabilities)
- Profit and Loss Statements
- Cash Flow Analysis

# Part 5

## If You Have Employees

- Contact Tax Accountant or Attorney to determine applicability, if any, of:
- State Unemployment Tax (SUTA)
- Federal Unemployment Tax (FUTA)
- Social Security and Medicare Withholding (FICA - Federal Insurance Contributions Act)
- INS Form 1-9 for Employment Eligibility Verification
- Federal Income Tax Withholding
- State Income Tax Withholding

# Part 6 - Asset Protection Planning

- Attorneys specializing in asset protection planning advise a three legged stool approach:
  - Invest in assets that are exempt from creditors
  - Isolate assets to insulate them from the liability exposure of other assets
  - Structure business entities to make them unattractive to creditors

# Asset Protection Planning (con't.)

## – Investing in Exempt Assets

- Assets can include annuities, cash surrender value of life insurance, qualified retirement plans and homesteads
  - However, each state has its own laws on exemption
- Exemptions for cash surrender value of life insurance or annuities varies from state to state. Extreme care must be taken not to lose that protection.

# Asset Protection Planning (con't.)

- Insulating of Assets from the Liability Exposure of Other Assets
  - As much as reasonably possible, the business owner may separate and thereby isolate various assets from the business

# **Asset Protection Planning (con't.)**

- **Structuring Business Entities to Make Them Less Attractive to Judgment Creditors**
  - Limited partnerships and limited liability companies offer their owners an added layer of asset protection.

# **Part 7: Miscellaneous**

- **New Mexico Department of Labor: Requirements**
- **If Indian business will be located outside of the Indian Country of the business owner:**
- Even if you have no employees, **file Form ES 802** with NM DOL to set up Employer Account Number for Unemployment Insurance.
- Receive letter exempting your business from quarterly fee per employee assessment for Unemployment Insurance.

# Grandfathering (Legal Term)

- Legal term applying to application of new law. Certain new law may not apply to individuals or businesses already in existence. However, if you purchase a business, you may not receive benefit of grandfathering - exemption from compliance with law. May be costly, e.g., remodeling to satisfy Americans with Disabilities Act building requirements.

# Trade Names and Marks

- May protect your name at state and/or federal level, and mark at federal level.
- Federal cost - (1) \$275 per class for a [TEAS Plus](#) application that meets the requirements of 37 C.F.R. §§[2.22](#) and [2.23](#); (2) \$325 per class for an application filed electronically using the [Trademark Electronic Application System](#) (TEAS); or (3) \$375 per class for an application filed on paper. Federal registration - U.S. Patent and Trade Office.
- Make name and mark simple!!!!
- State corporate name reservation (120 days) – PRC - \$10 for profit and nonprofit corporations State LLC name reservation – PRC – \$20.

# Part 8

# Forms

# **New Mexico LLC Forms**

**[www.state.nmprc.state.nm.us](http://www.state.nmprc.state.nm.us)**

- New Mexico Domestic LLC Organization Requirements
- New Mexico LLC Articles of Organization Form
- New Mexico LLC Affidavit of Acceptance of Appointment by Designated Initial Registered Agent (Registered agent is person designated to receive notice of lawsuits).
- New Mexico LLC Statement of Change of Registered Office or Registered Agent, or Both
- New Mexico Domestic LLC Amendment
- New Mexico Requirements for Dissolution of a LLC
- New Mexico Foreign LLC Registration

# Common NM Forms

- Tax
- New Mexico ACD-31015, Application for Business Tax Identification Number, New Mexico
- CRS-1 Form (Combined Reporting System – Gross Receipts Tax, Compensating Tax and Employee State Tax Withholding). Once you report, **you must continuously report, even if you have no income.**
- PIT-ES, New Mexico Individual Estimated Tax Payment Voucher
- PIT-1, New Mexico Personal Income Tax Form

# Common Federal Forms

- IRS Form 8832, Entity Classification Election (elect corporate or personal income tax rate)
- IRS Form SS-4, Application for Employer Identification Number
- IRS Form 1040-ES, Estimated Tax for Individuals (if self-employed)
- IRS Form 1040, US Individual Income Tax Return
- IRS Schedule C, Report Income or Loss from Business
- IRS Schedule SE, Self-Employment Tax
- IRS Form 1065 (K-1), Partner's or Multiple Member LLC Report for Share of Income, Credits, and Losses
- IRS Form 1099, Independent Contractors
- IRS Form I-9, Employment Eligibility Verification
- IRS Form 1023, 501(c)(3) Not-for-Profit Tax Exemption Status (ongoing tax reporting requirements)

# Common City and County Forms

- City of Santa Fe, Business Registration License Application, Certificate of Occupancy Inspection (Home and Commercial Sites)
- County of Santa Fe, Business Registration Application, Development Permit Application (Home and Commercial Sites)

# Part 9

## Helpful Resources

- **Small Business Development Center (SBDC)**  
[www.nmsbdc.org](http://www.nmsbdc.org)  
Santa Fe Community College  
6401 Richards Ave.  
Santa Fe, NM 87508  
(505) 428-1362  
(800) 281-7232
- **SCORE Santa Fe & North NM - Chapter 0373 (Volunteer Group)**
  - 120 Federal Place, #307  
Santa Fe, NM 87501  
Telephone (505) 988-6302
  - Fax (505) 988-6300  
Email: [info@santafescore.org](mailto:info@santafescore.org)
- **Santa Fe Business Incubator**  
3900 Paseo del Sol  
Santa Fe, NM 87507  
Telephone (505) 424-1140  
Fax (505) 424-1144

# Web Addresses for Key Resources

- [www.sba.gov](http://www.sba.gov)
- [www.nmsbdc.org](http://www.nmsbdc.org)
- <http://www.nmprc.state.nm.us/>
- <http://www.sos.state.nm.us/>
- <http://www.edd.state.nm.us>
- Gross Receipts Tax Workshop every Tuesday morning at NM Taxation and Revenue Department on San Mateo and Central in Albuquerque – NO information on Indian issues.

# **Part 10 Choice of Entity Chart**

## **Summary**

- This information is intended for illustrative purposes only. It does not constitute legal advice. Before choosing an entity type for your particular situation, consult an attorney. Always check statutes and schedules for updated information.

	<b>Sole Proprietorship</b>	<b>Limited Liability Company ("LLC")</b>	<b>C Corporation</b>	<b>S Corporation</b>
<b>Type of Ownership</b>	One individual or married couple	Members	Shareholders; may be different classes of stock	Shareholders; only one class of stock
<b>Eligible Owners</b>	Individual	No restrictions	No restrictions	Up to 100 shareholders; limited to individuals, estates, certain exempt organizations or certain trusts; no nonresident alien shareholders
<b>Management</b>	Full control by owner	Some or all members may manage; outside manager may manage; operating agreement designates manager(s)	Shareholders elect board of directors that sets policies and manages; officers carry out policies and have day to day responsibility	Shareholders elect board of directors that sets policies and manages; officers carry out policies and have day to day responsibility
<b>Term</b>	Terminated when sole proprietor dies or ceases business	Indefinite unless state requires fix term	Indefinite	Indefinite
<b>Taxation</b>	Individual declares business profits/losses	Entity not taxed (unless elects to be taxed as C corporation); profits/losses passed through to members in agreed upon allocation	Entity taxed at corporate rates; possible double taxation when shareholders receive dividends	Entity not taxed; profits/losses passed through to shareholders in proportion to ownership percentages
<b>Entity Tax Forms</b>	IRS Form 1040	IRS does not recognize LLC as a classification; LLC must file corporation, partnership or sole proprietorship tax return	IRS Form 1120	IRS Form 1120S
<b>Self Employment Tax (Social Security and Medicare)</b>	All income subject to self employment tax	All income subject to self employment tax	All salaries subject to self employment taxes at entity and individual levels	Salaries subject to self employment taxes; distributions to shareholders not subject
<b>Transfer of Ownership</b>	No	Restrictions, if any, set in operating agreement	Shares of stock freely transferred	Shares of stock freely transferred subject to Subchapter S stock ownership rules

# Thank You for Coming!!

- Please fill out evaluation form.
- Please let us know what other subjects you are interested in.