

**General Instructions for establishing  
A business corporation or  
A Limited Liability Company  
In the State of Maine  
And obtaining an Employer Identification Number  
From the Internal Revenue Service**

1. Go to the website of the Maine Secretary of State: <http://maine.gov/sos>
2. On the left-hand side is a menu, click on “corporations”;
3. When the corporations page opens on the left hand-side, depending upon what you want to do, click on either “Business Corporations” or “Limited Liability Companies”;
4. When the appropriate site comes up scroll down to the document(s) needed:
  - With respect to Business Corporations at least two documents will be required:
    - Form MBCA-6 “Articles of Incorporation”;– filing fee at present time \$145
    - Form MBCA-3-NCRA “Appointment of a non-commercial clerk” – filing fee at present time \$175
  - With respect to Limited Liability Companies one document will suffice:
    - MLLC-6 “Certificate of Formation” – filing fee at present time \$175
5. The system does not permit saving a completed form; so, although the form can be filled out on the computer the completed form will have to be printed. It is possible to save the blank form to the computer and then print it for completion by hand or with a typewriter.
6. The reason two forms are needed for a business corporation is the Articles of Incorporation do not include a provision for appointment of a “clerk”, while the Certificate of Formation for a limited liability company does. The function of the “clerk” (or in the case of an LLC “registered agent”) is to provide the Secretary of State with the name and physical address (not a post office box) of the person who can accept service of process in the event of a lawsuit against the entity. You can serve as the non-commercial “clerk” or “registered agent” for your business entity, except the President and the Clerk of a business corporation may NOT be the same person. So, if you are going to be President, someone else will have to be the Clerk. It is common for the attorney for the corporation to serve as Clerk. Generally, the Managing Member of an LLC will serve as the non-commercial registered agent of the entity.
7. When the form is complete send it to the Secretary of State’s Office in Augusta, together with the specified filing fee. It is recommended that a duplicate original and a stamped, self-addressed envelope be included with a request that the Secretary of State return the duplicate stamped with the filing date of the document. This way there is an official copy showing the date the corporation or LLC came into existence.
8. Once the business entity has been established application may be made to the Internal Revenue Service for an Employer Identification Number (“EIN”) for the business. Once the business entity has been established and an EIN obtained a bank account for the entity can be opened.
9. Several cautions:

- If the business corporation or limited liability company will have a SINGLE owner, it is generally possible for a non-attorney to prepare and submit the necessary forms. However, if there will be more than one owner the assistance of an attorney will be required.
- In the case of a business corporation by-laws for the corporation will be necessary and likely will require the help of an attorney to develop. The by-laws ought to include provisions for how one or another owner may withdraw from ownership in the business.
- For LLC's with more than one member you should seek the assistance of an attorney in developing the Operating Agreement. Portland SCORE can provide a sample Operating Agreement for a multi-member LLC, but it is intended to spur your thinking only and is NOT a substitute for legal advice. Bear in mind that the Operating Agreement for a multi-member LLC is quite similar to a partnership agreement, since it makes provision for how key decisions are made with respect to the management of the business; it should also include provisions for how one or another "member" (i.e., owner) may withdraw from ownership in the business. In this case, the assistance of an attorney to develop the Operating Agreement will be required.
- The Maine legislature revised the state's limited liability company law effective in July 2011 to require all limited liability companies, even those with a single owner, to have an "operating agreement". For a single member LLC, you may wish to obtain the assistance of an attorney to develop the Operating Agreement. Or you may wish to use the SCORE template located [here](#). Note this template is for a single member LLC only. It is intended to be a guide for completing an Operating Agreement without the assistance of an attorney, although you may wish to have an attorney review it. Most single owner limited liability companies are unlikely to need to ever refer to its Operating Agreement; however, should the company be sued the first thing the opposing attorney will request is a copy of the company's operating agreement. If there is none, the attorney will assert that the company is not a legitimate limited liability company, thereby threatening the owner's personal protection intended by having created a limited liability company to begin with.
- BEFORE taking action to establish either a business corporation or a limited liability company it is strongly recommended the advice and counsel of a tax professional be obtained so that the most advantageous structure is selected. There are some significant differences in how tax authorities treat business corporations and limited liability companies. These differences need to be understood and considered when deciding how to structure a business.

You may also search the records of the Secretary of State to determine whether the name you want to use for your business has already been taken by someone else. To do this, follow these directions:

1. Go to the website of the Maine Secretary of State: <http://maine.gov/sos>
2. On the left-hand side is a menu, click on "corporations";
3. When the corporations page opens on the right-hand side of the page you will see a menu; immediately under the heading "corporate interactive services" will be the choice "corporate name search"; click on it;
4. This will open a page where you are asked to insert the key word from the name to be searched, for example "Acme", or "Smith and Sons", etc.; you may ignore the "charter number"; click on "Click Here to Search";
5. This will bring up a list of all registrations in the Secretary of State's office for companies which use any part of the key word or words in the name you search; on the right-hand side you may click on "information summary" and the basic information about that company will appear.

Many people skip this step since when you try to register your company name the Secretary of State's office will perform the same search and, if there is a conflict, notify you.

### **Obtaining an Employer Identification Number (EIN) from the Internal Revenue Service**

To obtain an employer identification number (EIN) for your corporation, limited liability company, sole proprietorship or partnership go to: [www.irs.gov](http://www.irs.gov). Look for "Forms and Pubs", then click on "More". When this page opens click on "Current Forms & Pubs" and when that page opens there is a box for searching. Enter "SS-4" in the "Find" box, then click on "Find". When a list of documents opens click on "Form SS-4". You might also want to click on the instructions for the form, in which case click on "Inst SS-4". It is also possible to simply follow the on-line instructions to apply for an employer identification number. This process involves answering a series of questions; when complete the IRS will immediately reply with the EIN for your company. We recommend saving that document to your computer as a "valuable document" and also retaining a printed version.

Question 8a on the form will ask if your entity is a limited liability company. If so, answer yes; 8b will ask the number of "members" (i.e. owners) of the limited liability company. Enter number. Question 9a will ask you to identify the kind of entity. If it is a corporation you will check that box; if it is a limited liability company with only one member, check the box "other" and enter alongside "disregarded entity". If it is a limited liability company with more than one member click on the box "partnership".

A disregarded entity means the LLC does not have to file an annual income tax return; all of the net income is reported on Schedule C of the owner's personal Form 1040 income tax return. If there are two or more owners then the LLC will file an annual partnership income tax return, the partners reporting the income on their personal income tax returns in proportion to their partnership interest.

You can apply for the EIN either online as described, or else print out the form SS-4, fill it out and mail or fax it to the Internal Revenue Services. See the instructions that go with this form for further information.