



# MAKING THE CALL ON INDEPENDENT CONTRACTOR STATUS AS AN OFFICIAL:

Examining the Factors for Playing it Safe

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- By participating in this group discussion, we are not creating an Attorney/Client relationship
- This is not confidential
- I am not your lawyer

## A BIT ABOUT ME

- Cycling Fan
- Tax and Business Attorney
- Entrepreneur and owner of more than 12 different businesses



# SETTING UP YOUR INDEPENDENT CONTRACTING BUSINESS

- Business Structure and State Filing Requirements
- Record Keeping and Accounting
- Changes in the Tax Laws
- IRS Forms and Filing Requirements

# BUSINESS STRUCTURE

- Sole Proprietorship
- LLC (single member)
- LLC (multi-member)
- S Corporation
- C Corporation

# SOLE PROPRIETORSHIP

## PROS

- No filing requirements with the Secretary of State's Office
- No set up
- That's about it....

## CONS

- No limitation on liability
- Use your own SSN to report income
- All business expenses are reported with personal expenses on an IRS Form Schedule C

# LIMITED LIABILITY COMPANY (SINGLE MEMBER)

## PROS

- Easy to set up and maintain
  - File Articles of Organization with the Secretary of State's Office
  - File annual Periodic Report
- Limited liability
- No separate tax forms required

## CONS

- Have to file annual periodic report
- Use your own SSN to report income
- All business expenses are reported with personal expenses on an IRS Form Schedule C

# LIMITED LIABILITY COMPANY (MULTI-MEMBER)

## PROS

- Easy to set up and maintain
  - File Articles of Organization with the Secretary of State's Office
  - File annual Periodic Report
- Limited liability
- Payments reported on 1099-Misc
- Income and loss reported on IRS Form Schedule K-1
- Pass-through taxation

## CONS

- Have to file annual periodic report
- Have to obtain an EIN (easy)
- Have to prepare separate informational Tax Return for the company, IRS Form 1065



# S CORPORATION

## PROS

- Easy to set up
  - File Articles of Organization with the Secretary of State's Office
- Fairly easy to maintain
  - File annual Periodic Report
  - Annual meetings and minutes
- Limited liability
- Payments reported on 1099-Misc
- Income and loss reported on IRS Form Schedule K-1
- Pass-through taxation

## CONS

- Have to file annual periodic report
- Have to hold annual meeting of members
- Have to hold annual meeting of the Board of Directors
- Have to obtain an EIN (easy)
- Have to prepare separate informational Tax Return for the company, IRS Form 1120S

# C CORPORATION

## PROS

- All of the Pros of an S Corporation except: No Pass Through Taxation
- Can deduct medical insurance paid for owners

## CONS

- All of the Cons of an S Corporation, plus: Double taxation (although the rate has come down)

# TAX COMPARISON OF PASS THROUGH ENTITIES

## LLC (multi-member)

- Pass through taxation
- File annual partnership tax return, IRS Form 1065
- All income subject to self-employment tax
  - 50% credit

## S Corporation

- Pass through taxation
- File annual S Corporation tax return, IRS Form 1120S
- Must pay reasonable officer compensation subject to payroll taxes
- Balance of profits can be taken as a distribution (no payroll taxes)

# BUSINESS RECORD KEEPING

## Business Records to Keep

- Copies of all Independent Contractor Agreements (forever)
- Business Cards, Advertisements, and Listings (forever)
- Copies of resume, CV or documentation of qualifications (forever)
- Project Records and calendars (forever)
- Professional Licenses and Insurance Certificates (forever)
- Business bank statements (3 years)

# ACCOUNTING RECORD KEEPING

## Tax and Accounting Records to Keep

- All business receipts (7 years)
- All invoices you issue (7 years)
- Copies of paystubs if you have an S Corp (3 years)
- Travel Mileage Logs (3 years)
- Evidence of business purposes for meals (3 years)
- Tax Returns, Schedule K-1s, and 1099-Misc. (3 years or 7 years)

# TAX CHANGES UNDER THE JOBS ACT

- It nearly doubled the standard deduction, removed personal exemptions, and limited itemized deductions starting in 2018
  - Approximately 92% of all filers will now elect the standard deduction rather than itemizing
  - Standard deduction in 2017 was \$6,350 for single, \$9,350 for head of household, and \$12,700 for married filing jointly
  - Standard deduction in 2018 is \$12,000 for single, \$18,000 for head of household, and \$24,000 for married filing jointly
  - The personal exemption of \$4,050 per person was eliminated

## MORE TAX CHANGES UNDER THE JOBS ACT

Pass-Through business owners (excluding C Corps) can deduct up to 20% of qualifying net business income from their income taxes

- The deduction is only available to U.S. sourced income
- Does not apply to the wages paid by an S Corp to owners
- Only applies for income tax purposes, not self-employment taxes
- The deduction phases out for high-income individuals, starting at \$157,000 filing separately or \$315,000 filing jointly
- It is a “below the line” deduction, but not an itemized deduction. You can use it and still take the standard deduction

## EVEN MORE TAX CHANGES UNDER THE JOBS ACT

**Miscellaneous itemized deductions have been disallowed.**

Even if you itemize your deductions, as an employee you cannot deduct:

- Unreimbursed work expenses (i.e. uniforms, tools, travel, meals etc.)
- Professional dues; license fees; subscriptions to journals
- Business liability insurance premiums
- Medical exams required by an employer
- Home office expenses
- Tax preparation and planning fees



## FILING OBLIGATIONS (PASS THROUGH ENTITIES)

- Quarterly tax deposits and IRS Form 941s
- Regular Unemployment or Workers' Comp Payments
- Annual Federal Unemployment Tax (FUTA), IRS Form 940
- W-2s, W-3s, and State reporting by January 31 of each year
- Issue (and receive) 1099-Misc by January 31 of each year
- Company tax return (1120S or 1065) by March 15 of each year
- Schedule K-1s due by March 15 of each year
- Personal tax return by April 15 of each year



*WHAT ARE YOUR QUESTIONS?*

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