The Sole Proprietor & Bankruptcy: Arizona Bankruptcy Attorney

By Arizona Bankruptcy Attorney John Skiba

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Some entrepreneurs who open a business do so without the added benefits of creating a limited liability company (LLC) or corporation. While this is not a post on business entities and the benefits of creating them, generally if you are in business for yourself, even it is only you running the business, it is generally better/safer to create an LLC or corporation.

Despite this I do have several clients who are true sole proprietors. They operate a business, usually under a trade name, but in the end it is just them. All debts are under their personal names and social security numbers and they are on the hook if the business can't pay its debts. When it becomes necessary for a sole proprietor to file for bankruptcy the reality is that the business is filing for bankruptcy as well. The drawback to a sole proprietorship is that there is no real way to distinguish between you the person and your business.

Chapter 7 Bankruptcy

In a chapter 7 bankruptcy we will be required to disclose all gross income you receive from your work. Further, we will need to deduct all of your business expenses and disclose them to the bankruptcy court. Sometimes this results in a problems with vendors that you use for your business and your ability to maintain your working relationship with that company. Contrast this with a corporation where generally we don't list a day-to-day vendor used by the corporation when one of its shareholders files for bankruptcy. Also, depending on total income, expenses, and total debt it may be more difficult to qualify for a chapter 7 bankruptcy. As I have written about in the past you must qualify to file a chapter 7 bankruptcy based upon your household size and income. Sometimes being a sole proprietor results in showing more income that you otherwise would.

Chapter 13 Bankruptcy

The biggest disadvantage to being a sole proprietor in a chapter 13 bankruptcy case is that you will have a longer payment plan. In a chapter 13 bankruptcy case you will be required to propose a plan to the bankruptcy court and your creditors as to how you will deal with their debts through the bankruptcy. This plan can be a minimum of three years and a maximum of five years. Initially, whether your case will be a three year plan or a five year plan is based upon your income. If you make more than the average family in Arizona of your size, you will have a five year plan. If you are a sole proprietor, we must begin with your total gross income – including business income – before any of your business or personal expenses are deducted. This almost always results in the sole proprietor having a five year plan, even if the income they actually take home would qualify them for a three year plan.

Owning a business and going through bankruptcy can be a complex process. Arizona bankruptcy attorney John Skiba offers a free bankruptcy consultation where your business and personal situation can be discussed. He can be reached at (480) 464-1111.