

Should I Incorporate my California Business?

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To decide whether or not to incorporate your business, you have to think about why you want to incorporate a business.

Some people want to incorporate their businesses because of the perceived liability protection. Incorporating your business, or forming a limited liability company can create a "corporate shield" which will protect you from legal responsibility and personal liability for business debts and obligations. If a business related problem results in a non-guaranteed debt, or judgment, your corporation or LLC will be at risk, but your personal assets will be protected. That is so long as you followed the corporate formalities and properly set-up and maintained your corporation or LLC. The truth is – over 90% of all California corporations and LLCs are not properly formed, or maintained, and consequently have lost their "corporate shield."

If you have substantial assets outside of an IRA or a 401k, then incorporating a young business may be a good idea. If you have a tremendous fear of liability, or if the business you will be engaging in has a high amount of risk, you may also want to incorporate since a personal judgment can be collected for up to 20 years.

Some people want to incorporate because of the prestige. In some industries, suppliers and customers prefer to deal with an INC or an LLC, and look down on businesses with a simple DBA. If you are planning to do business with a government agency, they almost always insist your business be incorporated, or a limited liability company.

Others want to incorporate a business because of the supposed tax advantages. If you are earning in excess of \$60,000 a year then there may be some tax advantages, but often times the owners of a California corporation or LLC fail to take advantage of the tax savings either because they failed to call their accountant on time, or because they simply don't have any extra money to put away.

The downsides to incorporating (forming a California corporation or LLC) are mostly monetary:

- The proper formation of a California corporation will require the retention of an attorney. Although the cost to form a corporation or LLC averages \$2,500 we only charge \$899+Costs for a California corporation and \$899+Costs for a single member LLC. You can use an online service for about \$500, but we strongly advise against it because they will NOT complete all of the documents required in California.
- Both a California corporation and an LLC are required to pay a minimum franchise tax of \$800 per year. The minimum franchise tax is waived for the first year of a California corporation's existence, but not for a California LLC.
- Your end taxes will become more complicated and may require an additional tax return and the assistance of an accountant or CPA.

Usually, the question for most small businesses is not whether or not to incorporate, but whether to form a California corporation or a California LLC. You can read more, by clicking on the links under "Related Articles" but the truth is determining whether you should incorporate and whether you should form a California S corporation or LLC really depends on your particular facts and circumstances. If self-employment tax is killing you, then a California S corporation may be best, but if you don't want to notice, hold and document annual and special meetings of the shareholders and

directors and follow the other corporate formalities, then you may be better off with a California LLC despite the franchise tax on "gross revenues." Honestly, it is best to get input from an experienced business attorney or CPA because making the wrong decision can result in significant monetary losses.

If you would like to discuss the possibility of incorporating your California business, or forming a California limited liability company with a Los Angeles, California business law attorney, call Melissa Marsh at 818-849-5206 or Email: mmarsh@yourlegalcorner.com.

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