

Texas RioGrande Legal Aid, Inc.
LEGAL ASSISTANCE TO MICROENTERPRISES PROJECT
lamp.texasbar.org
4920 N. IH-35; Austin, Texas 78751

Business Entities in Texas: What form of business is right for you?
Limited Liability Company (LLC)

One of the most important decisions you can make as a business owner is deciding what form your business should take. There are several forms of business entities; each has advantages and disadvantages that should be considered as regards your specific situation. Below you will find the benefits and disadvantages of an LLC.

What is an LLC?

An LLC is a business entity created under the Texas Business Organizations Code. The LLC's owners are called members. LLCs are a relatively new type of entity, which blend together aspects of partnerships and corporations.

How do I form an LLC?

Texas requires that a Certificate of Formation be filed with the Texas Secretary of State's Office for the formation of an LLC, along with the filing fee of \$300.00. You should do a name search to make sure that the name you would like to use for your LLC is not already in use. This can be done through the Texas Secretary of State's Office.

LLCs must also register and maintain a "registered office" and a "registered agent." This does not need to be at the LLC's main place of business. The registered agent is the person who will receive governmental and other important notices on behalf of the LLC. This can be a member, but it does not have to be; there are businesses that provide registered agent and registered office services for a fee.

A member's interest in the business is governed by the LLC's "Company Agreement," which can be structured to meet the specific needs of the LLC's members. It sets out the rules for how the LLC is run, how profits and losses are allocated between members, how members can enter or exit the LLC, etc.

How are LLCs operated?

LLCs must be operated according to the rules set out in the operating agreement. Generally, all members participate in managing the LLCs business, though the members can agree to name one person (member or nonmember) to manage the business.

What licenses and certificates must I obtain?

Texas requires many types of business to obtain licenses and permits at the state and local levels. The licenses and certificates you must obtain will differ depending on the business location, business activities and industry that you will be in. For example, the owner of a moving company must register with the Texas Department of Transportation and obtain

the legally required insurance. LLCs conducting business activities are subject to these requirements as are any business.

You may also be required to have a Certificate of Occupancy from your local authority if you are going to be running your business out of a commercial space. If the LLC is going to be operating under a trade name that is not its official name, it must file an assumed name certificate, or DBA, with the Texas Secretary of State's Office.

A list of license and permit requirements can be found at:
<http://www.state.tx.us/category.jsp?language=eng&categoryId=9>

What tax-related requirements should I know about?

Most LLCs must obtain a federal Employer Identification Number (EIN) for tax filing and reporting purposes.

If you are a single-member LLC, you will report the LLC's income and expenses on your individual tax return, IRS Form 1040, using Schedule C; you may also need to file Schedule E or F. If your LLC has more than one member, you will probably need to report the LLC's income and expenses on IRS Form 1065. This is generally an informational return. Each member will receive IRS Form K-1, which informs the member of his or her share of the LLC's income and expenses. The member then reports this information on his or her individual 1040. LLC members may also be required to pay Self-Employment Tax and Income Tax on a quarterly basis, using IRS Form 1040-SE. You should consult with an accountant regarding any income tax filing requirement.

If the LLC hires independent contractors, the business may be required to issue IRS Form 1099-MISC to the contractor. If the LLC has employees, the business is required to withhold its employees' income taxes and FICA taxes and pay federal withholding tax and needs to submit W-2 and W-3 forms to the IRS, as well as IRS Forms 940 and 941. The LLC may also be subject to state and federal unemployment tax as well.

Depending on the type of business being conducted, the business may have to collect Texas Sales Taxes and remit these to the Texas Comptroller. There are other industry-specific Texas taxes administered by the Texas Comptroller Office that may apply to your business' activities.

LLCs are subject to the Texas Margin Tax. This is a state tax that applies to business with gross revenues over \$300,000. Even if your LLC will not ultimately owe any tax, it must file the Margin Tax return annually. The return is due each May 15.

LLCs must also report the value of their business' income-producing personal property and inventory to the Appraisal District in which the business is located. Each Appraisal District has its own form and sets the date by which the form must be filed.

What are the advantages of an LLC?

LLC members have limited liability for the debts or other liabilities of the business. This means that members' personal assets do not have to be used to pay off debts or other liabilities incurred by the LLC.

What are the disadvantages of an LLC?

Setting up an LLC is costly, the filing fee alone is \$300.00. It is also time consuming because the members must create and agree upon a detailed operating agreement that will set out how the LLC is run.

Where can I find more information?

Internal Revenue Service: <http://www.irs.gov/businesses/small/index.html>

Texas Secretary of State: <http://www.sos.state.tx.us/corp/index.shtml>

United States Small Business Administration: <http://www.sba.gov>

Texas Comptroller of Public Accounts: <http://www.window.state.tx.us/m23taxes.html>