



LEGAL ASSISTANCE TO
MICROENTERPRISES PROJECT

The background of the lower half of the page is a solid mustard yellow color. Scattered across this background are various white icons representing tools and household items, including a power outlet, a marker, a level, a screwdriver, a comb, a wrench, a fan, a roller, a hairbrush, and a power drill.

HIRE YOURSELF:

*A guide to starting a small
business for ex-offenders*

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Foreword & Acknowledgements

This guide is designed to give Texans with criminal convictions who want to work for themselves an overview of legal issues that may come up. We designed these materials to outline some important steps along the way, beginning at the early stages of reentering society after leaving prison and getting your life back on track.

The guide starts with an explanation of your rights as a person with a criminal record and provides tips for getting necessary identification documents that can be very helpful when starting a new business or trying to get a job. It then sets out steps for planning, starting a business, and applying for necessary licenses.

We would like to thank the City Bar Justice Center for graciously letting us model this guide from their original. For more information on the City Bar Justice Center and the work they do, go to www.citybarjusticecenter.org. Thanks also to Texas Law Fellowship summer intern Angela Faye Brown.

This guide is intended to provide a practical overview of some of the issues faced by persons with criminal records interested in starting a business. It is not intended to detail all laws and is not a substitute for the advice of an attorney.

I. You Have Rights

As you try to start a business, you may face barriers if you have a past criminal conviction. When you apply for a vocational license, you could be denied the opportunity to take a licensing exam or denied a license. If you are sent to prison, any existing license you hold will be taken away. However, Texas law makes it illegal for a licensing agency to discriminate against you, unless the conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the licensed occupation.

Any time you apply for a license or a renewal, the Texas Department of Licensing and Regulation (TDLR) will run a criminal background check. If the TDLR determines the license should be denied due to the conviction, you will be notified by mail and you may request a hearing. At a hearing, you may have to offer proof of rehabilitation, the time that has passed since your last criminal activity, a record of employment, current child support obligations, and that all court costs are paid.

Be your own best advocate. Keep clean copies of all documents and write down the names, phone numbers, and the dates and times you communicate with the agency or employer.

For more information about the consequences of criminal convictions on licensing, see www.license.state.tx.us/crimconvict.htm.

II. Be Able to Identify Yourself

You must have acceptable forms of identification to conduct all kinds of public and private business. Also, you will need photo ID just to enter many public and private buildings. The chart below lists various forms of ID issued by the government and how to go about getting them. Remember, government IDs are important and, in some cases, necessary to have.

Document	Birth Certificate	Social Security Card	Driver's License/ ID	U.S. Passport	U.S. Passport Card
Governmental Agency	Tx Dept of Health, Bureau of Vital Statistics	Social Security Administration	Texas Department of Safety	State Department	State Department (Valid for ground and sea travel in North America)
Contact Info	1100 West 49th Street Austin, TX 78756	Please check ssa.gov for locations around the state.	Texas DPS offices around state (512) 424 2600	Check local post office for passport locations and times.	Check local post office for passport locations and times.
What to bring	State Issued ID OR A family member with a picture ID OR two documents with your name (at least one having a signature)	Birth Certificate (age and citizenship verification) and a State issued ID	Birth Certificate, Social Security Card, Texas Inmate Card issued from TDCJ	Certified evidence of U.S. citizenship and Identification. Identification can include combination of witness and signature documents. See travel.state.gov/ for more details.	Certified evidence of U.S. citizenship and Identification. Identification can include combination of witness and signature documents. See travel.state.gov/ for more details.
Cost	\$23	Free	\$24 (DL); \$15 (ID)	\$100	\$45

III. Become Financially Literate

Reasons Why You Should Open a Bank Account

Banks are good places to keep your money. They provide a safe and convenient way to take care of your income and your expenses.

- Bank accounts are insured by the FDIC (Federal Deposit Insurance Corporation) so your money is safe—up to \$250,000.
- Banks make it easy for you to keep separate accounts for personal and business expenses. It is important to keep them separate, especially for tax purposes.
- Checking accounts let you take out money by writing a check or using a debit or ATM card.
- When you pay with a check, the check becomes an automatic record that you made that payment.
- Your bank statements can help you keep better track of your money and expenses.
- Banks offer easy 24-hour access to your money with ATMs.
- If you put money into a savings account, you can usually earn interest on that money. It's a good, easy way to save money.

Questions to Ask Before Opening a Bank Account

It is important to remember that you are a customer who is purchasing the bank's services. You should be satisfied with the services being offered and should not be afraid to sit down with bank representatives and ask questions about the services they provide to account holders.

You should ask:

- Is there a minimum amount of money that you need to deposit in order to start a bank account?
- Do you have to keep a certain amount of money in the bank account at all times?

- Are there any monthly fees? If so, how much are they and what are they for?
- Does the account include Overdraft Protection? (This is a service that protects you if you write a check for more money than you have in your bank account. It's like a loan and the bank charges you interest on it, and may charge fees for each time you use it.)

Other Things to Consider When Shopping Around for the Right Bank

- Does the bank have offices near your home or business?
- Does the bank have ATM machines near your home or business?
- Does the bank have staff that speak your language and who can provide you with assistance with which you feel comfortable?
- Is this a bank with which you already have a satisfactory relationship?
- Does the bank offer special banking services for small businesses, such as U.S. Small Business Administration sponsored loans or micro loans?

Opening a Bank Account

The actual process for opening a bank account may differ slightly from bank to bank and account to account. However, most banks will require that you provide them with two forms of identification, one of which has your picture on it, and will ask you to complete a signature authorization card and an account agreement. For more information on forms of identification, please see Section 2 – Be Able to Identify Yourself – of this guide.

Keep Your Business Bank Account Separate from Your Personal Bank Account

It is easier for tax and accounting purposes, such as keeping track of business expenses that are tax deductible. It will also help your clients take your business more seriously.

Keeping Track of all Transactions

It is important to keep up-to-date records of all the transactions you make with your bank accounts. Even though the bank keeps its own records and sends you a monthly statement, you need to keep your own records so that you know, at all times, how much money you have in your accounts so that you can keep your bank accounts balanced and not bounce any checks.

Using Direct Deposit

Direct deposit is when you arrange for your regular paycheck or other regular monthly payments that you receive (i.e., SSI or public assistance payments) to be automatically deposited into your bank account.

Bouncing Checks

If you write a check for more money than you have in your bank account and you do not have Overdraft Protection, the bank may “bounce” the check. This means the check will not be cashed. Instead it will be returned to you and you will be charged a returned check fee. Writing checks that bounce can be considered a crime under certain circumstances.

Debit Cards versus Credit Cards

A debit card is linked to your checking account. When you use a debit card, money is taken directly from your bank account. When using a debit card, it is important to record those purchases in your bank account register or you may end up bouncing a check.

A credit card is linked to a lender. When you use a credit card, you are borrowing money from a lender and will have to repay the amount borrowed plus interest.

Although using a debit card is similar to a credit card, the consequences of each are very different. The law doesn't provide as much protection for purchases made with a debit card as it does for purchases made with a credit card.

This chart highlights some of the major differences between credit cards and debit cards.

Credit Card	Debit Card
You are borrowing money from the bank	You are withdrawing money from your own bank account.
It is an unsecured loan	It is linked to your checking account or sometimes savings accounts.
It is a buy-now, pay-later tool	It is a buy-now, pay-now tool

Payday Loans

Payday loans are small cash advances, usually of \$500 or less. To get a loan, a borrower gives a payday lender a postdated personal check or an authorization for automatic withdrawal from the borrower's bank account. In return, he receives cash, minus the lender's fees. For example, with a \$300 payday loan, a consumer might pay \$45 in fees and get \$255 in cash.

The lender holds the check or electronic debit authorization for a week or two (usually until the borrower's next payday). At that time, the borrower has the option of (1) paying back the \$300 in exchange for the original check, (2) letting the lender deposit the check for \$300, or (3) renewing or rolling over the loan, if he is unable to repay it. Some lenders accomplish the same effect with "back-to-back transactions," having the borrower write a check for a new advance, and using these funds to repay the prior loan. In renewal and back-to-back transactions, the borrower gets no "new" money, but pays another \$45 in fees. Be careful with payday loans, the fees can add up quickly and equal very high-interest rates.

IV. Protect Yourself

Identity Theft

Identity Theft is a crime in which a person obtains key pieces of your personal identifying information such as Social Security numbers and driver's license numbers and uses them for their own personal gain. It can start with lost or stolen wallets, stolen mail, a data breach, computer virus, phishing, a scam, or paper documents thrown out by you or a business. Purchasing and using a shredder can go a long way to protecting your identity. To get more information on how to protect your identity, go to www.idtheftcenter.org.

Check Your Credit Report

Check your credit report once a year. It's a credit healthy thing to do—and now it's free. Creditors determine whether to give you credit or a loan—and how much you will pay—based on information in your credit history. The national credit bureaus (now called consumer reporting companies) collect information from your creditors about how many credit cards and loans you have and how many accounts are late, overdue, or in collection. They sell information in your file to creditors who determine if you'll get a loan and how much interest you'll pay on a credit card. This information about how much credit you have and how you pay your bills can even be used to decide if you get a job, new cell phone service, an apartment lease, or car insurance.

Even if you think your credit history is good, you still should get a copy of your report. You might find anything from old accounts to errors to outright identity theft. You shouldn't be the last to know what's in your file. That's especially true now that you can get free copies of your credit reports from the three major consumer reporting companies (Equifax, Experian, and TransUnion).

How to Order

You can order your free reports three ways:

- Call 1-877-322-8228.
- Visit www.annualcreditreport.com
- Mail a request form to Annual Credit Report Request Service, PO Box 105281, Atlanta, GA 30348-5281.

How do I correct a mistake on my file?

If you find something wrong in your file, you need to tell the consumer reporting company what information is inaccurate. It is best to do this in writing and use certified mail so you can prove you sent the letter disagreeing with the information dispute. If you have documents that support your claim, send copies—not the originals. The company has to investigate your claim and report back to you. You will also get another free credit report if your claim changes your file. You should also write to the creditor that provided the information to the consumer reporting company that you are disputing information it gave. Contact your local legal aid office for help concerning disputes. Below are the addresses and phone numbers for disputes.

Equifax

P.O.Box 740256
Atlanta, GA 30374
(800) 797-7033
(9:00 am to 5:00 pm
in your time zone)

TransUnion

P.O. Box 200
Chester, PA 19022-2000
(800) 916-8800
(8:30 am to 4:30 pm
in your time zone)

Experian

NCAC
P.O. Box 9595
Allen, TX 75013
(800) 583-4080
(9:00 am to 5:00 pm in your time zone)

V. Preparation

1. Get a Job

You will need income as you develop your business and, although finding work can be very difficult, you will have a better chance of getting a job if you get assistance from the Texas Workforce Commission's Project RIO and local nonprofit agencies. They all offer multiple services, including job training, interviewing skills, career counseling, resume writing and job placement services. If you are homeless or have an unstable living arrangement, you should ask them about transitional housing.

Texas Workforce Commission
Project RIO Staff
101 E. 15th Street
Austin, TX 78778
1-800-453-8140
www.texasworkforce.org

A list of agencies that will assist with job searching and basic resources are listed at:

www.criminaljusticecoalition.org/tools_for_re_entry/adult_services

Choosing a Business

For most, choosing a business can be a very personal choice. You must find a balance between your skill set and background, your training, your local resources and your personal interests. In Texas, as a person with a criminal record, you must also consider the restrictions placed on you by the law. To that end, be sure to look carefully at all of your release documents. Determine if there are any restrictions on where you can go and what you can do. Once you have considered all these factors, develop a list

of business options you think would be good for you. Finally, you will need to determine what licenses may be needed for each of your business options.

What licenses and certificates must I obtain?

Some businesses, like painting, do not require a license. But Texas laws require 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. General partnerships 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.

There are over 250 Occupational, Professional, and Business licenses required in Texas. Determining which licenses are required can be challenging. You will need to contact the city, county and state governments to determine their respective licensing requirements for your business. On their website, the state of Texas categorizes the licenses to help your search: **www.license.state.tx.us**.

The following section will help you determine if there are any restrictions to opening the businesses you are considering based on your past conviction.

2. Determine Affects of Conviction

The Texas Department of Licensing and Regulation (TDLR) reviews all licensing applications for applicants with a criminal conviction. TDLR looks at the nature of the criminal conviction as well as the regulations surrounding the requested license. TDLR then determines whether the criminal conviction should result in a denial of the license. A successfully completed deferred adjudication will not be considered a conviction, except under a few circumstances. If denied, you will have an opportunity

for a hearing. Contact your local legal aid office for help concerning these hearings.

In determining whether a criminal conviction should be grounds to deny a license, TDLR considers the following factors in all cases:

1. The nature and seriousness of the crime;
2. The relationship of the crime to the purposes for requiring a license to engage in the occupation;
3. The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which you were previously involved; and
4. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

In determining your fitness to perform the duties and discharge the responsibilities of the licensed occupation, TDLR will also consider the following:

1. The extent and nature of your past criminal activity;
2. Your age when the crime was committed;
3. The amount of time that has elapsed since your last criminal activity;
4. Your conduct and work activity before and after the criminal activity;
5. Rehabilitation efforts while incarcerated or after release; and
6. Other evidence of your fitness, including letters of recommendation from:
 - a. Prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for you;
 - b. Sheriff or chief of police in the community where you reside; and
 - c. Any other person in contact with you.

TDLR's website lists examples of licenses and types of crimes that could potentially disqualify an applicant for that particular license. Below is the TDLR example for Barbers. Other examples can be found at www.license.state.tx.us/crimconvict.htm.

Barbers

Crimes involving prohibited sexual conduct or involving children as victims.

Reasons:

1. Barbers have direct contact with members of the general public often in settings with no one else present.
2. A person with a predisposition for crimes involving prohibited sexual conduct or involving children as victims would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Barbers have direct contact with persons in situations that have potential for confrontational behavior.
2. A person with a predisposition of a violent response would pose a risk to the public.

Crimes involving illegal manufacture or delivery of a controlled substance.

Reasons:

1. Barbers work in a business establishment under their control, which is difficult to monitor with customers constantly coming and going, sometimes lingering for varied periods of time, and which would provide a person with a predisposition to sell controlled substances an effective cover of their selling of controlled substances.
2. Barbers have exclusive access to customers for extended periods of time providing the opportunity for persons with predisposi-

tion to sell controlled substances the opportunity to persuade someone who never tried drugs to buy a controlled substance.

If you have any further questions please go to the state of Texas website at www.license.state.tx.us/crimconvict.htm.

3. Get Licensed

Once you feel confident that you have a good business idea and there are no significant legal obstacles in your path, you will need to submit your license application to the appropriate agency. This is an official document and one of the first representations of your business. Be sure to pay special attention to the details when filling out the application. You can find links concerning licenses, permits, and registration in Texas at www.texasonline.com/portal/tol/en/gov/9. You can also get useful licensing information at www.license.state.tx.us/. You must also furnish proof that you have:

1. Maintained a record of steady employment;
2. Supported your dependents;
3. Maintained a record of good conduct; and
4. Paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which you have been convicted.

Below is a list of application tips to help you get started.

Application Tips for Vocational and Business Licenses

- Identify the government agency that licenses your vocation or business.
- Call, visit or go online to ask for a license application.
- Make several copies of the application form so that you can fill it out in draft form before filling out the final copy that you will submit.
- Carefully read the instructions for completing the application.

- Call the agency for an explanation about any part of the application that you do not understand.
- Complete all the questions and sections of the application form.
- Answer all questions truthfully.
- Check your answers and make sure you have not made any mistakes or left anything out.
- Sign the final copy and date it the day that you sign it.
- Include any applicable fees.
- Photocopy the completed application form.
- Photocopy each document you submit with the original application, if any.
- If you are submitting the application without any other documents, fold it and mail it in a business envelope.
- If you are including documents, do not fold. Use a large envelope.
- Check the mailing address to be sure it is complete and correct.
- Weigh large envelopes at the Post Office for the correct amount of postage for mailing.
- Make a note of the date that you mail the application and keep it with your copies.
- ***Be sure to include any additional documentation required due to your conviction.***

VI. Create a Business Plan

If you are interested in starting your own business or if you are trying to get your existing business off the ground, your first step should be to write a business plan. Writing a good business plan will help you to think through all aspects of your business. A business plan may be required by banks or investors for credit loans. The following section outlines what should go into a business plan. If you are interested in receiving some hands-on free mentoring as you create your business plan, you should contact a small business development organization or the Service Corps of Retired Executives at www.score.org to locate an office near you and to schedule an appointment.

Some Important Tips Before You Start!

- The business plan should tell a strong story about your business, explaining who, what, when, where, how and why.
- The plan should be focused and clear. The plan should define your specific business objectives and goals.
- A good business plan is a living document that should be updated regularly as you work to develop your business.

The Components of a Good Business Plan:

I. Executive Summary

This section should:

- Provide an enthusiastic snapshot of your business, explaining who you are, what you plan to do and why.
- Be less than 2 pages.

II. Business Description & Vision

This section should include:

- A mission statement explaining the purpose of your business.
- Your business goals and objectives and how you envision the business growing.

- A brief history of the business, if any.
- A list of the key people who will be involved in the business.

III. Definition of the Market

This section should:

- Describe the industry of which your business will be part.
- Identify your target market: who are the clients and customers you plan to reach and what are their needs.
- Describe what share of the market you anticipate having.

IV. Description of Products and Services

This section should:

- Describe all of your products and services.
- Explain your anticipated pricing and how your products and services will be competitive in this market.
- If applicable, refer to a picture or brochure of your products, which should be included in the plan's appendix.

V. Organization and Management

This section should:

- Provide a description of how your business will be organized and include an organization chart, if available.
- Describe the legal structure of your business. For more information on business structures, please see Section 7 – Structure Your Business –of this guide.
- Identify any licenses and/or permits that your business will need in order to operate. For more information on licenses and permits, please see Section 5 – Preparation –of this guide.
- Provide a brief biography or description of key managers within the business.

VI. Marketing and Sales Strategy

This section should:

- Explain how you are planning your sales strategy, with regard to pricing, promotion, products and place (the 4Ps).

VII. Financial Management

This section should include:

For a new business:

- An estimate of start-up costs.
- A projected balance sheet (going one year forward).
- A projected income statement (going one year forward).
- A projected cash flow statement (going one year forward).

For an existing business:

- Balance sheets (for the last three years).
- Income statements (for the last three years).
- A cash flow statement (for the last year).

If you are applying for a loan:

- A current personal financial statement and federal tax return for each principal of the business.

VIII. Appendices

This section should include as attachments:

- Company brochures.
- Resumes of key employees.
- A list of business equipment.
- Copies of press articles and advertisements (if available).
- Pictures of your business location and products (optional).
- Information supporting the growth of your industry and/or products (optional).
- Copies of key business agreements, such as leases, contracts, etc. (optional).

Business Start-Up Funds

Start-up money for ex-offenders may be available if you know where to look. If you look into grants and loans for minority groups you may be able to find suitable sources. Where to look:

- Local libraries
- Local Small Business Administration

- Community business incubators
- Government webpages

As a word of caution, you should never pay for information about start-up money for ex-offenders. Any information which requires payment most often can be found free of charge from state or federal agencies with proper research and time management.

If you are working on starting a business as an ex-offender, consider which minority category you fit into to refine your search. There are many categories which a person may fit into, such as:

- Racial or Ethnic Minority
- Native American or Tribal Member
- Female Minority groups
- Armed Forces
- Low income neighborhoods
- Underserved communities

VII. Structure Your Business

Businesses in Texas are set up according to one of several legally recognized structures. This section of the toolkit describes some of the most common legal structures and gives you information to help you select the one that is most appropriate for the kind of business you want to run.

Why You Need to Structure a Business

Your choice of a business structure affects:

- The amount of control you have over your business.
- How business decisions have to be made.
- How you can fund your business.
- How much of your personal funds are at risk.
- How much you will pay in taxes.

What to Do to Formalize Your Business

- Choose a business structure and register.
- Maintain licenses and permits.
- Have written contracts with the people you work with.
- Keep accurate and complete accounting records.
- File and pay taxes.
- Follow employment laws.
- Get insurance.

Why You Should Have Insurance

Although most businesses are not required to have insurance, obtaining insurance for your business is generally a good idea. Insurance for your business can protect you by paying out claims against you and your business that can come out of accidents, or losses resulting from natural disasters, fires, etc.

There are different kinds of insurance products available. Insurance for business property, general business liability, workers compensation, and malpractice are just some examples of the types of insurance a business may need.

Each industry and each business has unique insurance needs. Comparison shop and price premiums to obtain the best protection for your business at the most affordable price.

What tax-related requirements should I know about?

All businesses who have employees must obtain a federal Employer Identification Number (EIN) for tax filing and reporting purposes. If the business hires independent contractors, the business may be required to issue IRS Form 1099-MISC to the contractor. If the business has employees, the business is required to withhold its employees' income taxes and FICA taxes and pay federal withholding tax and needs to submit various forms to the IRS. The business may also be subject to state and federal unemployment tax as well. You should consult with an accountant regarding any income tax filing requirement.

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's Office that may apply to your business activities. Under certain circumstances businesses may be subject to the Texas Margin Tax (sole proprietorships and some general partnerships are exempt). This is a state tax that applies to business with gross revenues over \$1 million. If the partnership is subject to the Margin Tax, it must file the Margin Tax return annually, even if it will not end up owing tax. The return is due each May 15.

Businesses 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.

For more detailed tax information check out “Record Keeping and Taxes: A Toolkit for Micro-Entrepreneurs” located in the resource section on the LAMP website at lamp.texasbar.org. You should consult with an accountant regarding any income tax filing requirement.

Four Common Business Structures

1. Sole Proprietorship

This is a simple form of business in which the owner is personally responsible for all the obligations of the business, is entitled to all of the profits of the business, and has great flexibility with how to manage the business. The business and the owner are one legal entity.

Tax Concerns with a Sole Proprietorship

Sole proprietors report business income and losses on their individual tax return, IRS Form 1040 using Schedule C or C-EZ. Sole proprietors are also generally 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 personal income tax filing requirement. You should consult with an accountant regarding any income tax filing requirement.

What are the advantages of a sole proprietorship?

- It is simple and inexpensive to create and operate (little reporting).
- The owner reports business profits or losses on personal tax return; losses and business expenses are tax deductible.
- The owner has sole control over business.
- It can be converted to corporate, partnership or LLC form later.
- Sole proprietorships are not subject to the Texas Margin Tax.

What are the disadvantages of a sole proprietorship?

- The owner is personally liable for business debts and lawsuits; creditors can go after some of the owner's personal assets.
- Access to business resources, including capital, is limited.
- The owner must make all business decisions, and business does not survive owner.
- It can be difficult to sell or transfer a sole proprietorship business to another person, and difficult to put a value on the business.

2. General Partnership

A partnership is two or more persons operating a business for profit as co-owners. Partners contribute money, labor, property or skills to the partnership and participate in the management of the partnership. The partnership is an entity distinct from the partners. It can own property and engage in transactions independently from the partners.

General Partnerships allow for flexible operation. Usually, all general partners have equal rights to control and manage the partnership. However, general partners can, and should, create a *Partnership Agreement* to provide an agreed upon system for managing the partnership. This agreement can be structured to meet the specific needs of the partners. It sets out the rules for how the partnership is run, how profits and losses are allocated between partners, how partners can enter or exit the partnership, etc.

Tax Concerns with a General Partnership

Most partnerships must obtain a federal Employer Identification Number (EIN) for tax filing and reporting purposes. General partnerships need to report their income and expenses on IRS Form 1065. Each partner will receive an IRS Form K-1 which informs the member of his or her share of the LLCs income and expenses. The member then reports this

information on his or her individual 1040. Partners 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.

What are the advantages of a general partnership?

- General partnerships are easily formed, require few formalities and allow for flexible management.
- No written documents are required, though it is highly recommended that a Partnership Agreement be created for the partnership.

What are the disadvantages of a general partnership?

- General partners have liability for the wrongs and debts of the general partnership.
- When a partner acts on behalf of the general partnership, his or her actions can create liability for the other partners, for example by entering into a contract or having an accident on company business.
- Each partner is individually responsible for the entire debt of the business.

3. Corporation

This structure involves ownership of the business by one or more persons who own shares and have a financial interest in the business. Owning shares means that you have an interest in the business based on having provided money, property or past services to the business. Shareholders have limited liability protection.

Corporations must be operated according to the rules set out in the bylaws. Corporations may issue shares of stock and sell them to

generate revenue. These shares represent an ownership interest in the corporation, and carry with them voting rights and the right to a share of the dividends, which is the profit the corporation pays to the shareholders.

Tax Concerns with a Corporation

All Corporations must obtain a federal Employer Identification Number (EIN) for tax filing and reporting purposes. For federal tax purposes, there are two different treatments given to corporations: “S” Corporations, and “C” Corporations. “C” Corporations are the default tax treatment of corporations. The corporation will pay income taxes on its profits, and the shareholders will individually report and pay income taxes on any dividends received.

“S” Corporations must file for the S election with the IRS relatively quickly after incorporating. If the corporation complies with the requirements set out by the IRS, it may be granted “S” status, which makes it a “pass-through” tax entity. The “S” Corporation will file an informational return and its shareholders will use report the income and expenses. You should consult with an accountant regarding any income tax filing requirement. Corporations are subject to the Texas Margin Tax.

What are the advantages of a Corporation?

- Corporate shareholders have limited liability for the debts or other liabilities of the business. This means that the liability of the shareholder is limited to the amount he or she has invested in the corporation.
- “C” Corporations can raise additional capital by going public, which is offering additional shares for sale in an attempt to raise money for the business.
- “S” Corporations are “pass-through” entities for federal tax purposes, which means the “S” Corporation’s income is taxed only once.

What are the disadvantages of a Corporation?

- Setting up a corporation is costly; the filing fee alone is \$300.
- The members must create the bylaws that will set out how the corporation is run.
- The management of corporations is pretty inflexible due to the requirements of the corporate structure.
- Corporations are required to comply with many rules and formalities, which can be costly and time-consuming.
- “C” Corporations are subject to “double taxation;” the corporation pays taxes on its income, and the shareholders also pay taxes on their dividends.
- There are limitations on the number and types of shareholders in “S” Corporations, which makes it impossible for an “S” Corporation to raise capital by going public.

4. Limited Liability Company (LLC)

LLCs blend together aspects of partnerships and corporations. The LLC's owners are called members. LLCs must be operated according to the rules set out in the operating agreement. Generally, all members participate in managing the LLC's business, though the members can agree to name one person (member or nonmember) to manage the business

Tax Concerns with a LLC

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. 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. LLCs are subject to the Texas Margin Tax.

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.
- LLCs are more flexible than corporations in management and tax treatment.

What are the disadvantages of an LLC?

- Setting up an LLC is costly; the filing fee alone is \$300.
- It is time consuming because the members must create and agree upon a detailed operating agreement that will set out how the LLC is run.

Further information on business structures is located in the resource section on the LAMP website at **lamp.texasbar.org**.

VIII. Protect Your Work

There are laws that protect inventions, literary and artistic works, symbols, names, images and designs that you may create in the process of developing and operating your business. Those “creations of the mind” are called “intellectual property.” The protections that are available for intellectual property break down into three main categories:

Trademark

A trademark is any word, name, symbol or color that is used to identify and distinguish goods or services from those manufactured, sold or offered by others, and to indicate the source of those goods and services. Business names and logos are examples of items that you may want identified exclusively with your business that can be trademarked.

Patent

Any new and useful process, machine, composition of matter or design improvement may be patentable. A patent is a legal right granted by the federal government that gives the owner of the patent the right to exclude others from making, using, offering to sell, selling or importing into the U.S. an invention claimed in the patent (subject to the conditions and requirements under patent law).

Copyright

A copyright is a legal right to a literary, musical, dramatic, choreographic, pictorial, sculptural, motion picture, audio, audiovisual, software or architectural work that prevents anyone besides the copyright owner from making copies, modifying, selling, performing or displaying the work without permission.

Each of these different types of intellectual property rights has its own registration requirements. Please contact your local legal aid office for assistance with trademarks, patents, and copyrights.

IX. Why Should Small Business Owners File Tax Returns?

It's the law. If you don't file your tax returns and make payments on time, you may end up owing the government more money, including back taxes, penalties and interest. If you have a formal business entity, the state may also close your business down by revoking its Certificate of Formation.

It's in your interest. It's good to be aware of how much money you're making and how much you're spending. Maybe you're making so much profit that it is time to expand, or maybe you're spending more money on your business than you planned. Either way, this is key information that any small businessperson should know.

You may get a refund. If you file, and it turns out that you've overpaid your taxes you may get a refund.

You'll pay more into your Social Security account. If you don't pay into Social Security now, you and your family members cannot collect as much money when you retire or if you become disabled.

It may help with immigration status. Tax returns provide proof of income, employment, and good moral character, which you may need to adjust immigration status or to sponsor a relative.

It may help you buy a home. Tax returns also provide proof of income and employment, which you may need to qualify for a mortgage.

It may help you get a business loan. Banks will want to see past tax returns to determine how much money your business is making before loaning you money.

It may help you sell your business. If you decide to sell your business, potential buyers will want to see your tax returns so they can see how much money your business is really making.

For more detailed tax information check out “Record Keeping and Taxes: A Toolkit for Micro-Entrepreneurs” located in the resource section on the LAMP website at lamp.texasbar.org. You should consult with an accountant regarding any income tax filing requirement.

X. Helpful Websites

lamp.texasbar.org

www.annualcreditreport.com

www.texasworkforce.org

www.criminaljusticecoalition.org/tools_for_re_entry/adult_services

www.license.state.tx.us/crimconvict.htm

www.texasonline.com/portal/tol/en/gov/9

www.score.org

www.license.state.tx.us

www.idtheftcenter.org

www.responsiblelending.org

www.nelp.org

Additional resources available by phone:

Call 211 and identify yourself as an ex-offender.



LEGAL ASSISTANCE TO
MICROENTERPRISES PROJECT

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