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Ice Cream, Hot Dogs, or Vegetables: Starting a Mobile Food Vendor Business

By
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Mobile food vending includes sale of food from a trailer, van, truck, pushcart, or other vehicle. It includes the sale of prepackaged food like ice cream, food cooked in the vending unit such as tacos, and unsliced produce such as vegetables. Mobile food vending businesses are typically started as sole owner/proprietorships. While there are many other legal structures for businesses such as partnerships and corporations, the following procedures and regulations will help you open and run a mobile food vending business as a sole owner/proprietor.

- (1) **Choose a name for your business.** Check to make sure no one else is using that name. You may check with the County Clerk's office (sometimes they will have a computer system for you to look on). Also check corporate names on the Comptroller's web site at www.cpa.state.tx.us by looking at the Franchise Tax Account Status. Alternatively you may pay for an Assumed Name search on the Secretary of State's web site at www.sos.state.tx.us. Once you have chosen an available name, file an Assumed Name (DBA) at the County Clerk's office so that no one else can use the name you choose. Fees are usually around \$10. If you plan to work in more than one county, you should file a DBA in each county.
- (2) **Apply for an Employer Identification Number.** An Employer Identification Number (EIN), also known as a Federal Tax Identification Number, is a nine-digit number that the IRS assigns to business entities. It is required whether you have employees or not. The IRS uses this number to identify taxpayers that are required to file various business tax returns. EINs are used by employers, sole proprietors, corporations, partnerships, and other forms of businesses. You may apply for an EIN online at <http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>.
- (3) **Obtain a Texas sales and use permit and tax ID.** Submit an application to the Comptroller's office to obtain a Texas sales and use permit and tax ID. You may download the sales and use tax application online at <http://www.window.state.tx.us/taxinfo/taxforms/00-forms.html> (Sole owners should complete form AP-157). As a permit holder in the state of Texas you will be required to collect sales taxes and pay sales and use taxes. More Texas state tax information is provided by the Texas Comptroller of Public Accounts at <http://www.window.state.tx.us/taxinfo/sales/>. It is required that your Texas sales and use permit "be prominently displayed in your place of business."

- (4) **Obtain a health permit.** File an application for a Mobile Food Vendor/Mobile Food Unit permit (health permit) with the regulatory authority that has the permitting and inspectional responsibility for the establishment (each will have its own application for different and specific types of mobile units). This is normally done at the County Health Department, but the regulatory authority may also be a city, public health district, or the Texas Department of Health (TDH only permits establishments that are not permitted by a city, county, or public health district). Fees are usually around \$100 for a Mobile Food Vendor permit. The permit will last for one year and is renewable each year.

Inspections. Your mobile food unit will be inspected for compliance with Texas Food Establishment Rules (25 TAC §229.169) as well as any additional requirements before you are issued a permit. Texas Food Establishment Rules may be found online at <http://www.tdh.state.tx.us/bfds/retail/tfer.html>.

Some regulatory authorities may require several inspections per year in order for you to keep your Mobile Food Vendor Permit. Your permit must be attached to the unit while operating. Penalties for vending without a permit may be as high as \$2000.

Types of permits. It is important to note that there are restricted and unrestricted Mobile Food Vendor permits. Both permits have different requirements as described by the Texas Food Establishment Rules. The main regulatory differences between the two concern water usage, waste disposal, and unit construction. There may be other requirements relating to restricted and/or unrestricted permits depending on the regulatory authority.

- I. Restricted Mobile Food units serve only food that is already prepared and prepackaged. Restricted units are not required to have a water or waste system, but must follow the Texas Food Establishment Rules if they choose to have either.
- II. Unrestricted Mobile Food units offer food that is packaged or prepared on the vehicle, including the slicing or peeling of fruits and vegetables. Unrestricted units must be enclosed, have overhead protection and a water and waste system. If you are opening an unrestricted unit, written proof of an approved water source and approved waste disposal site by means of a commissary letter from an approved area are required before a permit will be issued (A commissary is an approved site, which may be a restaurant, at which food preparation, storage, and cleaning occurs.). You may not store or wash any utensils at home.

- (5) **Determine the sales location.** Additional applications for permits may need to be filed depending on the location of the mobile food vending unit. For example, units selling on city easements or sidewalks may be required to have a permit from the Urban Transportation Department (The Urban Transportation Department may also require liability insurance when operating on city property). There are also different jurisdictional requirements for operation in certain public areas such as parks. The Zoning Department should also be contacted to make sure you comply with zoning restrictions.

Caveat: There are other laws relating to employees and state and local taxes that are not conveyed here.

Additional information for small businesses may be found at the following locations:

Federal Taxes: <http://www.irs.gov/businesses/index.html>

Employment Laws: <http://www.tded.state.tx.us/guide>

State Taxes: <http://www.cpa.state.tx.us>

Legal Assistance to Micro-enterprises Project (LAMP) provides free legal services for qualified low-income residents of the Texas RioGrande Legal Aid service area to start or sustain a small business. LAMP provides useful legal advice and assistance on the laws that may affect proposed and existing businesses, including: formation, contracts, employment issues, tax, health and safety laws, commercial landlord/tenant leases, and lending laws. Texas RioGrande Legal Aid can only represent residents who are lawfully present in the United States. To complete an application, call toll-free: 1-888-988-9996.