

# STARTING A SMALL BUSINESS IN



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## **THE AMERICAN DREAM**

### **STARTING AND OPERATING A SUCCESSFUL SMALL BUSINESS**

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Many of us at one time or another, have had visions of owning or operating a small business. We long for the independence of being our own boss or making a success in the marketplace of our special skills. So charged are we in our pursuit of the American dream, that we launch head first into our new business – often only with our determination and aspiration to guide us.

Yet it is a well-documented fact that over 80 percent of all new businesses fails within the first five years of operation. Why?

Certainly many of these businesses have a transient importance and are quickly outdated, however, the single underlying cause can often be attributed to a simple lack of planning. The majority did not do their homework in developing a long-range business plan.

The Merced County Department of Commerce, Aviation and Economic Development is interested in your business and would like you to become a part of our area's growing economy. Merced County has developed this pamphlet to aid the prospective entrepreneur to fit into that successful 20 percent by providing key information on the requirements for starting a business in Merced County and realizing the American dream.

This pamphlet has three parts:

<b>PART ONE:</b>	<b>CHOOSING THE LEGAL STRUCTURE</b>
<b>PART TWO:</b>	<b>LICENSES, REGULATIONS, AND TAXES</b>
<b>PART THREE:</b>	<b>OUTSIDE SERVICE AND RESOURCES</b>

Careful attention to the information presented and diligence in your pursuits should result in a successful venture.

## **CHOOSING THE LEGAL STRUCTURE OF YOUR BUSINESS**

### **PART ONE:**

One of the first executive decisions you'll make for your new business is deciding what type of business organization is best for you. There are four different ways to organize your business. Listed from the simplest to the more sophisticated they are:

1. Sole Proprietorship (individual)
2. Partnership (need partnership agreement)
3. Corporation (need articles of incorporation)
4. Limited Liability Company (LLC)

### **Sole Proprietorship**

A sole proprietorship is as the name suggests a business with one owner. Of the four types of organization it is the most common. A business organized as a sole proprietorship is not separate from its owner, but merely a different name with which the owner represents him/herself to the public. The owner is the business and the business is the owner. They're inseparable.

Because of this relationship, a sole proprietorship is known as a pass-through entity. This means that all income and expenses pass-through to, and are filed as, part of the owner's personal return. If there is a business loss, the owner will enjoy a deduction to offset personal (paycheck) income. However, if the business makes a profit, the owner is responsible for any taxes due.

Since they have few legal requirements, sole proprietorships are easy to form and operate. They can also be more affordable since no legal documents need to be filed in most cases. Basically, all one has to do to form a sole proprietorship is get a business license and begin operations.

Although the sole proprietorship does have the advantage of simplicity, the negatives can steer entrepreneurs away from this form of business organization. The disadvantages of a sole proprietorship stem from its very nature the business and the business owner is inseparable. This leads to three potential problems.

First, owners can lose some lucrative tax-free fringe benefits because they cannot participate in company funded employee-benefit plans like medical insurance and retirement plans. Second, since the owner and the business are inseparable, whoever sues the business actually sues the owner. The owner's personal exposure is unlimited. Finally, the business owner is personally liable for the debts of the company, and unfortunately, personal assets can be taken to pay company obligations.

## **Partnership**

A partnership is similar to a sole proprietorship but has two or more owners. Like the sole proprietorship, the partnership is not a separate legal entity from its owners. Unlike the proprietorship however, the partnership can hold property and incur debt in its name.

In general, the partnership shares the same advantages and disadvantages as the sole proprietorship. However, the partnership has an additional drawback. A partner can be held liable for the acts of the other partners, increasing personal liability.

Tax treatment of the partnership is also slightly different. Although it is a pass-through entity and does not pay its own income tax, the partnership does file an informational tax return with the IRS. The prorated share of its income and expense are shown on each partner's personal return, and any taxes due are paid by the partners.

## **Corporation**

The corporation was conceived to solve the typical problems of the partnership. Incorporating allows a group of entrepreneurs to act as one, much the way a partnership does, with one important advantage. Since the corporation is a separate legal entity capable of being sued, it can protect its owners by absorbing the liability if something goes wrong. In recent years, the corporation has developed as a tax reduction-planning tool.

A corporation is essentially an "artificial person" created and operated with the permission of the state where it is incorporated. It's a person like you, but only "on paper." A corporation is brought to life when a person, the incorporator, files a form with a state known as the articles of incorporation. The owner of a corporation is known as a shareholder.

Since a corporation is a separate legal entity, the corporation actually owns and operates the businesses on behalf of the shareholder, under the shareholder's total control. This separation provides a legal distinction between the owner and the business and provides three important benefits:

1. It allows you, the owner; to hire yourself as an employee (typically as president) and then participate in company funded employee benefit plans like medical insurance and retirement plans.
2. Since you and your company are now two separate legal entities, lawsuits can be brought against your company instead of you personally.
3. When debt is incurred in the company name, a separate legal entity, you are not personally liable and your assets cannot be taken to settle company obligations.

## **S Corporations**

An “S” corporation is the same as any other business corporation with one important difference—the IRS allows it to be taxed like a partnership, a pass-through entity. When business corporations are created, they are all regular “C” corporation. This special filing status is elected by filing IRS form 2552. Many people begin corporate life as an S corporation when there are losses to offset their “paycheck” income and then revert to Corporation status when the corporation begins to make taxable profits. It is important to remember that being an S corporation is a tax matter only.

## **Limited Liability Companies**

A limited liability company is the newest form of business organization. Available in 49 states, a hybrid entity combines favorable aspects of the corporation and partnership. The LLC features pass-through taxation of the partnership, and limited liability of the corporation. You may choose to see it like this—LLC is a partnership that offers the limited liability protection of a corporation. Or conversely, it’s a corporation that’s taxed like a partnership. Yes, it is much like an S corporation without the 35-shareholder limitation.

The limited liability company is a promising type of business entity, but it does have a couple of disadvantages. First, its newness means that law regarding the LLC is still evolving and some issues regarding its operation remain unsettled. Also, if the LLC is taxed as a partnership, business owners will lose company funded benefits.

To decide what type of business entity is best for you, refer to the chart below:

Best Suited for	Proprietorship	Partnership	Corporation (S or C)	LLC
	<ul style="list-style-type: none"> <li>▪ Single owner business where taxes or product liability are not a concern</li> </ul>	<ul style="list-style-type: none"> <li>▪ Business or multiple owner business where taxes or product liability are not a concern</li> </ul>	<ul style="list-style-type: none"> <li>▪ Single or multiple owner business where owner(s) need(s) company funded fringe benefits and liability protection</li> </ul>	<ul style="list-style-type: none"> <li>▪ Single or multiple owner business where owner(s) need(s) limited liability but want to be taxed as a partnership</li> </ul>
<b>Type of Entity</b>	<ul style="list-style-type: none"> <li>▪ Inseparable from owner</li> </ul>	<ul style="list-style-type: none"> <li>▪ Inseparable from owner but can have debt or property in its name</li> </ul>	<ul style="list-style-type: none"> <li>▪ Separate legal entity</li> </ul>	<ul style="list-style-type: none"> <li>▪ Separate legal entity</li> </ul>
<b>Main Advantages</b>	<ul style="list-style-type: none"> <li>▪ Inexpensive to set up</li> <li>▪ Few administrative duties</li> </ul>	<ul style="list-style-type: none"> <li>▪ Inexpensive to set up</li> <li>▪ Few administrative duties</li> </ul>	<ul style="list-style-type: none"> <li>▪ Limited liability,</li> <li>▪ Company paid fringe benefits (C.corp.)</li> <li>Tax savings through income splitting (C corp.)</li> <li>▪ Capital is easy to rise through sale of stock.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Limited liability,</li> <li>▪ Pass-through entity</li> <li>▪ Unlimited number of owners</li> <li>▪ Capital is easy to raise through sale of interests</li> </ul>
<b>Main Disadvantages:</b>	<ul style="list-style-type: none"> <li>▪ Unlimited liability</li> <li>▪ No tax benefits</li> <li>▪ Business dissolves upon death of owner</li> </ul>	<ul style="list-style-type: none"> <li>▪ Unlimited liability, also liable for partners' acts</li> <li>▪ Legally dissolves upon change or death of partner</li> </ul>	<ul style="list-style-type: none"> <li>▪ Can be costly to form</li> <li>▪ More administrative duties</li> <li>▪ S corp. limited to 35 shareholders</li> </ul>	<ul style="list-style-type: none"> <li>▪ Can be costly to form</li> <li>▪ More administrative duties</li> </ul>
<b>Taxes:</b>	<ul style="list-style-type: none"> <li>▪ Owner is responsible</li> <li>▪ File Schedule C with Form 1040</li> </ul>	<ul style="list-style-type: none"> <li>▪ Partners are responsible</li> <li>▪ File Form 1065</li> </ul>	<ul style="list-style-type: none"> <li>▪ C corp. pays its own</li> <li>▪ S corp. passes through to owners</li> <li>▪ File Form 1120</li> <li>▪ S corps. File 1120S</li> </ul>	<ul style="list-style-type: none"> <li>▪ Usually taxed as a partnership, but can be taxed as a corp. in some states</li> <li>▪ Usually Form 1065</li> </ul>

For State of California information regarding different business structures, visit the California Secretary of State web site: [www.sos.ca.gov/business](http://www.sos.ca.gov/business)

## **LICENSES, REGULATIONS, AND TAXES**

### **PART TWO:**

#### **Business Licenses and Permits:**

All business licenses and permits are controlled at the city and county level. If your business is located within the city's limits, contact the business permit and licensing section of your city's government. If your business is located in an unincorporated area, a business license can be obtained through the Merced County Department of Commerce, Aviation and Economic Development. Some occupations such as: accountants, cosmeticians, optometrists, etc. may require state licensing. See Small Resource Guide to determine State Agency.

#### **Permits:**

All business involved in the sale of tangible personal property, must register with the California State Board of Equalization for a seller's permit, resale license. A security deposit may be required and may be deposited in one of the following ways: (1) non-interest bearing cash deposit; or (2) bank or savings loan certificate of deposit.

This permit will provide you with a resale number, which you are required to use when conducting business. Permits must be posted in a visible location. To obtain more information on the seller's permit, resale license, or wholesale license, see Small Business Resource Guide for nearest office of the State Board of Equalization.

#### **Insurance:**

There are numerous types of insurance coverage that your business may require depending upon the nature of your business. Below is a listing of the different types of coverage, which are available.

- Liability Insurance
- Basic Fire Insurance
- Extended Coverage
- Vandalism and Malicious Mischief Coverage
- Theft Coverage
- Automobile Coverage
- Product Liability Coverage
- Business Interruption Insurance
- Worker's Compensation

You should contact your local insurance agent/broker to determine your specific needs.

**Fictitious Name Statement:**

If you do business under any name other than your own, you must file a fictitious business name statement. This is also referred to as a DBA (doing business as). This statement must be filed with:

**Merced County Clerk's Department  
2222 M Street, Room 14  
Merced, CA 95340  
(209) 385-7501**

An application fee must be paid when the statement is filed. Within thirty (30) days of the filing for the fictitious business name, you must run the statement weekly for four weeks and pay a service charge. At the end of the four weeks, the newspaper will issue you a Proof of Publication certificate, which must be returned to the Merced County Board of Elections Office within thirty (30) days.

**Zoning**

Your business must meet local, state, and federal regulations governing business activities. Many businesses have special regulatory requirements that other businesses do not have. It is important that you know the regulatory requirements for your business, in order to avoid violating them.

Refer to the Small Business Resource Guide for the following:

Health And Safety Regulations

Federal and California Wage-Hour and Child Labor Laws

Federal and California Fair Employment Laws

Self-Employment Tax

State Employer Tax Identification Number

**Business Assistance Resources:**

**MERCED COUNTY/CITY LICENSES, REGULATIONS, AND TAXES**

- A. Business License (in city)
  - 1. Merced 209-385-6843
  - 2. Atwater 209-357-6310
  - 3. Los Banos 209-827-7000
  - 4. Livingston 209-394-8041
  - 5. Gustine 209-854-6471
  - 6. Dos Palos 209-392-2174
  - 7. Merced County 209-385-7686
  
- B. Resale Certificate (Seller's Permit)
  - 1. State Board of Equalization Fresno Office 559-248-4219  
Stockton Office (1) 800-432-2829  
Stockton Office (2) 800-400-7115  
[www.boe.ca.gov](http://www.boe.ca.gov)
  
- C. Insurance Needs (Workman's Compensation)
  - 1. State Compensation Insurance Fund 800-468-8437
  
- D. Fictitious Business Name Statement (Protect your Business Identity)
  - 1. Merced County Clerk 209-385-7501
  - 2. Any Newspaper in Merced County (Name needs to be published)  
(See list of newspapers at clerk's office for prices.)
  
- E. Zoning/Home Occupation Permits/etc. (City and County Planning Departments)
  - 1. Merced 209-385-6858
  - 2. Atwater 209-357-6340
  - 3. Los Banos 209-827-7000
  - 4. Livingston 209-394-8041
  - 5. Gustine 209-854-6471
  - 6. Dos Palos 209-392-2174
  - 7. Merced County 209-385-7654
  
- F. State Employer ID Number  
Employment Development Department 209-726-5407
  
- G. Federal ID Number  
Internal Revenue Service 800-829-3676 [www.irs.gov](http://www.irs.gov)  
IRS Hotline (tax forms) 800-829-1040
  
- H. Food Permits/Hazardous Materials  
Merced County Environmental Health 209-381-1100

## **USING THE SERVICE OF OUTSIDE PROFESSIONALS**

### **PART THREE**

There are a number of outside professionals with whom a new businessperson would want to establish a relationship.

#### **Chambers of Commerce:**

It is recommended that each new business register with the Chamber of Commerce. The Chamber of Commerce provides a variety of services to local businesses at little or no charge.

**Greater Merced Chamber of Commerce  
360 E. Yosemite Ave. Suite 100  
Merced, CA 95340  
(209) 384-7092**

**Los Banos Chamber of Commerce  
503 J Street  
Los Banos, CA 93635  
(209) 826-2495**

#### **Accountant:**

An Accountant should be consulted prior to setting-up a good bookkeeping system for your business. Inadequate record keeping is a leading contributor to the failure of a small business.

#### **Attorney:**

An attorney's services are not only essential in the planning stages of your business, but throughout the life of your business. They can assist you in choosing your legal structure, drawing up partnership agreements, or articles of incorporation, and structuring contracts, as well as providing information on your legal rights and obligations. The local chapter of the California Bar Association may be able to direct you to an attorney. Or contact:

**Merced County Lawyer's Referral Service  
(209) 383-3886**

#### **Banker:**

The capital requirements for a small business make it essential that a good working relationship is established with a local banker. They are a good source of financial information and for obtaining financing.

### **Insurance Agent/Broker:**

An insurance agent or broker can advise you about the type and amount of insurance coverage that is necessary for your business. They may be able to tailor a package to fit your specific needs at a reasonable rate.

### **BUSINESS ASSISTANCE RESOURCES**

#### **A. Chambers of Commerce**

- |    |                                   |              |
|----|-----------------------------------|--------------|
| 1. | Merced Chamber of Commerce        | 209-384-7092 |
| 2. | Atwater Chamber of Commerce       | 209-358-4251 |
| 3. | Los Banos                         | 209-826-2495 |
| 4. | Gustine                           | 209-854-6975 |
| 5. | Merced County Chamber of Commerce | 209-722-3864 |
| 6. | Hispanic Chamber of Commerce      | 209-384-9537 |
| 7. | State of California               | 800-331-8877 |

#### **B. Area Colleges with Business Courses available**

- |    |                                         |              |
|----|-----------------------------------------|--------------|
| 1. | Merced College                          | 209-384-6000 |
| 2. | California State University, Stanislaus | 209-667-3122 |

#### **C. Other Business Service Providers**

#### **Area of Services**

- |     |                                            |                                           |
|-----|--------------------------------------------|-------------------------------------------|
| 1.  | Commerce, Aviation & Econ Development      | 209-385-7686 Business Counseling          |
| 2.  | Merced County Revolving Loan Fund          | 209-385-7686 Gap Financing                |
| 3.  | Recycling Market Development Zone          | 209-385-7388 Low-Interest Recycling Loans |
| 4.  | Workplace Learning Resource Center         | 209-383-0360 Worker Training Programs     |
| 5.  | Merced County Assoc. of Governments        | 209-723-3153 Transportation               |
| 6.  | Workforce Investment                       | 209-724-2000 Employer Hiring Incentives   |
| 7.  | Economic Development Corporation           | 209-723-3889 Business Recruitment         |
| 8.  | Alliance SBDC                              | 209-381-6557 Business Loan Consulting     |
| 9.  | Center for International Trade Development | 209-384-5892 Export/Import Training       |
| 10. | SCORE                                      | 209-724-2033 Business Counseling          |

#### **D. Tools for Business Success**

1. [www.toolsforbusiness.info](http://www.toolsforbusiness.info)

## Temporary Services

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### **Kelly Services**

1180 W. Olive Avenue, Suite K  
Merced, CA 95340  
(209) 384-3301 – Phone  
(209) 385-3495 – Fax

### **Labor Ready**

1310 W. Main St.  
Turlock, CA 95380  
(209) 668-5420 – Phone  
(209) 668-5424 – Fax

### **Manpower**

1700 Standiford Avenue, Suite 100  
Modesto, CA 95358  
(209) 529-4821 – Phone  
(209) 529-4849 – Fax  
[www.us.manpower.com](http://www.us.manpower.com)

### **Placement Pros**

2965 “G” Street  
Merced, CA 95340  
(209) 383-6300 – Phone  
(209) 383-1256 - Fax

### **Select Staffing**

2831 “G” Street  
Merced, CA 95340  
(209) 381-7999 – Phone  
(209) 381-7988 – Fax

### **Corner Stone Staffing**

2995 “R” St. Suite 103  
Merced, CA 95348  
(209) 384-8367 – Phone  
(209) 726-3394 – Fax

## Common Websites

Alcoholic Beverage Control	(916) 263-6900	<a href="http://www.abc.gov">www.abc.gov</a>
EDD	(916) 653-0707	<a href="http://www.edd.ca.gov">www.edd.ca.gov</a>
Board of Equalization	(800) 400-7116	<a href="http://www.boe.ca.gov">www.boe.ca.gov</a>
Bureau of Automotive	(800) 852-5711	<a href="http://www.smogcheck.ca.gov">www.smogcheck.ca.gov</a>
California Chamber of Commerce	(800) 331-8877	<a href="http://www.calchamber.com">www.calchamber.com</a>
CalJobs	(800) 758-0398	<a href="http://www.caljobs.ca.gov">www.caljobs.ca.gov</a>
Contractor's State License Board	(800) 321-2752	<a href="http://www.cslb.ca.gov">www.cslb.ca.gov</a>
Consumer Affairs	(800) 952-5210	<a href="http://www.dca.ca.gov">www.dca.ca.gov</a>
Department of Industrial Relations	(415) 972-8835	<a href="http://www.dir.ca.gov">www.dir.ca.gov</a>
Franchise Tax Board	(800) 852-5711	<a href="http://www.ftb.ca.gov">www.ftb.ca.gov</a>
Fair Employment & Housing	(800) 884-1684	<a href="http://www.dfeh.ca.gov">www.dfeh.ca.gov</a>
Immigration & Naturalization	(800) 870-3676	<a href="http://www.uscis.gov">www.uscis.gov</a>
Internal Revenue Service	(800) 829-1040	<a href="http://www.irs.gov">www.irs.gov</a>
Permit Assistance Center	(800) 468-1786	<a href="http://www.calgold.ca.gov">www.calgold.ca.gov</a>
Secretary of State	(916) 653-6814	<a href="http://www.ss.ca.gov">www.ss.ca.gov</a>
Social Security Administration	(800) 722-1213	<a href="http://www.ssa.gov">www.ssa.gov</a>
State Job Training Coordinating Council	(916) 654-6836	<a href="http://www.sjtcc.cahwnet.gov">www.sjtcc.cahwnet.gov</a>
State Labor Commissioner	(415) 975-2080	<a href="http://www.dir.ca.gov">www.dir.ca.gov</a>
State Personnel Board	(916) 653-1705	<a href="http://www.spb.ca.gov">www.spb.ca.gov</a>
U.S. Department of Labor	(202) 219-5000	<a href="http://www.dol.gov">www.dol.gov</a>
U.S. Dept of Revenue	(800) 250-3913	<a href="http://www.treas.gov">www.treas.gov</a>
Workers Compensation	(800) 736-7401	<a href="http://www.dir.ca.gov/dwc/dwc_home_page.htm">http://www.dir.ca.gov/dwc/dwc_home_page.htm</a>