

STARTING A BUSINESS IN NEW MEXICO

General Tax and Licensing Requirements

In New Mexico most businesses must register with the *New Mexico Taxation and Revenue Department*, and may be required to report and pay gross receipts tax and state income tax withholding on employee wages, as well as income tax on taxable income of the business. If the business has employees, it will be required to register with the *New Mexico Department of Labor*, and will probably be required to pay State Unemployment Taxes. In addition, if the business is required to provide Workers Compensation coverage, the business will be required to file quarterly reports with the *New Mexico Taxation and Revenue Department*.

Most businesses will also be required to obtain an occupation license from the municipality or county where its office(s) is located. Property used in the business must be assessed for property taxes by the County Assessor's office in the county where the property is located.

Choice of Entity

If you are considering starting a business in New Mexico, you will need to decide how you want to organize your business. The decision involves many different factors, including questions of legal liability, tax considerations, and operational factors. It is a good idea to consult with professionals in making this decision.

Many of the registration and licensing requirements imposed by State and local governments are determined by the type of entity that you select. The following is a brief summary of some of those requirements and the agencies that you should contact.

Sole Proprietorship A sole proprietorship is not a separate entity. The owner of the business and the business itself are one and the same, and there is no need to file a document to create a sole proprietorship. The **General Tax and Licensing Requirements** discussed above will usually be applicable to a sole proprietorship.

Partnerships A partnership is an association of two or more persons who carry on a business for profit as co-owners. There are various types of partnerships. As with a sole proprietorship, the **General Tax and Licensing Requirements** may be applicable.

General Partnerships. Although it is a good idea to have a written agreement, a general partnership can be formed orally or in writing. There is no requirement that a general partnership file an agreement or certificate before it can exist. However, the partnership may file a certificate of registration with the *New Mexico Secretary of State*, under the New Mexico Uniform Partnership Act.

Limited Partnerships. A limited partnership provides some protection from liabilities of the partnership for limited partners. The partnership must have at least one general partner who is not protected from the liabilities of the partnership, and at least one limited partner. A limited partnership is formed by filing a Certificate of Limited Partnership with the *New Mexico Secretary of State*, in compliance with the Uniform Limited Partnership Act or the New Mexico Revised Limited Partnership Act.

Limited Liability Partnerships. Partnerships (general or limited), who comply with certain insurance requirements, and file a registration statement with the *New Mexico Secretary of State*, may obtain some protection from liabilities.

Corporations Corporations are legal entities separate from the owners. Corporations provide the owners (referred to as shareholders) with some protection from liabilities incurred by the business. A corporation is created (formed), by filing articles of incorporation. New Mexico corporations are formed by filing articles of incorporation with the *New Mexico Public Regulation Commission-Corporations Bureau*. Certain special purpose organizations may be required to comply with other laws before they may file articles of incorporation. For example, organizers of banks formed under State law are required to obtain permission from the Director of the *Financial Institutions Division of the Regulation and Licensing Department*, prior to filing articles of incorporation with the *Public Regulation Commission*. Similar requirements apply to trust companies and other special purpose corporations.

Many people mistakenly believe that S-corporations under Federal tax law are formed differently from other corporations under State law. A corporation's status as an S-corporation is governed by the Internal Revenue Code, not by State law.

Professional Corporations. Professionals such as lawyers, doctors, accountants, engineers, and other licensed professions may incorporate under the New Mexico Professional Corporations Act. Unlike business corporations, a professional corporation may only be incorporated by a person licensed to conduct the profession for which the corporation is organized. The corporation is organized by filing articles of incorporation with the *New Mexico Public Regulation Commission-Corporations Bureau*.

Limited Liability Companies. Limited liability companies ("LLC's"), are a relatively new type of entity. They are sometimes mistakenly referred to as limited liability corporations. The New Mexico Limited Liability Company Act was adopted in 1993. LLC's provide the owners with protection from liabilities that is similar to corporations. LLC's are formed by filing articles of organization with the *New Mexico Public Regulation Commission-Corporations Bureau*. The owners have some flexibility in deciding how an LLC will be taxed, and professional assistance is generally advisable.

Non-Profit Corporations. To qualify as a non profit corporation, no part of the income or profit may be distributable to its members, directors or officers. The corporation is formed by filing articles of incorporation with the *New Mexico Public Regulation Commission-*

Corporations Bureau. In addition, charitable corporations that solicit funds may be required to register and file reports with the *New Mexico Attorney General's Office* under the Charitable Solicitations Act.

Businesses Organized in Other States.

Businesses that have been organized in other states may be required to register and qualify to do business in New Mexico. Foreign corporations and limited liability companies should contact the *New Mexico Public Regulation Commission-Corporations Bureau*. Foreign partnerships should contact the *New Mexico Secretary of State*.

Tradenname (D.B.A.) and Trademark Issues.

The State of New Mexico does not require that a business register its use of a tradenname (sometimes referred to as a fictitious name, doing business as or d.b.a.). The use of a tradenname that is different from the legal name of the business can have legal implications that should be discussed with your attorney.

If the business has a unique tradenname or mark that distinguishes it from other businesses, the business may want to register the mark with the *New Mexico Secretary of State*. New Mexico's trademark and service mark registration law is designed to mirror federal trademark protection.

It should be noted that the *Secretary of State* and the *New Mexico Public Regulation Commission-Corporations Bureau*, each maintain separate data bases, and registration with one of these State offices may not prevent someone else from registering the same name with the other State office.

Other Applicable Laws

Depending upon the nature of the business, and its intended activities, other State or local laws could affect your business. For example, if your business intends to raise capital by issuing securities, you may be required to comply with the New Mexico Securities Act, which is administered by the *Securities Division of the New Mexico Regulation and Licensing Department*. The definition of "securities" is broad and includes stock, limited liability company membership interests, limited partnership interests, notes, and investment contracts. Solicitation of capital in violation of the Securities Act, could subject a promoter to civil and criminal liability under State and Federal law. If your business will have more than a few owners, or owners who are not going to be directly involved in the operation of the business, you should determine whether you are required to register or file a claim of exemption with the *Securities Division of the New Mexico Regulation and Licensing Department*.

Insurance companies, credit unions, escrow companies, trust companies and other types of businesses may also be required to comply with registration requirements and other applicable

State laws.

Most professions, and many other business activities, such as construction activities and businesses that serve alcohol, are also regulated by State law, and require compliance with licensing requirements. Most of the occupation licensing laws are regulated by the *New Mexico Regulation and Licensing Department*.

Local governments may also have special permit requirements for certain businesses. Businesses that serve food or drink may be required to obtain permits by the municipal or county government where the business is located.

More Help

Most State agencies are happy to answer general questions and provide forms that may assist you in the operation of your business. However, if you have legal questions, State employees are not permitted to provide legal advice. You should consult a lawyer if you have legal questions. Other professionals, including accountants and financial planners may be able to provide assistance as you decide how to organize and operate your business.

Prepared by Robert D. Gorman, Esq., C.P.A.