

FORMING AN LLC

Client Name(s): _____
(Hereinafter referred to as "Client")

Tax Practitioner: Monica Haven, E.A.
(Hereinafter referred to as "EA")

You may want to think twice before forming an LLC. Many people feel they need to form an LLC to protect themselves and their assets. But often, these concerns can be more easily addressed with insurance. You should be aware that the liability protection provided by an LLC is limited, and there are annual taxes and fees that must be considered. Also note that California's tax authority (FTB) has been aggressively pursuing nonresident LLC members, which may deter out-of-state investors.

Limited liability protection

Generally, members of an LLC are not personally liable for the debts of the LLC. A member's acts may bind the LLC, but they typically do not subject individual members to personal liability. However, like the corporate shareholder, the LLC member is personally responsible for his or her tortious or malpractice acts.

An LLC member's non-LLC assets may be attached if:

- The member caused the event;
- The member was negligent in hiring the person who caused the problem; or
- The member was responsible for supervising the activity.

What about insurance?

For LLCs that hold property, all lenders will require the owner of the property to carry insurance on the property. Depending on your needs, you may be able to purchase additional coverage for only a small amount of added premium; the cost of insurance is based on a number of factors, including who the carrier is and what other coverage the carrier provides. So, here's the choice: Pay the \$800 LLC annual tax plus the cost to prepare the entity's return or pay as little as \$250 for roughly \$1 million of additional coverage. At a minimum, I urge you to check out your insurance options before rushing to form an LLC.

The annual tax and fee

Note that the LLC will be liable for an \$800 annual tax indefinitely until the LLC formally dissolves. LLCs that have California gross receipts in excess of \$250,000 must also pay an LLC fee, which starts at \$900 and can run into the thousands.

While LLCs are an excellent structure for many businesses, they aren't the right choice for everyone. Besides taxes and insurance, many other issues should be considered, including but not limited to the ability to raise capital, hire employees, pay the owner, eventual termination, etc. And because it is rarely a good idea to form a legal entity on your own, it is crucial that you *engage competent legal counsel* from the outset.

Client Signature: _____

Date: _____

Print Client's Name: _____

Spouse Signature: _____

Date: _____

Print Spouse's Name: _____

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