

# THINKING ABOUT AN LLC?

Many people feel they need to form a Limited Liability Company (LLC) to protect themselves and their assets. But often, these concerns can be more easily addressed with insurance. Business owners should be aware that the liability protection provided by an LLC is limited. Additionally, there are annual taxes, fees, accounting and bookkeeping complexities that should be considered. **NOTE:** California's tax authority has been aggressively pursuing non-resident LLC members, which may deter out-of-state investors from joining the business endeavor.

## The annual tax and fee

At a minimum, an LLC is liable for an annual tax and that obligation continues until the LLC *formally* dissolves. **NOTE:** LLCs that have gross receipts attributable to California of \$250,000 or more must pay an LLC fee in addition to the minimum franchise tax.

## Limited liability protection

Generally, members of an LLC are not personally liable for the debts of the LLC. While a member's acts may bind the LLC, they generally do not subject individual members to personal liability. However, like a corporate shareholder, the LLC member is personally responsible for his or her tortuous 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 (e.g., the member knew that the employee prepared fictitious Schedules C); or
- The member was responsible for supervising the activity (e.g., a project manager overseeing a job).

## What about insurance?

For LLCs that hold property, all lenders will require the owner of the property to carry insurance on the property. The cost of insurance is based on a number of factors, including who the carrier is and what other coverage the carrier provides. Liability insurance may be purchased for a comparatively nominal cost in addition to property insurance. Thus, business owners considering an LLC are faced with the choice to pay the LLC annual tax (\$800 in California) plus the cost to prepare the requisite tax returns, or pay for liability coverage (at a cost of roughly \$250 per million-dollar policy).

## Conclusion

While LLCs are an excellent structure for many businesses, they are not the right choice for everyone. *Be sure to contact a tax advisor as well as a business attorney to help determine if the LLC structure is appropriate for you.*

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