



# Newsletter

APRIL 2005

Professional Legal Assistors

22647 Ventura Blvd.

# 363

Woodland Hills, CA 91364-1416

(818)347-0101 / (800)621-7008

fax (818)347-1823 / (888)232-9022

Email: [dottie@biz-usa.com](mailto:dottie@biz-usa.com)

Visit us at

<http://www.biz-usa.com>

Our office will be closed for the following holidays:

May 30th, 2005 – Memorial Day

July 4th, 2005 – Independence Day

Our next newsletter will be mailed out the beginning of July 2005.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than June 15<sup>th</sup> for our July newsletter.

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## Nevada – New Policies and Procedures

Nevada Secretary of State is in the midst of implementing a new filing system that has been under development for the past few years. This new system will replace the current system that has been in place for close to 30 years.

Nevada expects significant efficiencies in the filing process and ask for your patience while they adjust to their new system.

You will see some differences in charters and other certificates, as well as correspondence. Colored charters and certificates will no longer be offered.

## IRS WARNS OF "CORPORATION SOLE" TAX SCAM

The Internal Revenue Service issued a consumer alert advising taxpayers to be wary of promoters offering a tax evasion scheme that misuses "Corporation Sole" laws. Promoters of the scheme misrepresent state and federal laws intended only for bona-fide churches, religious institutions and church leaders.



"This scheme shamelessly tries to take advantage of special tax benefits available to legitimate religious groups and church leaders," said IRS

Commissioner Mark W. Everson. "Unscrupulous tax promoters always look for ways to game the system and prey on unsuspecting victims. Taxpayers should be on the look-out for these and other scams."

Scheme promoters typically exploit legitimate laws to establish sham one-person, nonprofit religious corporations. Participants in the scam apply for incorporation under the pretext of being a "bishop" or "overseer" of the phony religious organization or society. The idea promoted is that the arrangement entitles the individual to exemption from federal income taxes as an organization described in Section 501(c)(3) laws.

The scheme is currently being marketed through seminars with fees of up to \$1,000 or more per person. Would-be participants purportedly are told that Corporation Sole laws provide a "legal" way to escape paying federal income taxes, child support and other personal debts by hiding assets in a tax exempt entity.

While fraudulent Corporation Sole filings have happened sporadically for many years, the IRS has recently seen signs the scam could be starting to spread with multiple cases seen recently in states such as Utah and Washington. The IRS is concerned about this increase and is taking steps to pursue Corporation Sole promoters and participants.

Used as intended, Corporation Sole statutes enable religious leaders — typically bishops or parsons — to be incorporated for the purpose of insuring the continuation of ownership of property dedicated to the benefit of a legitimate religious organization. Generally, creditors of a Corporation Sole may not look to the assets of the individual holding the office nor may the creditors of the individual look to the assets held by the Corporation Sole. Currently, 16 states permit Corporation Sole incorporations. The IRS suggests that individuals considering becoming involved in any kind of tax avoidance arrangement obtain expert advice from a competent tax advisor not involved in selling the arrangement. Do not rely on legal opinions obtained or provided by the arrangement's promoter. Start by asking the following questions:

- Is the arrangement designed to hide income or assets?
- Is the arrangement designed to evade

income taxes?

Answering "yes," or even "maybe," to either of these questions should raise red flags for taxpayers.

Additional information on Corporation Sole and the rest of the "Dirty Dozen" tax scams and schemes is available on IRS.gov.

Tax guidelines for churches and religious institutions can be found in Publication 1828, "Tax Guide for Churches and Religious Organizations".

Taxpayers with specific questions on a tax scheme or who wish to report a possible scheme can call (866) 775-7474 or send an e-mail to [irs.tax.shelter.hotline@irs.gov](mailto:irs.tax.shelter.hotline@irs.gov).

## MOST COMMON ASKED BUSINESS QUESTIONS

**Can a husband and wife run a business as a sole proprietor or do they need to be a partnership?**

It is possible for either the husband or the wife to be the owner of the sole proprietor business. When only one spouse is the owner, the other spouse can work in the business as an employee. If the spouses intend to carry on the business together and share in the profits and losses, then they have formed a partnership.

**Are partners considered employees of a partnership or are they self-employed?**

Partners are considered to be self-employed. If you are a member of a partnership that carries on a trade or business, your distributive share of its income or loss from that trade or business is net earnings from self-employment. Limited partners are subject to self-employment tax only on guaranteed payments, such as salary and professional fees for services rendered.

**I recently formed a limited liability company (LLC). The LLC has no employees. Do I need a separate Federal Tax ID number for the LLC?**

No, you will not need a separate Federal Tax ID number for the LLC if you are the sole owner of the LLC and the LLC has no employees. If you are the sole owner of the LLC and the LLC has employees, you will need to get a separate Federal Tax ID number, if you choose to have the LLC report and pay

employment taxes with respect to employees of the LLC. If you are not the sole owner of the LLC, you will need a separate Federal Tax ID number for the LLC.

**For IRS purposes, how do I classify a limited liability company? Is it a sole proprietorship, partnership or a corporation?**

A limited liability company (LLC) is an entity formed under state law by filing articles of organization as an LLC. Unlike a partnership, none of the members of an LLC are personally liable for its debts. An LLC may be classified for Federal income tax purposes as if it were a sole proprietorship (referred to as an entity to be disregarded as separate from its owner), a partnership or a corporation. If the LLC has only one owner, it will automatically be treated as if it were a sole proprietorship (referred to as an entity to be disregarded as separate from its owner), unless an election is made to be treated as a corporation. If the LLC has two or more owners, it will automatically be considered to be a partnership unless an election is made to be treated as a corporation. If the LLC does not elect its classification, a default classification of partnership (multi-member LLC) or disregarded entity (taxed as if it were a sole proprietorship) will apply.

**Must a partnership or corporation file a tax form even though it had no income for the year?**

A domestic partnership must file an income tax form unless it neither receives gross income nor pays or incurs any amount treated as a deduction or credit for federal tax purposes.

A domestic corporation must file an income tax form whether it has taxable income or not.

**What are the plain English definitions for the following: (1) a closely held corporation, (2) a personal holding corporation, and (3) a personal service corporation?**

Generally, a closely held corporation is a corporation that, in the last half of the tax year, has more than 50% of the value of its outstanding stock owned (directly or indirectly) by 5 or fewer individuals. Generally, closely held corporations are subject to additional limitations in the tax treatment of items such as passive activity losses, at-risk rules, and compensation paid to a corporate officers.

Basically, a corporation is a personal holding company if both of the following requirements are met:

- Personal Holding Company Income Test. At least 60% of the corporation's adjusted ordinary gross income for the tax year is from dividends, interest, rent, and royalties.
- Stock Ownership Requirement. At any time during the last half of the tax year, more than 50% in value of the corporation's outstanding stock is owned, directly or indirectly, by 5 or fewer individuals.

A personal service corporation is a corporation where the main work of the company is to perform services in the fields of health, law, engineering, architecture, accounting, actuarial science, the performing arts, or consulting. Examples may be law firms and medical clinics. Also, substantially all of the stock is owned by employees, retired employees, or their estates.

**Does a small company need a tax ID number?**

A sole proprietor who does not have any employees and who does not file any excise or pension plan tax returns is the only business person who does not need an employer identification number. In this instance, the sole proprietor uses his or her social security number as the taxpayer identification number.

**Is an employer ID number the same as a tax ID number?**

Yes, an employer identification number, or EIN, is also known as a taxpayer identification number, or TIN. A sole proprietorship that has no employees and files no excise or pension tax returns and a LLC with a single owner (where the owner will file employment tax returns) are the only businesses that do not need an employer identification number. In these instances, the sole proprietor uses his or her social security number as the taxpayer identification number.

**Under what circumstances am I required to change my employer identification number (EIN)?**

If you already have an EIN, and the organization or ownership of your business changes, you may need to apply for a new number. Some of the circumstances under which a new number is required are as follows:

- An existing business is purchased or inherited by an individual who will operate it as a sole proprietorship
- A sole proprietorship changes to a corporation or a partnership,
- A partnership changes to a corporation or a sole

proprietorship,

- A corporation changes to a partnership or a sole proprietorship, or
- An individual owner dies, and the estate takes over the business.

**Do businesses have to obtain the taxpayer identification number (TIN) from vendors and keep it somewhere on file?**

In general, businesses are required to obtain the TIN from vendors if they are required to file any return, document or other statement that calls for the taxpayer identification numbers (TINs) of other taxpayers. [Form W-9](#) (PDF), **Request for Taxpayer Identification Number and Certification**, can be used to make the request. The business should also maintain the verification of these numbers in their records.

**What is the due date for business returns?**

Some forms and entities have due dates other than the well-known April 15th due date. The instructions for the each type of form used will have the appropriate due date(s) noted. In general, sole proprietor's schedule of income and expenses is attached to the 1040. Therefore, the due date is the same as the 1040.

A Corporation must generally use the calendar year, unless the entity can establish a business purpose for having a different tax year. The due date is usually March 15th.

A partnership generally must conform its tax year of the partners unless the partnership can establish a business purpose for having a different tax year. The tax year is the same as one or more partners that own (in total) more than a 50-percent interest in partnership profits and capital. If there is no majority interest tax year, the partnership must adopt the same tax year as that of its principal capital holder. Where neither condition is met, a partnership must use the calendar year. A limited Liability Company reporting as a partnership has the same tax year as a majority of its partners.

**Always consult a tax/accounting professional when in doubt or questions arise.**

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**The six laws of work are:**

1. A man must drive his energy, not be driven by it.
2. A man must be master of his hours and days, not their servant.
3. The way to push things through to a finish effectively must be learned.
4. A man must earnestly want.
5. Never permit failure to become a habit.
6. Learn to adjust yourself to the conditions you have to endure, but make a point of trying to alter or correct conditions so that they are most favorable to you.

***William Frederick Book***

Professional Legal Assistors  
22647 Ventura Blvd.  
# 363  
Woodland Hills, CA 91364-1416

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