

I should incorporate, right?

By Philip L. Marcus, Esq.

I am a service provider, like most of you reading this e-letter. I often hear of other service providers getting incorporated. I also get ads about the benefits of incorporating in Nevada.

OK, I get Nevada. It has the cachet of Vegas, but the real benefit of Nevada incorporation is that what comes to Nevada stays there—the state releases no information about corporations created there, especially not any lists of creators or officers in a corporation. Therefore, if you want secrecy, Nevada is your state.

But in the real world service providers—financial advisors, coaches, lawyers, travel agents, etc.—want a simple and inexpensive way to get down to business.

“But if I have a corporation I cannot be sued, right? I want that.” Sorry, Charley, you can be sued. Of course, being *sued* is not the right question. Being *found liable* or not is the right question.

If you provide a service personally, and you mess up—or there are facts allowing someone to *claim* you messed up—you can certainly be found liable “jointly and separately” with your corporation or LLC for the mess up. That means the plaintiff can collect from you directly. (The only limit is they cannot collect double, from you and your company.)

“But I heard the stockholders of a corporation cannot be liable for its negligence.” That is true. (It is also true for “members” of a limited liability company or LLC.) However, individuals who do services are jointly and separately liable with their employers.

“Then what is the good of incorporating?” Less than you might think. As we saw above, service providers cannot avoid liability simply by being sent on a job by an LLC or INC. If instead the corporation or LLC buys a piece of equipment on installments, leases it, or just borrows money, and it stops paying, then shareholders and LLC members are not liable for the contract debt.

Still, Installment lenders and leasing companies know that. So they insist you and your spouse co-sign the papers. Gotcha. Not only are you now liable, but you cannot hide behind “tenancy by the entirety.” (That is a legal fiction in most states that prevents someone with a right to collect against *one* of two spouses from taking their residence and selling it off.) Therefore, they get both of you to sign.

“But what about medical insurance, isn’t it cheaper for the company to buy it and write it off?” I am not a tax expert, and you should consult one. Still, what I heard from one is Congress has equalized these for the self-employed. Also, a car lease can be written off when used in business, as I understand it, by an individual just as by a company for its employee.

So when should you incorporate or make an LLC? Really, only if you sell goods, or have employees, or have partners in the business. Then an LLC starts to look good, despite

the expenses of creating one and of making yearly government reports (your accountant's fee to prepare it plus the state's fee to accept it for filing).

“So how can I really protect myself?” The only real way is to buy insurance. You can insure as a service provider against negligence (“errors and omission”) and as a provider of goods against product liability. It's a cost of doing business.

This has been general advice. In specific cases, you should always consult with an attorney or tax accountant or both.

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