



Corporations

A corporation differs from other legal forms of business entity in that the law considers it to be an artificial being. Unlike a sole proprietorship or a partnership, a corporation has an existence separate from its owners, making it legally a completely separate 'person'. As such, it can sue and be sued, own property, engage in contracts and business transactions in its own name. Since a corporation is a separate entity, it is not dissolved with a change in its ownership. An exception to this general rule applies to the LLC, which is dissolved upon the death or bankruptcy of an owner (member). The result is that corporations have unlimited life.

The Corporate Charter

To form a corporation you must be granted a charter by the state in which your business resides. Each state sets its own requirements and fees for the issuance of charters. The cost for incorporating a small business usually ranges from \$250 to \$2,000. One of the first items you will need to compile is your Articles of Incorporation. It is advisable that you have your attorney assist you with this.

Stockholders and the Board of Directors

A corporation differs from a partnership in that it is managed by a board of directors which represents the stockholders. Each person who owns stock in your corporation is a co-owner with you in the business. They are guaranteed the right to vote on the members of the corporation's board of directors and on certain major corporate policies.

Enabling people to become co-owners in a business in this way benefits both the corporation and the stockholders. The corporation is able to obtain investment capital and the stockholders can share in whatever profits the corporation earns. These profits are distributed to stockholders in the form of dividends. Furthermore, since stock is transferable, stockholders are free to sell their stock at any time and receive the current market value for it.

The board of directors represents the stockholders and is responsible for protecting their interests. Board members are elected annually, usually for one-year terms, which can be renewed indefinitely by means of the election process. The board of directors generally concerns itself with determining corporate policies, rather than taking care of day-to-day operations. To handle these, the board appoints the chief executive officer and other top corporate officers – vice presidents, secretary, treasurer and so on. They, in turn, see that the policies stipulated by the board of directors are implemented.

Advantages of a Corporation

Stockholders have limited liability. One of the most attractive advantages of the corporate form of business is that the owners have limited liability. Investors are financially liable only up to the amount of their investment in the corporation. This limited liability ensures that creditors of the corporation cannot touch your personal assets. Corporations can raise the most investment capital. You can increase the investment capital in your corporation by selling more shares of stock. However, if you are a privately held corporation, there are state and federal regulations with which you will need to comply. Be sure you seek the advice of a competent securities attorney.

Corporations have unlimited life. Because of its status as a legal entity, a corporation has its own identity. Unlike sole proprietorships and partnerships, whose life spans are linked to those of their owners, it is possible for your corporation to exist indefinitely. The withdrawal of stockholders, corporate officers or employees will not terminate its existence.



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Ownership is easily transferable. Ownership in a publicly held corporation is easily transferable from one person to another. Investors can buy and sell shares of stock as they please without seeking the prior approval of anyone. In addition to providing investors with maximum control over their investments, this enables your corporation to go on operating without disruption. Privately held corporations have more regulations to comply with concerning the transfer or sale of stock. Again, seek the advice of a competent securities attorney.

Disadvantages of a Corporation

Corporations are taxed twice. Unlike sole proprietorships and partnerships, some corporations and their owners are taxed separately. In what amounts to double taxation, both the income your corporation earns and the income you as an individual earn are taxed. This is the primary drawback to the corporate form.

Corporations must pay a capital stock tax. In addition to paying a corporate Federal Income Tax, corporations must pay a capital stock tax. This is an annual tax on outstanding shares of stock, which is levied by the state in which the business is incorporated.

Starting a corporation is expensive. More expense is involved in starting a corporation than is involved in starting any other legal form of business. There are the costs for legal assistance in drawing up your charter, state incorporation fees, and the purchase of record books and stock certificates. All these require expenditures not only of money but also of time.

Corporations are more closely regulated. The government regulates corporations much more closely than it does any other form of business. Numerous state and federal reports must be filed regularly. Each year, some corporations may be required to prepare, print and distribute an annual report summarizing the company's activities during the preceding year.

Taxes for a Corporation

Taxation for a corporation generally involves any local sales or use tax, the payroll withholding taxes, Federal Income Tax on the business and, if applicable, any state or local taxes.

Sales or Use Tax: Because you are a service business, it is possible that you do not have to collect, pay, or report sales tax on the service you are providing to your clients. You should contact your state sales tax agencies to find out what the law requires in your area. The taxation laws vary from state to state. (e.g., the State of New Mexico has what is called a gross receipts tax. It doesn't matter if you are selling tires or if you are a lawyer, the gross receipts tax applies to the gross receipts of your sales from whatever source. However, in contrast, the State of California doesn't charge tax on services and that includes the services rendered by a personal chef.)

When you make an inquiry to any tax agency, you must carefully explain the following points:

- ❖ You are providing a service to your clients only.
- ❖ Your service is performed in their home just like a maid service.
- ❖ You are not selling any products, only your service (groceries used are purchased by the client.)
- ❖ You consult with clients regarding their meals and dinner routine much like a personal fitness trainer consults regarding exercise and a fitness routine.



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Due to the fact that the service you are providing is new and innovative, most government agencies have not established a category for personal cheffing. For this reason the clerk might try to put your business into a catering for food sales category. You do not want this to happen because if you're a "caterer", it will then be assumed that you are purchasing raw goods at wholesale prices, marking the price up and reselling to your customers. In many municipalities there are added tax codes and cumbersome formalities to regulate this type of wholesale business activity. Experiences reported by other Personal Chef Service business owners indicate that when they keep the description of their service very simple and explain it as similar to a maid service or a personal fitness trainer, the application process does not turn into an ordeal.

Payroll Withholding Taxes: As soon as profits warrant, place yourself and any other officers on the corporation's payroll. This way the corporation will be withholding proper taxes from your paycheck just as if you were an employee of any other company. It is highly recommended that you have your accountant help you set up your procedures.

Federal Income Tax: Because the corporation is recognized as a sole and separate entity, it is responsible for paying Federal Income Tax just as you do on your Personal Tax Return. At the end of each year, each corporation is required to file IRS Form 1120: U.S. Corporation Income Tax Return. We recommend that you get specifics on the required taxes and forms from your accountant. **State Income Tax:** If the state of incorporation has an income tax, you will file this return based upon the information from your Federal Tax Return. Verify this with your accountant.

A Personal Chef Corporation

An incorporated Personal Chef Service business would generally be what's called a closely held, private corporation. That means the shares are held by just a few people and are not publicly traded. In a closely held corporation, one can be a shareholder (own it), serve on the board of directors (be responsible for running it correctly) and be an officer of the corporation (be responsible for the day-to-day operation of the business).

One challenge with a corporation is that everything the corporation does - all major decisions, obtaining of loans, buying of equipment, etc. - must be documented in the minutes of the corporate records. There's a lot more documentation paperwork required to operate as a corporation.

The upside of incorporating is that the business is a separate entity. So, although you own the corporation and/or work for the corporation, if something happens and the corporation gets sued, the corporation is responsible, not you as an individual. Unless, of course, the law can prove that you did something that wasn't in the best interest of the corporation, such as embezzling money, and can be held personally liable (this is called "piercing the corporate veil"). But, if you do everything correctly and document everything correctly - and any good accountant or attorney can help you do that - then you are completely insulated from any liability.

For example, if you as a Personal Chef Service business owner have incorporated and you are out cooking, you are working for the corporation. If for some reason something happens and somebody sues the business, they are suing the corporation. If they win, they can take the corporation's assets. If the corporation has no assets and cannot continue to operate with the lawsuit or judgment hanging over it, the corporation would then declare bankruptcy and go out of business. You as an individual, however, probably would not be held personally liable for it. However, you could be held liable if you had not made sure that you administered the corporation's paperwork correctly, failed to report all your income and pay applicable taxes, or neglected to comply with all necessary regulations regularly. So, incorporating can be more difficult and more expensive to set up; however, it can give you liability protection and afford you some tax benefits that you might not otherwise be able to take.