

Business Structures

Before starting a new business, owner must decide what form of business entity to establish. Business range in size and complexity, from someone who is self-employed to a large corporation, and can be organized in a variety of ways. The most common forms of business are the sole proprietorship, partnership, corporation, S corporation and limited liability company. Each form will determine which income tax return form you have to file. The following is a brief description of registration requirements for each type of business organization, as well as the variations of each structure according to Kansas State regulations.

Sole Proprietorship

Registration : None

Fee : None

A sole proprietorship is the simplest and most common structure chosen to start a business. It is a business controlled and owned by one individual who entitled to all profits and is responsible for all your business's debts, losses and liabilities.

Forming a Sole Proprietorship

To form a sole proprietorship, you do not have to take any formal action. You will only need to obtain the necessary licenses and permits. Be aware that regulations vary by industry, state and locality. Kansas has no state requirements to register or file the business name of a sole proprietorship.

Sole Proprietor Taxes

Income and expenses of the business are reported on the proprietor's individual income tax return and profits are taxed at the proprietor's individual income tax rate.

Advantages:

1. Easy and inexpensive to form
2. Decisions are made by the owner (complete control)
3. Fewer reporting requirements to government agencies
4. Corporate "double tax is avoided"
5. Business losses may be taken as personal income tax deduction to offset income from other sources
6. The tax rates are the lowest of the business structure (owner's personal income tax rate)

Disadvantages:

1. Compared to corporations and partnerships, sole proprietorships cannot take advantage of certain benefits afforded by the IRS
2. Unable to hand over the ownership
3. Investment capital is limited to that of the owner
4. Loans are based on credit worthiness of the owner
5. Unlimited personal liability which means owner's assets are subject to business liabilities
6. The flipside of complete control is the burden and pressure it can compose

Partnership

A partnership is a single business where two or more people share ownership. Each partner contributes to all aspects of the business, including money, property, labor or skill. In return, each partner shares in the profits and losses of the business. Therefore, it is important to have legal agreements even it is not legally required to avoid misunderstanding in the future.

There are three general types of partnership arrangements:

1. **General Partnerships**

Registration : Secretary of State (optional, not required)

Fee : \$35

General Partnerships assume that profits, liability and management duties are divided equally among partners, unless there is a partnership agreement beyond that. Partnerships have specific attributes which are defined by Kansas Statutes. The partnerships has no continuity of life, so in case any partner dies or becomes incompetent, such partner's interest is dissociated from the partnerships and the partnership may be dissolved or reformed. In Kansas, partnerships are required to apply for a Federal Employer's Identification Number, whether they have employees or not. For income tax purposes, a General Partnership functions as a conduit and not separate as a separate taxable entity.

2. **Limited Partnerships** (also known as a partnership with limited liability)

Registration : Secretary of State. The limited Partnership may be required to register the Limited Partnership's interest in securities with the Office of the Securities Commissioner.

Fee : \$165 Paper Filing (Domestic/Foreign) or \$160 Electronic Filing (Domestic Only)

Limited Partnerships are more complex than general partnerships. Each partner is liable for debts only up to the amount of his/her investment in the company. Under Kansas Statutes a limited partnership must be formed in writing between one or more general partners and one or more limited partners. Here, limited partners have no voice in the

management of the partnership. Each limited partnership must have and maintain registered office in Kansas that may or may not be the place of business. Additionally, a Kansas resident agent must be appointed. For tax implication, each partner is responsible for filing a Kansas Individual Income Tax Return, together with Kansas Limited Partnerships Return or S Corporation Income Tax.

3. Joint Ventures

Joint ventures act as general partnership, but for only a limited period of time or for a single project. Partners in a joint venture can be recognized as an ongoing partnership if they continue the venture, but they must file as such.

Partnership Taxes

A partnership must file an “annual information return” to report the income, deductions, gains and losses from the business’s operations, but the business itself does not pay income tax. Instead, the business “passes through” any profits to its partners. Partners include their respective share of the partnership’s income or loss on their personal tax returns.

Partnership taxes generally include:

- Annual Return of Income
- Employment Taxes
- Excise Taxes

Partners in the partnership are responsible for several additional taxes, including:

- Income tax
- Self-employment Tax
- Estimated Tax

C - Corporation

Registration : Secretary of State. It may be necessary for Corporate securities to be registered with the Office of the Securities Commissioner.

Fee : \$90 Paper Filing (Domestic and Professional) / \$115 Paper Filing (Foreign) or \$85 Electronic Filing (Domestic Only)

A corporation is an independent legal entity owned by shareholders which means the corporation itself who held legally liable for the actions and debts the business incurs. Corporation is comprised of three groups of people: shareholders, director, and officers.

Corporations offer the ability to sell ownership shares in the business through stock offerings. "Going public" through an initial public offering (IPO) is a major selling point in attracting investment capital and high quality employees.

Corporations are more complex because they tend to have costly administrative fees and complex tax and legal requirements. Therefore, corporations are generally suggested for established, larger companies with multiple employees.

A domestic corporation is one incorporated in Kansas, and it must file Articles of Incorporation with the Office of the Secretary of State.

A foreign corporation is a business incorporated in a country, state or jurisdiction other than Kansas. In order to conduct business in Kansas, a foreign corporation must file an Application for Authority to engage business in Kansas.

A professional corporation is comprised of a single professional or a group of professionals who file both Articles of Incorporation and a certificate from their specific Kansas Professional regulatory board with the Secretary of State. Shareholders of professional corporation are limited to the members of that specific profession.

Forming a Corporation

To form a corporation, you will need to establish your business name and register your legal name with your state government.

To register a business as a corporation, you need to file certain documents, typically articles of incorporation, with the Kansas Secretary of State. Once registered, you must obtain business licenses and permits.

Corporation Taxes

All forms of Corporations are required to file for a Federal Employer Identification Tax Number. Corporations must also file an IRS Form which reports earnings and taxes profit, and subject to quarterly estimated tax payments if its Kansas Income Tax liability can reasonably be expected to exceed \$500. Any corporation that began business in Kansas during this period is not required to file a declaration and no underpayment of estimated tax penalty will be imposed.

Advantages:

1. Limited liability because no shareholder, officer or director may be held liable for debts of the corporation unless corporate law was breached.
2. Interests in the business may be readily sold by the transfer and sale of shares.
3. The ready transferability of shares in the corporation facilitates estate planning.
4. If desired, a qualifying corporation may be taxed as a Subchapter S under the Internal Revenue Code.

5. Easy to raise capital for its business and has the ability to raise funds through the sale of stock
6. Corporates file taxes separately from their owners
7. Corporations are generally able to attract and higher quality and motivated employees due to more benefits

Disadvantages:

1. Corporations are costly and time-consuming ventured to start and operate
2. In some cases, corporations are taxed twice - first, when the company makes a profit, and again when dividends are paid to shareholders
3. There will be additional paperwork because corporations are highly regulated by federal, state, and some in local agencies
4. Annual reports must be made to the Office of the Secretary of State.

S – Corporation

An S corporation is a special type of corporation created through an IRS tax election. An eligible domestic corporation can avoid double taxation by electing to be treated as an S corporation.

An S corporation is a corporation with the Subchapter S designation from the IRS. To be considered as an S corporation, you must first charter a business as a corporation in the state where is headquartered. What makes the S corporation different from a traditional corporation (C-Corporation) is that profits and losses can pass through to your personal tax return. Consequently, the business is not taxed, but the shareholders are taxed. The shareholder must be paid fair market value, or the IRS might reclassify any additional corporate earnings as “wages.”

Forming an S Corporation

The step is similar like forming traditional corporation (C Corporation), however, before you form an S Corporation, determine if your business will qualify under IRS stipulations. You also need to have all shareholders signed and filed Form 2553 to elect your corporation an S Corporation.

S Corporation Taxes

Unlike Kansas C Corporation, Kansas S Corporation does not itself pay any income taxes. While an S Corporation with more than one shareholder does file tax returns, the individual shareholders (owners) must include their share of the corporation’s income or loss on their personal tax returns, just as is done in sole proprietorships, partnerships and limited liability companies (LLC). However, in Kansas, S Corporation cannot have more than 100 shareholders and S Corporation shareholders cannot be other corporations, Limited Liability Companies (LLC), partnerships, certain trusts, or non-resident aliens.

Advantages:

1. One of the best features of the S Corporation is the tax savings for you and your business
2. Some expenses that shareholder/employees incur can be written off business expenses
3. An S corporation designation also allows a business to have an independent life, separate from its shareholders

Disadvantages:

1. It requires scheduled director and shareholder meeting, minutes from those meetings, adoption and updates to by-laws, stock transfers and records maintenance
2. A shareholder must receive reasonable compensation

Limited Liability Companies

Registration : Secretary of State. It may be necessary for the Limited Liability Company interest to be registered with the Office of the Securities Commissioner.

Fee : \$165 Paper Filing (Domestic/Foreign or Professional) or \$160 Electronic Filing (Domestic Only)

A Limited Liability Companies (LLC) is a hybrid type of legal structure that provides the limited liability features of a corporation and the tax efficiencies and operational flexibility of a partnership. Each member of an LLC enjoys liability limited to that of the investment in the business and pays taxes in proportion to ownership share, thus avoiding the corporate malady of double taxation. In Kansas, every LLC formed must have at the end of the company name the words "limited company" or the abbreviation "LLC" or "L.L.C." Moreover, a domestic LLC formed in Kansas must file Articles of Organization.

The professional limited liability company is comprised of a single professional or group of professionals, who file both Articles of Organization and a certificate from their specific professional regulatory board with the Office of the Secretary of State. The certificate must state that each member is duly licensed and that the company name has been approved. If association or corporation, each such profession shall be stated.

Limited Liability Company Taxes

Depending on the circumstances, an LLC may or may not require the use of a Federal Employer Identification Number. LLC also can be taxed as though they were a Partnership, and each member of an LLC must report income on individual Income Tax Forms and file a Kansas Partnership Return or S Corporation Income Tax.