1996

NF96-256 Setting Up Your Own Business: The C Corporation

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Nebraska Cooperative Extension NF96-256

NebFact

Published by Cooperative Extension, Institute of Agriculture and Natural Resources, University of Nebraska-Lincoln

Setting Up Your Own Business: The C Corporation

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This is one in a series of **NebFacts** providing information on the principal forms of business organization used by small businesses. A broad overview of the advantages, limitations, and tax implications of each form of business organization is included. Titles in the series are listed at the end of each NebFact.

Your need for legal and tax advice: While the information contained in this document is thought to be accurate, it should not be used as a substitute for legal advice on matters related to business organization, taxation, estate planning, or other business and financial management matters. Consult with your legal and tax advisers before making decisions.

Form of business organization:

A "C Corporation" is taxed under Subchapter C of the Internal Revenue Code. As a legal entity (an artificial person), the C corporation is separate and distinct from the stockholders – the owners of the corporation. Under Nebraska incorporation law, there is no distinction between a C corporation and an S corporation. However, the two types of corporate entities are subject to differing federal and state tax treatment. Principal aspects of C corporation taxation are summarized in this document.

As a tax-paying entity, the C corporation must pay taxes on its taxable income prior to making dividend distributions to stockholders. It is allowed to issue more than one type of stock and can have any number of stockholders.

As a separate legal entity, the corporation's finances and records are established and maintained completely separate and distinct from the finances and records of the stockholders. Through a resolution adopted at a stockholders meeting held in accordance with the bylaws of the corporation, one or more officers or employees of the corporation are authorized to conduct business on behalf of the corporation. The resolution typically includes an authorization within specified limits to borrow and repay funds as needed for business operations. Credit arrangements are made in the name of the corporation with loan document signatures by the authorized person or persons after the lender has received a certified copy of the authorizing resolution. If the corporation is newly formed, small (has few assets), or has a limited record of credit use, it's likely that a lender will require personal guarantees by one or more officers or stockholders before approving a credit application from the corporation. If personal guarantees are given, the signer(s) usually have unlimited liability for the debts of the corporation.

The Corporate Charter includes information on the purpose(s) for which the corporation is organized and the life of the corporation. (A corporation often has perpetual life.) Bylaws of the Corporation are the "rules" for conducting the organizational life of the corporation.

Moderate legal costs are incurred in setting up a C corporation, and annual costs are incurred for stockholders meetings, tax return preparations, and preparing other yearly reports and summaries as needed for management and desired by stockholders. Public notice of the formation and continued operation of a corporation is required and is accomplished through filings with the Secretary of State's Office.

Advantages of the C Corporation:

Creation of the corporate shield that, in the absence of personal guarantees, limits the liability of stockholders to their capital investment in the corporation and the usefulness for estate planning purposes of the corporate form of business organization are frequently cited advantages of forming a C corporation. Other advantages include:

- The perpetual life of the corporation makes possible its continuation, and the relatively undisturbed continued operation of your business, despite the incapacity or death of one or more stockholders.

- Fractional ownership interests are easily accommodated in the initial offering of stock.

- The purchase, sale, and gifting of stock make possible changes in ownership without disturbing the corporation's ability to conduct business.

- The required separation of finances and records for the corporation reduces the risk of unrecognized equity liquidations.

- To the extent the corporate shield is maintained and other investments and savings of the stockholders are not at risk, the personal life of stockholders is simplified.

- The annual meetings of stockholders and consultations with legal counsel can provide stimulus for improved communication with the stockholder group (usually a family group) and can provide more comprehensive guidance for management.

- Life insurance up to $50,000 per person, health insurance, housing costs, and other benefits for employees (including stockholder-employees) can be a tax-deductible expense for the corporation.

Limitations of the C Corporation:

Double taxation of corporate net income distributed to stockholders in the form of dividends is the most frequently cited disadvantage of the C corporation. As a corporate entity, C corporations must pay income tax on their net income prior to any distribution of dividends to stockholders, and the dividends are taxable to the stockholders resulting in double taxation of corporation income distributed to the stockholders. However, the effects of this limitation can be reduced when the stockholders are corporation employees and derive most of their income from salaries and wages paid by the corporation.

Other limitations of the C corporation include:

- Lenders may require personal guarantees from corporate officers as a condition of supplying credit, thus negating the limitation of liability.

- Conflicts or disagreements among the usually small group of stockholders in a small scale entrepreneurship corporation may immobilize decision making.

- Restrictions on the sale of stock and/or buy-back agreements included in the bylaws may prevent minority stockholders from being able to recover the value of their investment in the corporation.

- Through the processes of gifting and inheritance, stock ownership can become divided among many persons who are not participants in operations of the business, and that can result in their becoming a voting block that does not support needs and decisions believed desirable by managing stockholders.

- Over time, corporation paid benefits for stockholder-employees may become costly and exceed the ability of the business to pay.

- If appreciated assets are owned by the corporation and the corporation is dissolved, significant income taxes on the appreciation amount will be generated.

The corporate shield of limited liability may be lost:

- When corporate formalities are not followed – that is, when director and shareholder meetings are not held and minutes of such meetings are not kept.

- When corporate assets are treated as personal assets – for example, when a corporate vehicle is used for family vacation and the corporation is not reimbursed for the nonbusiness use.

When limited liability is lost, shareholders become personally liable for any corporate legal or financial obligations. In addition, if corporate income tax returns are audited, failure to observe corporate formalities or treating corporate assets as personal assets can result in loss of corporate income tax deductions and levying of penalties and interest on taxes assessed for previous years.

Tax implications - general:

All real and personal property held by a C corporation is taxable to the extent set by Nebraska law. C corporations pay income tax at rates that, depending on their level of taxable income, can be more or less that the income tax rates of single or married stockholders with comparable levels of taxable income. If you are considering forming a C corporation, secure current information on the relevant tax rates and compare estimated tax costs with and without incorporation before deciding to incorporate your business.

Pay of corporation employees is subject to payroll taxes in the same manner as is the case for employees in any other type of economic activity. Assets of the corporation generally are retrieved to individual ownership only through transactions that generate taxable income. Sale of stock establishes the market price as the purchaser's tax basis for the stock, but does not increase the tax basis of assets of the corporation. Death of a shareholder may result in a "step-up" of the tax basis of his or her corporation stock, but does not increase the tax basis of assets held by the corporation.

If the corporation is dissolved when it owns assets that have appreciated in value (usually land, buildings, and/or equipment), federal income tax will be due on the asset appreciation amount even when the assets are not sold. For this reason, many management advisers and estate planners recommend holding title to fixed assets in an entity separate from the corporation – for example, in individual ownership or in ownership by a limited liability company. When this is done, the corporation rents the fixed assets from the individual or noncorporate entity. Generally, this approach is useful only when the value of fixed assets is relatively large or there is good reason to believe they will experience significant appreciation in value.

Gift tax and estate tax implications:

All aspects of the gift tax, estate tax, and inheritance tax apply to the receipt of corporate stock by gift or inheritance. Tax amounts are calculated on the value of the stock included in the gift or inheritance. Gifting of stock to utilize the nontaxable gift allowance of up to $10,000 per recipient per year (up to $20,000 for joint gifts by husband and wife) can be easily accomplished. Estate planning can provide a plan for minimizing the legal and tax costs of orderly transfer of corporate stock and/or noncorporate business or personal assets to successors. If you are considering gifting or other transfers of stock or other assets, be certain to secure and follow the recommendations of your legal and tax advisers when planning and implementing the gift or transfer.

Cooperative Extension publications in this series:

- NF 96-253 *Setting Up Your Own Business: The Sole Proprietorship*
- NF 96-254 *Setting Up Your Own Business: The Partnership*
- NF 96-255 *Setting Up Your Own Business: The "S" Corporation*
- NF 96-256 *Setting Up Your Own Business: The "C" Corporation*
- NF 96-257 *Setting Up Your Own Business: The Limited Liability Company*

File NF256 under: CONSUMER EDUCATION
E-4, General
Issued April 1996

Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Elbert C. Dickey, Director of Cooperative Extension, University of Nebraska, Institute of Agriculture and Natural Resources.