



REID AND RIEGE, P.C.
COUNSELLORS AT LAW

Business Formation & Ownership

Discussions involving the formation of a for-profit venture begin with the choice of entity, including whether the enterprise is being organized to engage in a business enterprise (e.g. a service or manufacturing business) or an investment for profit (e.g. income producing real estate investment). This analysis involves assessing the needs of the client, not just on the day he, she or they walk into our offices, but most likely for either future generations or some other iteration down the road, from an eventual sale or other business transaction. How to best structure a business enterprise requires an in depth understanding of our clients' business, and often family, objectives.

Fundamental questions to be considered will include: (i) type of liability protection; (ii) management and operational issues; (iii) the allocation of income and distribution of profits; (iv) succession planning (whether in the context of family business or among shareholders/partners); and (v) federal, state and local tax and regulatory issues. Responses to these general inquiries will likely lead to more in-depth analysis. For example, tax inquiries could include: (i) minimizing current tax liability or deferral; (ii) use of losses (especially in the startup of a new enterprise); (iii) who shares in and how best to protect equity growth in the business (including future income tax and estate tax planning); (iv) applicability and interplay of basis, "at-risk" and passive activity loss rules for current operations and future transactions; and (v) capital and financing needs. As counselors and advisors, we recognize that certain factors will be more important than others, and that some issues are more sensitive than others.

Depending upon those needs and demands, often a team of attorneys will be called upon to assist in advising about fundamental questions of choice of entity. The team would include: (i) the general counsel business lawyer; (ii) tax counsel; (iii) attorneys with financing and banking experience; (iv) attorneys familiar with applicable employment law; and (v) attorneys with ERISA and retirement planning experience. Reid and Riege is able to call upon these areas of knowledge with our in-house capabilities, but also excel in working with our clients own independent advisors, such as accountants, bankers and investment advisors.

Once the analysis has been completed, we lay out alternative structures



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discussing the pros and cons of each, analyzing the clients' needs with the available options to determine which entity choice is the most appropriate. Basic entities run the gamut from sole proprietorships to C corporations. In between, there are different forms of partnerships, limited liability companies, S corporations and trusts. In many instances, the structure may include a combination of these entities; for example: a Delaware corporation may be created with a subchapter S election designed to serve as the parent entity with subsidiary limited liability companies being treated as disregarded entities for tax purposes creating a flow through structure up to the eventual shareholders. Reid and Riege's experience also includes some more esoteric entities; such as real estate investment trusts, regulated investment companies and tax-exempt entities.

Once the choice of entity has been made for both business and tax purposes, Reid and Riege goes to work establishing the entity or entities as well as the necessary ownership and operational documentation as well as other legal relationships, including: (i) employee/independent contractor status and agreements; (ii) buy-sell provisions and agreements; (iii) lender and borrower relationships; (iv) leases; and (v) licenses, franchises and other intangible property arrangements. In addition, there may be regulatory filings, many times in multiple jurisdictions, in order for the entity to conduct its business. Finally, once formed, an entity may face a myriad of reporting requirements, from annual reports to tax returns, and our Business Law attorneys can assist our clients with these requirements.

At Reid and Riege, choice of entity and establishment of the ownership and operation of the enterprise is only the beginning of our relationship. The Reid and Riege way means that we stay with our clients, from cradle to grave, and hopefully as counselors for generations of heirs and successors to come.