Minor & Brown PC
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Why Bother With Having More Than One Company?

Many businesses are run out of only one company, only one entity, and that is perfectly reasonable. However, sometimes it is important to consider more than one entity to limit liability.

An easy example is the business owner who also owns the real property where the business is operated. The business property should be in a different entity than the business operations (and neither should be owned directly by the business owner – only through an entity). The business operations might be in an “S” corporation, while the business property might be owned in an LLC (and then rented to the “S” corporation). That way, if some big problem arises out of the operations, there is a better chance of not letting the creditor reach the business property.

Another example where this can be used is when there are different business lines or divisions - a retail operation and a wholesale operation, or two locations for the same type of business.

Sometimes it works to have the business operations in separate entities, all of which are owned by a holding company. The holding company is the parent and the operations are in subsidiaries. The holding company has no operations. Why? If the parent holding company has operations it can have one of those awful problems and its creditors can then easily get to the subsidiaries to pay off that debt – those subsidiaries are just like any other asset.

What about insurance? Doesn’t that cover it? Well, perhaps, but insurance does not necessarily cover every risk, and there are dollar limits on the coverage. Having different entities is like having an extra insurance policy.

Can you just set up the second company with the Secretary of State and that is enough? No, not at all. If you don’t treat them like different companies, then the creditor doesn’t have to either, and all of this work might be for naught.

To make this work you have to really treat the companies like they are totally different entities. They should have different bank accounts (and don’t just lightly pay bills for one company out of the other company’s bank account), different letterhead, different billing invoices, different business cards, and different websites. Ideally they should have different telephone numbers, different locations, and different employees. This is not always feasible. However, every effort should be made to make these separate and distinct companies. If you can’t have two telephone numbers, at least answer the phone in a manner that clearly indicates that there are two different companies available. If you can't have separate personnel, then be sure that each company pays its share for the use of that personnel.

So that means you have lots of tax returns to file too - right? Not necessarily – often they can be treated as just one company for tax purposes even though they are treated as separate companies for liability purposes!

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