

Contract for changing business entity



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Acme Fireworks: Changing Business Entity

Introduction

Acme Fireworks started as a sole proprietorship two years ago in a home garage. Acme is a fireworks vendor who retails fireworks, provides ground presentation fireworks and provides massive aerial display fireworks. The company now has 15 employees, and the entity has never changed from the original business entity of sole proprietorship. Recently, due to a recent influx of more substantial business agreement requests the owner is looking to change the sole proprietorship entity status. The new contract requests would cause a need for more employees, increased liability risk, the contract will cause additional applications for the high-risk product, and the company will need to expand insurance coverage. The new agreements will create a significant expansion and will use the Uniform Commercial Code (UCC) to govern. With all the changes the company is making it would be advised they change the entity to a single-member limited liability company or more commonly known as LLC, from a sole proprietorship. These changes will help the company succeed in its future endeavors.

Uniformed Commercial Code (UCC)

When entering the proposed new contracts, it is essential that Acme Fireworks ensure that all the necessary arrangements are included to cover each part of the transaction. In Acme Fireworks case the UCC would protect the business contract series. The UCC tries to unite state laws that affect business into a single code that allows every state the ability to adapt and enable the interstate business to be more accessible and additionally more

effective (Rogers, 2012). There is a strong possibility that with these new contracts that some companies will be out of state. Under the UCC all the transactions would be a unified process. Whereas, the common law wouldn't because laws differ from state to state regarding sales and taxes (Bernstien, 2016). It is important to note that in the transaction series each transaction would be gauged on a case by case basis. When each case is evaluated, it will be done so by several factors: such as regional supply and demand, as well as state and federal law.

Contracts: Five essential elements of an enforceable contract

Currently, Acme is a sole proprietorship, and this allows the owner to accept and offer deals. The owner for firework display contracts provided the arrangements, and they were taken. The parties decided on the price with the intent of engaging a lawfully binding contract. Upon entering the deal, both parties had mental competency and were able to comprehend the character and conditions of the transaction (Rogers, 2012). The agreement is legally binding, and the owner is obligated under the law to follow through. Once Acme becomes a single member LCC, the Member may assign, hire, or otherwise contract with other individuals or entities for business transactions for the performance of services for or on behalf of the business determine in his or her choice (Single-Member LLC Individual Member Form, 2014).

1. Offer

The owner of Acme Fireworks was contacted by several firms interested in contracting for commissions of their firework displays for occasional functions and company events. An offer is an invitation to another individual

or entity to enter into a contract (Rogers, 2012). Acme will fulfill its commitments for fireworks displays that will include events for other persons or entities.

2. Acceptance

An agreement is defined as entering into a transaction under the terms and conditions of the offer (Rogers, 2012). The owner of Acme notified the new clients that it would be conceivable for acme to fulfill the transactions. In informing the new clients of this, the owner of Acme Fireworks entered what would be considered a verbal contract. The owner also explained what was included and required at the price of the firework displays, as well as confirming that Acme Fireworks found it conceivable to fulfill regular deliveries.

3. Consideration

The cost of each presentation was decided upon and in the total price in this situation would contain the amount and include in that cost would be trained labor cost, insurance, set up, show settings and the actual firing/lighting of the fireworks. All things with legal significance that is requested for and acknowledged as the cost for entering into a contract (Rogers, 2012). In the world of business, liability is an essential principle, with this in consideration it is understood on all sides of the transaction that it includes protections for the spectators, the business and its employees

4. Legality

Legality is the degree to which the agreement is lawful and not in contradiction of public policy (Rogers, 2012). In Acme's case, the transaction

was made with the purpose to create a contract that protects all parties within the law. The Owner of Acme Fireworks has the lawful right to set charges, make verbal agreements as well as choose the storage and distribution of all products produced and consumed by the company. Upon receiving the inquiries for firework displays the owner agreed that it would be possible for Acme Fireworks to fulfill the inquiries contingent on the resolution concerning business expansion and the number of workers.

5. Capacity

Capacity is the mental ability to agree when the parties entered into the contract, both parties had mental competency and were able to comprehend the character and conditions of the transaction.

Personal liability

If Acme ensures that the setup and the display of the fireworks are correctly done, the spectator liability is categorized as the tort of liability and agency. In this assumption, Acme was not neglectful in the setup of the fireworks but will still be held liable for any injuries. It could also be possible for the plaintiff/spectator to sue the venue/landowner (Torts: Liability of Theater for Injuries to Spectator, 1916). Fireworks are a dangerous business and to reduce the likelihood of spectator injury, it would be best that Acme Fireworks assured that the person conducting the firework displays are wholly trained and are in of a sound mind, as well as acquiring full liability coverage.

Employment type

Acme has concerns about if the contracts will produce enough income for the company to keep and maintain an expanded group of employees. Acme is faced with the decision to hire additional full-time employees or employ contractors as needed. Acme fireworks would benefit from contracting employees rather than hiring full-time staff, allowing them the flexibility of employing workers as required. Additionally, in Acme Fireworks case it would be best to keep a current headcount of employees and use contractors as to fulfill any job that requires more employees than Acme Fireworks has on the books.

Employees

Full-time employees may require paid time off, liability insurance, and health coverage. Employees must have payroll taxes deducted. The worker has job duty to complete all activities for the improvement of the proprietor. A full-time employee can save money when it comes to payroll and liability insurance, as you have a fixed number for them to account. When employees are treated well, they are committed to the company their duties and maintain quality in their work. Employee engagement of this nature reduces accidents and increases production levels, allowing the owner to improve profitability.

Independent contractors

When an agent is a separate contractor payroll taxes will not be deducted as the contractor is responsible for paying taxes themselves. The use of contractors is a practical choice for businesses that do not have a steady workflow. In the case of Acme Fireworks, firework shows are not an ordinary

occurrence for most of their contracts. The contracting of skilled labor would be the more cost friendly than hiring full-time employees. The use of contractors would help reduce layoffs of hourly employees during slow periods. In the long-term the owner of Acme Fireworks would save, hiring trained contracted labor would only be for a set amount of time.

Agency Law

Acting in good faith, the employee should remain loyal and follow the proprietor's rules and notify the employer of all pertinent info regarding company operations. The worker is also obligated to perform attentively and adeptly all activities required to complete assigned tasks while maintaining records for the employer (Rasmusen). An employer is required to reward monetarily for any services swiftly and reasonably. They are also to compensate the worker/ agent for any losses suffered for any legal acts the worker/agent has performed under the agency agreement (Rogers, 2012).

An employer may find it beneficial to hire contractors when operating in a high-risk field such as fireworks. Contractors can reduce risks suffered by the business in the occasion a contractor error triggers an accident. Acme Fireworks would save a lot on the expenditure of extra liability insurance using contractors instead of hiring employees in the case of expansion. The more expenses the, less the company has for delivery and production of its product and services

Business entity change

The most straightforward and easy way to own a business is a sole proprietorship. (The U. S. Small Business Administration) When the owner started the company, they took advantage of the simplicity of operating as a sole-proprietorship. Now that the company is growing the biggest concern for Acme Fireworks owner is a liability. Currently, as a sole property, the owner is 100% personally liable for all the business debts and legal claims. If someone were to sue the company, the owner would be held accountable for anything awarded to the plaintiff by the courts. Operating under a sole proprietorship there is taxation on the company and the owner. The company and the owners are the same in a sole proprietorship. The owner is required to report all business income and losses on their tax return.

Acme Fireworks would benefit from a changing the business entity from a sole proprietorship to a single member LLC. A single member LLC allows the company the flexibility of a corporation where the company is not taxed only the employer. The reason the owner would want this is that it keeps taxes from cutting into profits. Federal income taxes are another reason Acme Fireworks should change to a single member LLC when it comes to federal income taxes, they are handed to the members of the LLC and are paid through their income tax because the federal government considers that an LLC is not a separate tax entity. (Single-Member LLC Individual Member Form, 2014). The change from a sole proprietorship to an LLC will allow the owner to distance themselves from any issues that arise with the business.

Conclusion

When Acme Fireworks started a business, the owner was a small businessman. A review of what during this time of expansion it is critical to decide what direction is best for the company to go in. The owner when negotiating new contract realized the need for development and possibly a change of entity to conduct business on a larger scale. When the company had less large contracts operating as a sole-proprietor fit the business needs. However as Acme plans on taking on larger business accounts, and due to the increased amount business, it would be in Acme fireworks best interest to become a Single Member LLC. Acme Fireworks will be covered by the UCC, allowing them to enjoy the benefits of interstate commerce enabling them to be more accessible and more effective. Once Acme implements these changes, they should be able to expand and be quite successful. Contract employees will allow Acme to fulfill its contracts without putting an undue burden on the company if business demand declines, halting unnecessary and morale effecting layoffs.

Maintaining flexibility in our ever-changing fast-paced business world is essential. The change to an LLC from a sole proprietor will afford the company the capability to stay ahead of profit and loss. An average day to day business in a typical industry is hard and uncertain undertaking on its own, adding something as dangerous as fireworks make it additionally so. An LLC would serve Acme Fireworks operations best, along with the use of contract employees for large contracts or busy periods. The implementation of these things will allow Acme Fireworks to be successful as long as all parties are content by the arrangements involved to certify devotion and happiness from both employees and its customers.

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