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**I can Hammer out any Problem!**

John B. Goldhamer is an “*Authored Tax Law Expert*” with *Education and Experience in all Business Disciplines*, including J.D. Equivalent Legal Education, Finance, Marketing, MBA, Accounting, and Information Systems.

John’s *Free Position Papers* are *Educational, Entertaining, and Empowering* that provide definitions, procedures, website links for cross reference, and a Table of Contents for easy review.

**STARTING A BUSINESS REQUIREMENTS**

**START SMALL, BUT THINK BIG**

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### Name of the Organization

Marketing people agree that the name of the organization should identify the type of work offered.

For example, a Consultant should have the phrase “Consulting” in the name such as *John B. Goldhamer Consulting*. A wholesaler should have the phrase “Wholesale” in the name. A restaurant should have the phrase “Restaurant or Food.” Organization names listing an address or just a person’s name do not indicate what is being offered. A Trade Name or DBA (Doing Business As) is also acceptable, but it must be filed in the local court. [www.scc.virginia.gov/clk/befaq/fict.aspx](http://www.scc.virginia.gov/clk/befaq/fict.aspx)

The name of an organization must not be the same as another business registered or reserved with the Secretary of State, or in Virginia, the State Corporation Commission. For example you cannot name your company “Walmart.”

In the United States, a Corporation must end with the word “Corporation, Corp. Incorporated, or Inc.

A Limited Liability Company (LLC) must end with “LLC.”

A Sole Proprietor does not have any requirements.

### Request an EIN or FEIN (Federal Employer Identification Number)

An EIN or FEIN (Federal Employer Identification Number) is a unique nine-digit number assigned by the Internal Revenue Service (IRS) to business entities operating in the United States for the purposes of identification. It is equivalent to a Social Security number used for individuals.

[https://en.wikipedia.org/wiki/Employer\\_Identification\\_Number](https://en.wikipedia.org/wiki/Employer_Identification_Number)

The IRS requires all organizations, Sole Proprietors, LLC, Corporations, and nonprofits operating within the United States to register and receive an EIN or FEIN (Federal Employer Identification Number). It is a *free* nine-digit number and functions for a business as a Social Security Number.

[www.irs.gov/businesses/small-businesses-self-employed/how-to-apply-for-an-ein](http://www.irs.gov/businesses/small-businesses-self-employed/how-to-apply-for-an-ein)

Since 2010, under the *Transfer and Reorganization of the Bank Secrecy Act* and FATCA (*Foreign Account Tax Compliance Act*) the IRS requires a Social Security Number or EIN for an organization to open a checking or savings account. [www.irs.gov/businesses/corporations/summary-of-fatca-reporting-for-us-taxpayers](http://www.irs.gov/businesses/corporations/summary-of-fatca-reporting-for-us-taxpayers)

### Tax Cuts and Jobs Act of 2017- Pass-through Entities

Sec. 199A Deduction up to 20% of Qualified Business Income (2018 to 2025 *only seven years*)

One of the more important provisions in P.L. 115-97, known as the Tax Cuts and Jobs Act, enacted Dec. 22, 2017, is the new Sec. 199A, the deduction for Qualified Business Income (QBI). Sec. 199A allows a deduction for up to 20% of Qualified Business Income (QBI) from *Partnerships, Limited Liability Companies (LLC’s), S Corporations, Trusts, Estates, and Sole Proprietorships.*

[www.JournalofAccountancy.com/issues/2018/may/sec-199a-deduction-for-qualified-business-income.html](http://www.JournalofAccountancy.com/issues/2018/may/sec-199a-deduction-for-qualified-business-income.html)

A Pass-through Entity is any entity that is recognized as a separate entity for federal income tax purposes such as Sole Proprietorships, Partnerships, LLC’s and S Corporations, which means that these entities, are not subject to income tax, but rather, the owners are directly taxed individually on the income, taking into account their share of the profits and losses. This avoids double taxation.

[www.legalzoom.com/knowledge/limited-liability-company/glossary/llc-pass-through-entity](http://www.legalzoom.com/knowledge/limited-liability-company/glossary/llc-pass-through-entity)

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### Choose a Business Organizational Structure

I always recommend that every new business “START SMALL, BUT THINK BIG!”

#### Sole Proprietor (Federal Schedule C)

If you establish yourself as a Sole Proprietor, then at the end of the year attached to your Individual Income Tax Federal Form 1040 Return, you will also file Federal Form Schedule C, *Profit or Loss From Business, Sole Proprietor*, where you are able to deduct “*Reasonable Expenses*,” but you must show a profit in one out of five years.

#### Partnership

A partnership may have just one partner. The partnership income or loss passes to the owners and is listed on their Federal Form 1040 Individual Income Tax Return from the partnership completing a *K-1 Partner’s Share of Income, Deductions, Credits, etc.* and then the income or loss is listed on the owner’s Federal Form 1040 Individual Income Tax Return. [www.irs.gov/pub/irs-pdf/f1065sk1.pdf](http://www.irs.gov/pub/irs-pdf/f1065sk1.pdf)

#### LLC (Limited Liability Company)

The Limited Liability Company (LLC) was created by the *Small Business Job Protection Act of 1996*. An LLC (Limited Liability Company) *in theory* protects the owner’s assets such as a house and bank accounts from having a lien placed against them by a Court of Law.

The “Owner” places an amount of assets into an LLC as an accounting adjustment called a “Capital Contribution. The title of the assets such as bank accounts, real estate, automobiles should be listed in the name of the LLC. Essentially, if the LLC is sued, the only assets that a Court of Law could place a lien against are those owned by the LLC. For example, if an owner places \$1,000 “Capital Contribution” into an LLC by making an accounting adjustment, then a Court of Law could only place a lien against the \$1,000 if the court found the LLC liable.

Unfortunately, in this Litigious Society, a Court of Law may “*Pierce the Corporate Veil*” holding the LLC owners *Personally Liable*, but homeowner’s policies or umbrella policies may provide coverage.

In addition, since a “Consultant or Sales Person, would not be providing something physical that a person could get hurt on, then generally, they would not need the protection of an LLC. They could be sued for malpractice for bad advice, but it is difficult to find expert testimony to prove it in court.

If someone is selling merchandise or edibles such as food or drink (Tangible Personal Property) that someone could get hurt on, then an LLC might protect their assets from a lien by a Court of Law.

In most states, an LLC is registered with the Secretary of State and the application costs vary. In Virginia, an LLC is created by the *State Corporation Commission (SCC)*, which requires an *Articles of Organization* and \$100 fee. [www.scc.virginia.gov/publicforms/322/llc1011.pdf](http://www.scc.virginia.gov/publicforms/322/llc1011.pdf) [info.legalzoom.com/start-llc-virginia-3354.html](http://info.legalzoom.com/start-llc-virginia-3354.html)

Similar to most states, the SCC requires Virginia LLC’s to file a *\$50 Annual Registration Fee*.  
[https://scc.virginia.gov/clk/files/How-To\\_Guide\\_Pay\\_Annual\\_Reg\\_Fees\\_Online.pdf](https://scc.virginia.gov/clk/files/How-To_Guide_Pay_Annual_Reg_Fees_Online.pdf)

A Registered Agent must be listed by the LLC, which is the person or business that will receive service of process if the LLC is sued or subpoenaed by a Court of Law. Generally, a small LLC will list the one of the owners as a Registered Agent. An LLC may deduct “*Reasonable Expenses*.”

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Choose to Treat an LLC as a Partnership or Corporation (File [IRS Form 8832, Entity Classification Election](#))

An LLC may be treated by the owner as a corporation or a partnership, even with only one owner. [www.irs.gov/businesses/small-businesses-self-employed/llc-filing-as-a-corporation-or-partnership](http://www.irs.gov/businesses/small-businesses-self-employed/llc-filing-as-a-corporation-or-partnership)

If an LLC is treated as a partnership, then the LLC income or loss passes to the owner on a *K-1 Partner's Share* and is listed on the owner's Federal Form 1040 Individual Income Tax Return. If an LLC is treated as a Partnership and *does not have any employees*, then it is not required to withhold Federal or State Individual Income Tax or pay Social Security Tax or Medicare Tax for employees and the limited partner's share of income is not taxable for Self-employment Tax. (IRC § 1402(a))

If an LLC is treated as a corporation, then the LLC pays Federal and State Corporation Income Tax, but may pay dividends to the owners. If an LLC is treated as a corporation and has employees, then it is required to withhold Federal and State Individual Income Withholding Tax and pay the employee's Social Security and Medicare Tax.

In addition, if an LLC is treated as a corporation and has employees then the LLC must register with State Department of Revenue and the State Employment Commission and pay Unemployment Tax for each employee. In Virginia, if an LLC is treated as a corporation it would register with the Virginia Employment Commission (VEC) and pay Unemployment Tax for each employee.

[www.vec.virginia.gov/employers/account-number](http://www.vec.virginia.gov/employers/account-number)

### Subchapter S. Corporation (S. Corp)

Subchapter S. Corporation (S Corp) was created by the *Technical Amendments Act of 1958* to provide small businesses corporation tax saving, but is not as popular today because of its limitations.

An S Corporation, for U.S. Federal income tax purposes, is a closely held corporation that makes a valid election to be taxed under *Subchapter S* of Chapter 1 of the *Internal Revenue Code*. In general, S Corporations do not pay any federal income taxes. Instead, the corporation's income or losses are divided and passed through to its shareholders. The shareholders then report the income or loss on their individual income tax returns. *An S Corp must not have more than 100 shareholders.* [en.wikipedia.org/wiki/S\\_corporation](http://en.wikipedia.org/wiki/S_corporation)

Just like any corporation, S Corps have limited liability protection, but can passthrough income or loss to the owners the same as a partnership; however some states will tax the S Corp. as a corporation.

### Corporation

A corporation is a company or group of people authorized to act as a *single entity* (legally a person) and recognized as such in law. [en.wikipedia.org/wiki/Corporation](http://en.wikipedia.org/wiki/Corporation)

In most states, a corporation must register with the Secretary of State or other company registrar such as the Virginia State Corporation Commission (SCC) and file an "*Articles of Incorporation*," ([How to Create Articles of Incorporation- ehow.com](#)) which outline the governance of a corporation and the corporate Bylaws ([How to Create Corporate Bylaws- ehow.com](#)) or internal rules to regulate itself, and affirm that the State laws where the organization originated, govern the corporation.

Just like individuals, corporations pay federal, state, and sometimes local corporation income tax.

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### Business Plan

A business plan is a formal statement of business goals, reasons they are attainable, and plans for reaching them. It may also contain background information about the organization or team attempting to reach those goals. Written business plans are often required to obtain a bank loan or other financing.

[https://en.wikipedia.org/wiki/Business\\_plan](https://en.wikipedia.org/wiki/Business_plan)

Although generally not required, it is a good idea to have a Business Plan or at least look at the categories. SCORE, a nonprofit organization providing free business mentoring services to prospective and established small business provides a [free Business Plan Template for a Startup Business](http://www.score.org/resource/business-plan-template-startup-business).

[www.score.org/resource/business-plan-template-startup-business](http://www.score.org/resource/business-plan-template-startup-business)

A Business Plan should state: *The problem that your products or services solves, why you are the best to resolve it, briefly explain your experience in the field, and that you enjoy that type of work.*

### Individual Income Tax Issues

Seven states do not have an Individual Income Tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming. Most of the remaining states start with an Individual's the Federal 1040, Individual Income Tax Return and add or subtract certain modifications to arrive at a tax due.

A corporation may pay dividends to stock owners, which are included in the owner's Federal 1040, Individual Income Tax Return.

If an LLC is treated as a partnership, then the LLC income passes to the owners by the partnership providing a *K-1 Partner's Share of Income, Deductions, Credits* then the income or loss is listed on the owner's Federal Form 1040 Individual Income Tax Return. [www.irs.gov/pub/irs-pdf/f1065sk1.pdf](http://www.irs.gov/pub/irs-pdf/f1065sk1.pdf)

### Local Business License

Most localities in the United States require a registration for a Business License to operate in the city or county. Each county or city should have a website for registering a Business License.

In some localities, if the *"Estimated"* Gross Sales are less than a certain amount, then a payment may not be required when registering, but some localities may have a minimum payment.

### Home Occupation License

Some localities in the United States require a registration and payment for a *Home Occupation License*, which is to balance the ability of persons to operate a business from their place of residence and the need to maintain the residential character of the surrounding communities. The character of the community may change if signs are posted, customers use the home for pickup and delivery, or employees are working at the home.

Some *Home Owners Associations, Condominium Associations, or Property Managers* may have private deed restrictions that may prohibit having a business in a home.

In Virginia, a Home Occupation License is not required, but check with your locality.

For certain occupations, working out of their home might not change the residential character of the surrounding communities such as consulting, government employees, or company employees and they might be exempt of a Home Occupation License or a Home Owners Associations restriction.

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### Occupational or Professional License

All states require an individual to have an Occupational or Professional License in order to operate in certain occupations, such as Tradesmen, Carpenters, Contractors, Electricians, HVAC, Plumbers, Real Estate Salespeople & Brokers.

In Virginia these licenses are administered by the Department of Professional and Occupational Regulation. [www.dpor.virginia.gov/About](http://www.dpor.virginia.gov/About) [www.dpor.virginia.gov/LicenseLookup](http://www.dpor.virginia.gov/LicenseLookup)

Certain licenses are administered by specific professional boards such as Doctor, Attorney, or CPA.

### Local Business Personal Property Tax

Most localities in the United States require a registration for Business Personal Property Tax. Each county or city should have a website for registering for Personal Property Tax.

Generally, all Business Assets or *Tangible Personal Property* (Something that can be seen, felt, or touched other than real estate) such as equipment are required to be listed once a year and the Tax is calculated by the locality on the value of the assets.

In most localities, Software is considered *Intangible Personal Property* (Something that *cannot* be seen, felt, or touched) and is therefore not taxed.

### Sales and Use Tax<sup>TM</sup>

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In the United States, there is not a Federal Sales Tax.

Five states do not have a Sales Tax: Alaska, Oregon, Montana, Delaware, and New Hampshire.

Throughout most of the United States, if a product also known as Tangible Personal Property (Something that can be seen, felt, or touched; other than real estate) or *certain services* are sold, Sales Tax must be charged to the Customer by the Seller and paid to the State.

Generally, if a product is sold and shipped to an out-of-state Customer, which is called "*Interstate Commerce*," then under the Commerce Clause of the United States Constitution the Seller is not required to charge Sales Tax to the Customer.

If however, a Customer receives a product from an out-of-state Seller *without* Sales Tax, then the Customer is generally required to pay the state where the item will be used, which is called a "*Use Tax*" for "*Using the item in that state*," which is at the same rate as the Sales Tax.

In most states, a business selling a product also known as Tangible Personal Property must register to *charge, collect, and pay* Sales Tax from their Customers with the Department of Revenue.

In Virginia, if an organization is selling a product also known as Tangible Personal Property, then it must register to *charge, collect, and pay* the Sales Tax to the Virginia Department of Taxation.

[www.tax.virginia.gov/content/register-business](http://www.tax.virginia.gov/content/register-business)

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### Employee Withholding Tax

Generally, a worker who performs services for you is your employee if you have the right to control what will be done and how it will be done. [www.irs.gov/publications/p15/ar02.html](http://www.irs.gov/publications/p15/ar02.html)

Generally, if an organization has *any employees*, it is required to charge the employee estimated federal and state Withholding Tax, which is a prepayment of the employee's Individual Income Tax payment, submit the payment to the government, and at the end of the year list it on the employee's W-2 Wage and Tax Statement.

### State Employee Withholding Tax

Seven states do *not* have an Income Tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming. New Hampshire and Tennessee only tax Individual Dividend and Interest Income.

In Virginia, an organization must have a Virginia withholding account if it has an employee who is earning income while in Virginia. This includes a person or business that pays wages or salaries for services performed in Virginia or pays pensions or annuities to Virginia residents.

<http://www.tax.virginia.gov/content/register-business>      [www.tax.virginia.gov/ireg](http://www.tax.virginia.gov/ireg)

### Employee, Federal Income Tax Withholding, Social Security, and Medicare Taxes

In general, an organization with employees must deposit federal income tax withheld, and both the employer and employee Social Security and Medicare taxes. Generally, employers must report wages, tips and other compensation paid to an employee by filing the required form(s) to the IRS. You must also report taxes you deposit by filing Forms 940, 941 and 944 on paper or through [e-file](#).

At the end of the year, the employer must complete [Form W-2, Wage and Tax Statement](#) to report wages, tips and other compensation paid to an employee. File Copy A of all paper Forms W-2 with [Form W-3, Transmittal of Wage and Tax Statements](#) to the Social Security Administration (SSA). File Copy 1 to an employee's state or local tax department.

[www.irs.gov/businesses/small-businesses-self-employed/depositing-and-reporting-employment-taxes](http://www.irs.gov/businesses/small-businesses-self-employed/depositing-and-reporting-employment-taxes)

### Self-Employment Tax

*Self-Employment Tax* is a tax consisting of Social Security Tax and Medicare Tax paid to the IRS by individuals who work for themselves, such as a *Sole Proprietor (Federal Schedule C)* and an "Independent Contractor" or "Jobber." For a Partnership or an LLC treated as a Partnership, a partner's share of income is considered an investment and is not taxable for Self-employment Tax. However, LLC owners are required to *Self-Employment Taxes* directly to the IRS.

When an individual works for an organization such as a company as a Full or Part-time Employee," the organization pays the IRS Social Security Tax and Medicare Tax totaling 7.65% of the employee's income and the employee pays an additional Social Security Tax and Medicare Tax totaling another 7.65% of the employee's income.

For a *Sole Proprietor (Federal Schedule C)* or when an "Independent Contractor" or "Jobber" works for an organization they pay to the IRS both parts of the Social Security Tax and Medicare Tax totaling 15.3% (7.65% x 2) of income. Therefore, for the "*Independent Contractor*" or "*Jobber*" it will cost an extra 7.65% out of their pocket to take the position and they must register with the IRS. For a *Sole Proprietor (Federal Schedule C)*, they can deduct one-half of self-employment tax on Schedule 1.

<https://www.irs.gov/pub/irs-pdf/i1040sc.pdf>

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### Federal Unemployment Tax Act (FUTA)

Only the employer pays Federal Unemployment Tax Act (FUTA) and it is not withheld from the employee's wages. Report your FUTA taxes by filing [Form 940, Employer's Annual Federal Unemployment \(FUTA\) Tax Return](#).

### State Unemployment Tax

Most states require employers to register *and pay* Unemployment Tax either through a state Employment Office, the Department of Revenue, or the Department of Labor.

In Virginia, the Unemployment Tax is administered by the Virginia Employment Commission (VEC). Virginia Unemployment Coverage (tax liability) is determined by the number of workers employed, the duration and nature of services performed, and the amount of wages paid for services in employment. Once the liability conditions are met for your type of employment, you are required to report the total payroll for the entire year, by quarter, and pay the appropriate amount of taxes.

Most employers are liable if you have one or more employees who work for any portion of a day in twenty different weeks in a calendar year, or if your total gross payroll for any calendar quarter is \$1,500 or more. §60.2-210. There are exceptions concerning domestic, nonprofit or agricultural employing units. [www.vec.virginia.gov/employers/i-have-employees-where-do-i-start](http://www.vec.virginia.gov/employers/i-have-employees-where-do-i-start)

Employers of “*Independent Contractors*” do not pay Unemployment Tax.

In general, “*Independent Contractors*” do not pay Unemployment Tax and they are not entitled to Unemployment Insurance Benefits.

### Workers' Compensation

Since 1902, a Worker's Compensation Law has been administered in the United States.

Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence.

[en.wikipedia.org/wiki/Workers%27\\_compensation](http://en.wikipedia.org/wiki/Workers%27_compensation)

In Virginia, Workers' Compensation claims are administered by the Virginia Workers' Compensation Commission (VWC). An employer may insure for workers' compensation *through a commercial insurer*, self-insurance, group self-insurance association or through a professional employer organization. Commercial insurance is not available through the Commission.

Workers' Compensation generally is available through an insurance agent or carrier. [www.vwc.state.va.us/content/employers](http://www.vwc.state.va.us/content/employers)

Workers' Compensation Cost *depends on the employee's occupation*. In Virginia, Workers' Compensation Cost for a *clerk is about \$.14 per \$100 of employer payroll and a construction worker is about \$15 or more per \$100 of employer payroll*. [www.trustedchoice.com/l/virginia/workers-compensation](http://www.trustedchoice.com/l/virginia/workers-compensation)

As a general rule, a business with more than two employees is required to *carry workers' compensation coverage*. An employee is viewed broadly under workers' compensation law and includes part-time, seasonal and temporary workers, minors, trainees, immigrants and working family members. [www.vwc.state.va.us/content/employers](http://www.vwc.state.va.us/content/employers)

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### **Employee or Independent Contractor?**

Sometimes an employer will classify workers as contractors instead of employees. In these cases, contract workers are responsible for paying their own payroll taxes, including federal and state income taxes and both the employer and employee portion of Social Security taxes. In most cases, contractors are responsible for providing their own Workers Compensation Insurance and are not eligible for Unemployment Insurance if their services are no longer needed.

Generally, a worker who performs services for an employer is an employee if the employer can control both what will be done and how it will be done. The key factor is that the employer has the right to control the details of how the services are performed, even if the employee has substantial freedom of action. [www.vec.virginia.gov/employee-or-independent-contractor](http://www.vec.virginia.gov/employee-or-independent-contractor)

By contrast, an independent contractor performs services required by an employer, but is not subject to the employer's control about how the services are performed. [www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee](http://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee)

To help determine whether a worker is an employee [IRS identified 20 factors](#) that may indicate whether the employer can exercise enough control to establish an employer-employee relationship. Not all the factors must be present to find an employee/employment relationship, but the factors are guides to assess the likelihood as to whether an individual is an employee or an independent contractor. The 20 factors and Virginia's exemptions to employee classification can be found at [www.vec.virginia.gov/irs-20-factors-and-exemptions](http://www.vec.virginia.gov/irs-20-factors-and-exemptions)

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Virginia Tax Facts  
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The Virginia Department of Taxation (the Department) administers most state taxes, including but not limited to income taxes, sales and use taxes, and miscellaneous excise taxes.

[www.tax.virginia.gov/sites/tax.virginia.gov/files/Tax%20Facts%202015%20FINAL.pdf](http://www.tax.virginia.gov/sites/tax.virginia.gov/files/Tax%20Facts%202015%20FINAL.pdf)