

What Incorporating Can Do For You

Inside:

- Secrets of how you can insulate yourself and your family from commercial and personal creditors... legally reduce your state income taxes by as much as 100%... keep your financial affairs private... and inexpensively set up a business structure to protect and optimize your wealth!
- How you can do business while someone else takes all the risk and you maintain 100% control — plus all the profits (page 1)
- Does it *really* matter where you incorporate? (page 21)
- Enjoy total privacy (even with the IRS), control and flexibility in your affairs (page 24)

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INTRODUCTION

Incorporating represents an exciting opportunity for many to protect their personal assets from the perils that exist in doing business today. Incorporating is also an excellent way for many to gain tax savings and other benefits.

All you need to do is read the newspapers to determine that we live in a very dangerous environment for conducting business, or doing much of anything. The risk of getting sued today, especially when conducting your own business, is greater than it's ever been. There are now more practicing attorneys in the United States than anywhere else in the world. While the United States has barely 7% of the world's population, we have 94% of the world's lawyers.

American attorneys work under a system which is not found anywhere else in the world, and that is the contingency fee system.

Under the contingency fee rules, attorneys will file lawsuits without their clients having to put up any money. The successful attorney then takes a percentage of anything he is able to get from a defendant. This percentage, or contingency fee, will typically run in an area of 30-40% of everything that is collected. Is it any

wonder then, that attorneys press for very high awards in lawsuits? Only a few years ago, a jury award of a million dollars or more was unusual. Nowadays, however, a jury award of a million dollars is the norm. As a result, lawsuits are more and more common, making this a very dangerous climate in which to do business.

Incorporating one's business is certainly a good answer to protect you from those business lawsuits that come around so often. One need only read the newspaper everyday to realize how serious this

situation is. Looking at the number of million dollar plus jury awards would lead us to conclude that those on the losing end would now only wish that they had incorporated. You cannot wait until it's too late, after you have been sued. The time to incorporate is while your legal seas are calm. In these pages we will discuss the protection that incorporating can provide.

Another problem business people experience is ever increasing taxes. Sometimes it seems that just when you make a little profit, the tax man is there to take it away from you. The government provides benefits to taxpayers who are smart enough to take advantage of them. No one is required to pay more taxes than the law requires, and it is through incorporating that one can take advantage of many deductions and advantages that the law provides for. We will be discussing these advantages and benefits in this book.

As evidence of the ever increasing litigation explosion, if you were to take all of the lawsuits filed in this country and then divide that number by the number of people in the United States, you would realize that the average American will be sued five times in his

lifetime. Now it is true that not every person is sued five times during their lifetime, some are sued less and some are sued more. The question you as a business person must ask yourself in the face of this litigation crisis is: Do you feel lucky? Most business people will tell you that depending on luck is no way to do business. Therefore, many business people are looking for ways to protect themselves from the litigation crisis, and I would submit, you too should look to protect yourself from the litigation crisis.

In the end, incorporating can save a business person or entrepreneur quite a bit of money and provide that person with personal protection — both highly desirable in today's business environment. In short, incorporating can benefit you.

WHAT IS A CORPORATION?

When I was a youngster in school, there were many days when I wished that I could send someone else to school in my place. How nice it would be, I thought, to have someone else take the certain unpleasanties that could come my way. All I would really have to do is to tell the person who was going to school in my place what to do; I would have to do the thinking for the person whom I sent in my place. Today there are more serious matters to consider. Now, there is litigation, and there are assets I would just as soon not have immediately associated with me. I wish I had a person whom I could send to court to risk his assets instead of mine. I wish there was a person whose thoughts I controlled so that I could have him or her hold title to certain assets so that I could limit my exposure connected with them.

If I could own people whom I could think for, who had no greed, and who did only what I told them to do, I would jump at the chance. Better yet, if I could find a way to create such people at will, I would do so. Wouldn't you? Of course, slavery is illegal; and only God can create people, (that is human people). But people can create corporations, legal people.

It's no wonder that roughly a million corporations are formed each year and the number is growing every year. It's really no wonder at all that so many people create legal persons to do things that would otherwise be impossible. Yet, I am amazed that so many people put vast restrictions on their capabilities by not utilizing the versatile person that can do everything but think, that is a corporation. Perhaps some people are lazy, maybe they are too busy to grow in their capability to

succeed, maybe they think they already know everything about business, it's hard to say...why don't many people see the light? Some people do and just refuse to act and grab the benefits available to them, but I think most people are just like I am many times, and possibly like you may be at times: they start to think about what they could do with corporations, and it's all over from there. The word "corporation" is like the name "trust" or "conglomerate", it makes people think, "what could I do with that? I'm not even sure what it is, what it does, or how it relates to me."

So here's the news, hopefully news that will benefit you in all of your business and legal planning concerns and problems. In brief, a corporation is a legal artificial person, a person that is separate, distinct and

apart from you. It is not you. You are not it. It is a distinct, different and totally separate legal or artificial person. A corporation is a distinct legal entity. It is separate and apart from its employees, stockholders, directors, or officers. Although it's a separate entity, it can act only through its stockholders, officers, or agents. A corporation can have no knowledge or belief on any subject independent of the knowledge or belief of its people. A stockholder (owner or partial owner) is a holder of shares of stock in the corpora-

tion and is not in legal danger. A stockholder is not the employer of those working for the corporation, nor is he the owner of corporate property. His liability is limited entirely to the money he has put into this separate legal person.

As an artificial person, a corporation's rights, duties and liabilities do not differ from those of a natural

A corporation is a legal person, an entity unto itself with a life and identity all its own. The corporation is not you, and you are not the corporation. A corporation is a person whose thoughts you can control, that can and will defend you against lawsuits, protect all your personal assets and hold title to property.

person under similar conditions, except where the exercise of duty would require the ability to comprehend, or think. That's where the Board of Directors comes in. They do the thinking for the corporation. Proof that the directors thought on behalf of the corporation is evidenced by minutes or corporate resolutions. For example, a corporation may become a debtor or trespasser. A corporation can buy, trade, sell and make loans; literally anything you as a person can do, these thoughts and actions are simply documented by resolutions. When you think it through, the possibilities become fascinating. The key point to remember here, is that when you own a corporation, the corporation exists as a separate entity or person.

This is probably the most important single point in this book. You cannot properly deal with or understand

any item discussed in this book until you absolutely understand what a corporation is. Therefore, if there is anything in this explanation that you do not completely understand, we strongly suggest you keep analyzing and researching it until you do, it is that important.

Corporation = Person

It seems so simple-and it is, that's the beauty of it! Ask yourself: "How could I use a person that I can create and think for?" Once you've answered the question, chances are you can do the same thing only better, with the corporation. The next time you need a fall guy, a servant, a good friend, a decoy, remember: the solution is a corporation.

FORMS OF DOING BUSINESS

There are various forms of doing business. There are proprietorships, partnerships, limited partnerships, and corporations.

PROPRIETORSHIPS

The advantage of being a sole proprietor is that it is the easiest and simplest form of doing business. You as an individual simply start a business. You are then a proprietor. The main disadvantage is the individual proprietor is subject to full liability resulting from business acts. If the proprietor gets sued because of a related activity, all of his personal assets as well as business assets are on the line. He or she could lose everything in a lawsuit.

Also the proprietor is subject to the 15.3% self-employment tax on all income earned from the business. Further, proprietors do not have available to them benefits such as medical reimbursement plans, certain pension plans and full deductibility of business related expenses.

PARTNERSHIPS

A partnership is a relatively simple form of business used when two or more people get together to conduct a business enterprise. They are simple to form. The partners simply get together and enter into a partnership agreement. From that point the income or loss of the partnership is passed through to the individual partners and is included on their individual tax return. This creates ease of doing business and simplicity in figuring taxes. The main disadvantage of a partnership is it provides no liability protection to the partners. If for example, Joe and Don get together and form a business partnership, and the partnership gets sued and loses, then both Joe's and Don's assets are on the line. Each of them could lose everything. This disadvantage alone is enough to compel those considering a partnership to consider another form of doing business - usually a corporation or a limited liability company.

As an added disadvantage, a partnership doesn't have many of the tax benefits available to a corporation, such as a medical reimbursement plan, pension plans and full deductibility of business related expenses. Further, in a partnership, the active partners are subject to a 15.3% self-employment tax on the income they receive from the partnership. This self-employment tax is not an income tax. It is a separate tax that must be paid by certain taxpayers. A corporation is not subject to self-employment tax on its income.

LIMITED PARTNERSHIPS

A limited partnership is taxed like a partnership, yet it has many of the liability protection aspects of a corporation. There are two types of partners in a limited partnership. There are limited partners who invest in the partnership but have no control, and there is the general partner (or partners) who controls the partnership. The problem with the limited partnership is the general partner has personal liability for certain lawsuits filed by the limited partners against him, or in a lawsuit filed against the partnership itself. Therefore, the liability protection that a limited partnership provides is by no means absolute. The general partner is at risk, and his personal assets are entirely on the line.

Another drawback to a limited partnership is it is quite complex and often quite expensive to form. Also as with general partnerships and proprietorships, the general partner in a limited partnership is subject to the self-employment tax on his or her income. In addition, limited partnerships do not allow for medical reimbursement plans, pension plans and other benefits a corporation offers.

The primary advantage of a limited partnership is it affords the limited partners limited liability and a single level of taxation. The income that comes into the limited partnership flows through to the partners for tax purposes and is included on their personal tax returns.

CORPORATIONS

The main advantage of incorporating is that it provides limited liability for the owners. If the business is sued,

then only the corporation's assets are on the line. If you, as a shareholder, have only invested \$10,000 in the business, that's all you have at risk. Generally, the shareholders' liability in a corporation is limited to their investment in the corporation, not all of their personal assets. If the corporation is sued, it's the corporation's problem. Corporations also have great tax and other fringe benefits available to them, such as medical reimbursement plans, pension plans and full deductibility of business expenses.

The main disadvantage of incorporating is formation can be complicated. Another disadvantage to the corporate form of business is the so called double taxation problem. However, double taxation only occurs when a regular corporation declares a dividend. A regular corporation pays taxes separately from its shareholders and it can't deduct a dividend payment, while the shareholders must take it into income and pay taxes on it. So the double tax problem is that the income may be taxed once at the corporate level and once at the shareholder level and is thus taxed twice. Actually, there is no law requiring a corporation to declare a dividend, although many think there is. The corporation can, in fact, retain earnings up to \$250,000. and even more if the corporation intends to use the money for growth. In most cases there is no need to declare a dividend and be double taxed in a small, closely held corporation. Further, a corporation can elect to be treated as an S-Corporation for tax purposes. This means that all income or losses are generally passed through to the individual shareholders for tax purposes. Essentially, an S-Corporation is treated like a partnership for tax purposes, but has all the limited liability protection of a regular corporation.

“...a corporation is a legal person, an entity unto itself, with a life and identity all its own.”

S-Corporations, however, don't have many of the fringe benefits a regular corporation does, such as certain pension plans, and full deductibility of passive losses against active income. An S-Corporation does, however, avoid self-employment taxes just like a regular corporation, and an S-Corporation also avoids double taxation.

In summary, a corporation is a legal person, an entity unto itself, with a life and identity all its own. The

corporation is not you, and you are not the corporation. A corporation is separate and apart from its employees, stockholders, directors or officers. Although it is a separate entity, it can only act through its stockholders, officers or agents. A corporation can do anything legal, except think for itself. The thinking process of a corporation is done by the Board of Directors. Thus with the Board of Directors to do its thinking, a corporation can do literally anything you as a person can do.

HOW A CORPORATION WORKS

Stockholders/Owners:

Stockholders are the owners of a corporation. As such they are holders of stock certificates. Their primary function related to the corporation is they elect the directors. Each share of voting stock is entitled to one vote, which is where control of the corporation comes in.

The directors are supposed to carry out the stockholders' wishes and run the corporation in the stockholders' best interest with, of course, the end result of making a profit for the corporation for the benefit of the stockholders.

When a person (or persons) has control of a corporation, they can always call a special meeting and fire directors who are not performing according to their wishes. Also, of no little consequence is the fact the stockholders may also elect themselves as directors, which is what usually happens in small privately held corporations. It always happens in a one person corporation, is very common and is totally acceptable in many states.

Directors:

Directors are supposed to work for the best interests of the stockholders. The directors are responsible for

the general overall management of the corporation. They are the ones who really have the power to "wheel and deal" with the corporation. They set policy to be carried out by the officers and make the major decisions affecting the corporation. They hire the officers, and the officers take orders from them, usually as funneled through the president of the corporation. Like the shareholders, the directors make decisions by voting. However, the directors do not have one vote per share of stock — as they are not necessarily stockholders — they have one vote each. For example, if there are three directors, the vote of any two would make a majority or quorum.

Officers:

The officers carry out the instructions of the Board of Directors in the matter of day-to-day operations. The officers have the power to run the corporation on a day-to-day basis and to make decisions, so long as those decisions are contained within the framework of policy and instruction as handed down by the Board of Directors. The president is in charge of the officers, and is the one primarily responsible for reporting to the Board of Directors, and seeing that their wishes are carried out. The responsibilities of both the directors and officers are usually spelled out in the bylaws of the corporation as set down by the stockholders and/or directors. A director may, if he has the votes, elect

himself as an officer. In the case of a small corporation, this is quite common.

The officers of the corporation also have considerable legal responsibility. They are, for example, responsible for seeing that the payroll taxes withheld by the corporation are paid to the I.R.S. In the event they fail to perform that responsibility, they are held personally liable and responsible for their payment.

Employees:

Employees are hired by the officers to carry out their instructions and perform duties consistent with those instructions on a day-to-day basis. You can be a shareholder, a director, an officer and an employee of the same corporation. The difficult part of a one person corporation is that you must remember at all times which function you are serving in. When choosing yourself as director for the corporation, you are acting as a shareholder. When drafting corporate resolutions, you're acting as a director. When signing contracts or other documents, you're acting as an officer. When sweeping the floor you are acting in the

capacity of an employee. In one person corporations such as this, corporate formalities become the crucial element of proof that you are in fact, doing business as a corporation, rather than as a proprietor. "Corporate formalities" are simply the title given to certain functions within the operation of a corporation which prove that a corporation is acting properly. Corporate formalities include annual meetings of shareholders and directors, minutes of meetings, Board of Directors resolutions which document the directors' thinking, and proper appointment of officers.

Corporate formalities are usually the area in which small one person corporations have the greatest difficulty. They experience difficulty, not because corporate formalities are difficult, but rather because many business people forget to observe them. The best way to avoid this situation is simply to keep up with your corporate records, hold your annual meetings, and stop and think which role you are playing at any given time. Entrepreneurs who do so, seldom find this to be difficult or onerous.

WHAT IS A CORPORATION SHELL?

A corporate shell is a corporation completely formed and ready to proceed. It is called a shell because it has no stockholders, directors or officers yet. It is a shell with nothing inside it; it has no assets or liabilities.

Expressed another way, a shell is like a brand new completed house with nothing and no one inside it. It is waiting for you to decide what and who you want to put in it, as well as when and how. Corporation shells are ready to do business immediately, and the purchase of an already formed corporate shell is the fastest, simplest and most efficient method by which you can incorporate. As time goes on, and doing business as a corporation becomes more and more popular, most entrepreneurs are purchasing corporate shells from incorporating companies, rather than going to an attorney to incorporate. They find this is faster, easier and more cost effective than using an attorney... or even "self-incorporating."

WHO CAN BENEFIT BY INCORPORATING?

Now that we've seen what a corporation is, and how it stacks up against other forms of doing business, a natural question would be, who should incorporate? To decide whether or not incorporating is for you, you need to ask yourself a few questions. The first question you should ask is, "what is my liability picture?" The second question you should ask is, "do I have assets that I wish to protect?" Thirdly, you should ask yourself if incorporating will benefit you from a tax perspective.

Anyone who is involved in a business or profession where they interact with people, clients, or businesses should also be incorporated. If a business deal goes sour, or if a mistake is made in handling a customer's request or business, then the first reaction today is to sue. Today, even nuisance lawsuits are dangerous. Just to give you an example, Forbes magazine published an article in October of 1986 which details the following story. Ernest Canon, attorney, won \$23 million for a five year old client who was severely injured while riding a lawn mower. Canon convinced the jury that the manufacturer, Ariens Company, was grossly negligent. Punitive damages in the case were \$13 million! As though a five year old's parents should have let a five year old ride a lawn mower to begin with! At a glance you'd think, "what a ridiculous lawsuit," but the fact is, it was worth \$23 million. Of course, anyone in a

potentially hazardous business, such as contracting, excavating, heavy equipment operation or the like should incorporate. The potential for personal harm to people working for the company, innocent bystanders, or those looking for a quick buck is huge in these types of businesses.

There are also people who are involved in joint ventures or partnerships who should consider incorporation. If you are in a partnership with a person and that person does something to get the partnership sued your personal assets are on the line as well as theirs. By contrast, if the business were a corporation instead

of a partnership, this would not be the case. From a liability protection standpoint, there is something else to consider as well. It's hard to believe that just owning something can get a person sued, but it can. Take the case of a person who owns several pieces of real estate on which there was a light pole. There was an individual sleeping by the pole when a truck came by and hit the pole. The pole fell upon the person sleeping under it. The truck had no insurance and the person driving it wasn't worth very much. On the other hand, the property owner was worth

The bottom line? It is probably easier to outline who should not incorporate than who should. The people who should not incorporate are simply those who don't have a business, and are not going into business. They are people who have no assets, and have no plan or desire to accumulate assets. Anyone in business, going into business, or anyone with valuable assets or working to acquire valuable assets, should consider incorporating.

quite a bit. The injured individual sued the property owner for failure to secure the pole properly. The injured party took the position that the owner of the property should have made sure the pole was so secure a truck would not knock it down. Yes, it's a ridiculous lawsuit, but it shows just how easy it is to

get sued. Simply owning an asset can create liability, therefore, people who own an asset which could be associated with liability should incorporate and put that asset into the corporation. This would limit their liability and a potential lawsuit to that one asset and protect the other assets they have.

Aside from the liability protection incorporating affords, it can also provide many tax benefits for those thinking of starting a business. For example, a couple selling their own paintings on the side in addition to their primary employment may not conceive of any liability problem. However, by using a corporation properly they may have enormous tax savings which could warrant incorporating.

When all is said and done, incorporating is beneficial to most people. It is beneficial in the area of liability protection as well as tax savings. The next two sections of this book will outline how and why corporations should be used in the area of liability protection and then in the area of tax savings.

Many business people have received well meaning but inadequate advice from tax professionals, who tell them not to incorporate unless they're making \$50,000 per year.

Such advice might have merit from a tax standpoint, but from a liability standpoint, such advice is often catastrophic. As anyone in business can tell you, you can be sued just as easily making \$20,000 a year as you can making \$100,000 a year. Advice such as that mentioned above has unfortunately resulted in hundreds of thousands of bankruptcies across America, in situations where people earning under whatever magic number they were told, were the victim of a lawsuit. The simple fact is, any person engaging in business in the 1990's needs to be incorporated. This advice is

becoming more and more prevalent in today's environment.

Experts such as the well-known radio business advisor Bruce Williams say over and over that they would never engage in business today without being incorporated. When highly respected individuals such as Mr.

Williams are giving this advice, we should realize that this is not something to be taken lightly.

Anyone who is involved in a business where there are any employees should be incorporated. Lawsuits against a business for the negligent acts of its employees are widespread. Liability for the negligent act of an employee is almost always imputed against the employer. Consequently, any business enterprise which has the employees but is not incorporated is at great risk not

only for liability inherent in the nature of the business that it conducts, and not only from any accidents which may occur on its premises, but is at risk for anything that an employee says or does while on the job.

Yet, as if that weren't bad enough, lawsuits from employees are also very common today. Suits regarding wrongful termination and sexual harassment are more and more common, and judgment awards for such suits are going higher and higher. Steven A. Bokas, Vice President and General Counsel of the U.S. Chamber of Commerce says, "Work place litigation is causing unbelievable problems for employers. You fully expect that every time you discharge an employee, or don't promote an employee, or demote an employee, you're going to get a lawsuit. That was not true even 10 years ago." This quote is taken from Nation's Business, July 1989. Since 1989 the situation has gotten even worse.

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LIABILITY PROTECTION THROUGH INCORPORATING

REAL WORLD CORPORATIONS AND WHAT THE TEXTBOOK SAYS

If you've ever been to a college accounting class, you were probably told the reason corporations were formed was to allow people to pool their resources and to provide centralized management of those resources. People who learn about incorporating in college think the reason to incorporate is as simple as a bunch of people getting together, putting their money into a business, and hiring centralized management to run it. In the real world it doesn't quite work that way.

The theory of pooling resources and centralized

management really only relates to larger, more sophisticated corporations. It's true this is how corporations started out, but today it's not the case. Most corporations formed today are small businesses. In fact, many only have one person as the sole shareholder, director, and officer. The main reasons for people to incorporate today are liability protection and tax advantages which can only be gained through the corporate entity. In this section we will look at the liability protection incorporating can offer. We'll also take a look at why many accountants, and even lawyers, give fatally flawed advice like, "don't incorporate until you're making at least \$50,000 a year." Then we'll look at the myths and misconceptions such advice is founded upon. When you are through with this information you'll know why to incorporate. Plus, you'll know how to get protection and savings most people only wish for.

INCORPORATING: THE KEY TO LIMITED LIABILITY AND PERSONAL PROTECTION

As you probably know by now, a corporation is a legal person. As a legal person it is separate from its stockholders, its officers, its directors, and its employees. This means if a corporation is sued, all it can lose is what it has. People who sue the corporation cannot attach the assets of the individual Shareholder. The corporation limits the liability of the individual person who is associated with it to the extent of his actual investment in the company.

Let's say you set up a corporation, a legal person.

Let's say you put \$10,000 into that separate legal person in exchange for stock. You now own stock in the corporation and the corporation has \$10,000. Now let's say the corporation you formed takes \$7,000 and buys a vehicle to use in the corporate business. Let's say it takes the rest of the money and hires an employee. You tell your corporate employee to take the corporate vehicle and go run an errand. Your trusty employee goes out with the corporate vehicle and proceeds to run over someone. Now you have a problem, because the negligence of that

employee will be imputed to the corporation. It almost always is, and you will probably be no exception.

The good news is you can rest a lot easier than many people in this situation, because you had the foresight to incorporate your business. All that you have at risk is the \$7,000 car and a couple of thousand dollars in cash. Not bad when you consider all of your personal assets would be on the line otherwise.

A wrongful death lawsuit such as the one that would result in our example could easily run into millions of dollars, exceeding insurance policy limitations and coverage. A lawsuit like this would ruin most people; incorporation is needed protection. I cannot urge people strongly enough to be prepared. Prepare for the worse, and hope for the best.

There are also lawsuits that come from employees to consider, such as wrongful termination, discrimination or sexual harassment. There are customers who could sue for service failures, loss profits, damage to reputation, slander, and more. There are suppliers who could sue, people who just walk across your yard and slip or step into a hole, can sue. The possibilities go on and on.

DO THESE LAWSUITS HAPPEN IN THE REAL WORLD?

According to the National Center for State Courts more than 19 million civil lawsuits were filed in the United States in 1992 alone. This trend is continuing. According to Jack Farls, President of the National Federation of Independent Businesses, in an article printed in "The Chronicle" of Centralia, Washington on May 19, 1995, "the toll of just one lawsuit can be so

great that guilty or innocent, many firms shut their doors, lay-off their employees and vanish into legal graveyards."

“The lawsuit could not only take business assets but personal assets of yours as well. Incorporation would limit your liability and protect you.”

Everyone knows about the famous multimillion dollar McDonald's hot coffee suit. In the months since that jury award, dozens of similar suits have been filed against restaurant owners.

Sexual harassment is more and more a danger faced by small businesses. This past June, Wal-Mart was on the receiving end of a \$50 million sexual harassment verdict from a Jefferson City, Missouri jury.

Still other outrageous lawsuits fill today's newspapers. According to an article in the Harrington,

Texas "Valley Morning Star" from August 7, 1995, a Texas Wal-mart store was charged with a \$5.5 million jury verdict because it allegedly sold .22 caliber bullets to a 19 year old teen, who put them into a pistol that was accidentally discharged on a fishing trip.

Even more outrageous is the case involving an Alabama physician who purchased a brand new black BMW. The physician took the BMW into a body shop to have it "gussied up" and the body shop discovered that the car had been previously painted. Since it had been slightly damaged in shipment, BMW repainted the car. The physician, doing what seems to be all the rage, sued BMW and as a result won \$4,000 in compensatory damages and \$4 million in punitive damages because his car had been painted twice. The examples of ridiculous and outrageous lawsuits go on and on. The fact of life in the 90s is that this trend is real and it could happen to you.

The courts are full of real life examples of huge lawsuits. If you are unincorporated and you fire an employee, or just get one upset, you could be facing a lawsuit for wrongful termination and/or intentional infliction of emotional distress, emotional damage, breach of covenant of good faith and fair dealing, and

on and on. The lawsuit could not only take business assets but personal assets of yours as well. Incorporation would limit your liability and protect you.

Our nation's founding fathers would turn over in their graves if they heard about this one. Recently, a San Antonio, Texas man who owned the Dixie Flag Manufacturing Company found himself a defendant in a lawsuit in a case in which he wasn't even involved. It seems the alleged victim in the case had stopped to help employees of a business lower a large American flag on a windy day. A gust of wind allegedly whisked the flag and the passer-by 70 feet into the air. The flag then ripped and dumped the person hanging on onto the ground resulting in a lawsuit claiming severe injuries because the flag was "unreasonably dangerous" without warning labels and the flagpole was defectively designed to allow consumers to become airborne. Pete Van de Punte of San Antonio was sued, even though he neither manufactured nor sold the flag in question. He was sued because he was a manufacturer of flags and happened to be in San Antonio. Like many small business owners innocently dragged into such cases, Van de Punte settled out of court rather than face the high legal bills and immense waste of time involved in fighting the lawsuit. Unfortunately, many small business owners surrender to out of court settlements to protect their businesses from the brutal financial beatings administered by today's expensive and lopsided legal system. "Even if an entrepreneur goes to court and wins, his legal fees and court costs could still mean bankruptcy," according to Farls.

Another example is the one about the people who made the mistake of thinking that English was sufficient for use in the United States. Several Spanish speaking farmhands in Texas accidentally killed their boss's prize bull by using pesticide that was lethal to livestock. There was apparently a warning label on the pesticide that told them that the pesticide could kill livestock, but it wasn't in Spanish. The farm workers could not read the label so they used the pesticide anyway and the bull died. Their employer, instead of figuring that it was his own negligence or the negli-

gence of his employees, sued the manufacturer of the pesticide instead. It seems he thought that the warning label should have been in Spanish as well. The result, the employer is rewarded \$8.5 million including \$7 million of punitive damages.

Pretty incredible, an \$8.5 million bull! Apparently, the manufacturer thought that English would be sufficient for use in the United States, what a silly thought, eh? Yes, even so-called nuisance lawsuits are dangerous. They may seem ridiculous, but they can ruin you.

You would think you would have to be actually at fault to be sued and have a court rule against you. We only wish that were the case. As "Forbes" magazine recently put it, "Defendants, particularly if they are perceived to have deep pockets have begun to find that they run the risk of losing lawsuits even if their involvement is minimal". Even the most specific contracts to the contrary are ignored. "In a nut shell, the law now says be careless, get paid", summarizes Victor E. Schwartz, a partner with Washington D.C.'s Crowell and Moring, "Not only is it easy to get sued, jury awards and judgments against unsuspecting defendants are going up all the time". "Forbes" stated that, "A rarity just a decade ago, the million dollar plus award is now merely average in San Francisco and Cook County". ("Forbes" magazine, October, 1989).

It's a risky world out there in business. Incorporating doesn't eliminate lawsuits, but it cuts down on a person's deep pockets. Generally, all an incorporated business risks is what's in the corporation. The personal assets of Shareholders are not at risk, valuable protection in a litigious, dangerous world.

Why should a business person risk all of his own assets he has spent a lifetime building up? Why should he risk his family's welfare? There's no good reason, especially when they can do a simple thing like incorporating to limit their exposure. It's such a simple, economical process and yet it's overlooked so often or put off until it's too late.

TWO CORPORATIONS FOR LIABILITY PROTECTION

If one corporation is good, are two corporations better? Many times yes. As the litigation explosion heats up, many business people are finding that with two corporations they can separate their risks and minimize their lawsuit exposure. Let's say you have two business locations. Put them into separate corporations and run each as a separate entity. This has the desirable effect of limiting the potential for loss in any one business location to that one location. The other business locations are not at risk. Other business people go even further. They'll set up two corporations, one corporation which conducts a certain business enterprise, and the other business which leases it a great deal of its assets. The chances of the leasing corporation being sued are slim since its main customer is the other corporation which you still own. If the lessee corporation is sued, while there are some assets at risk the bulk of the assets are owned by another company that is not subject to the suit. Also consider the possibility of putting different assets into different corporations to spread out the risk. For ex-

ample, let's say you own multiple apartment buildings. Put each apartment building into a separate corporation, that way, if a tenant living in one apartment building sues, that suit is brought against the corporation that only owns one apartment building. Only one apartment building is at risk and the others are secure. When you consider it, this is like buying awfully cheap insurance that will protect your assets.

Corporations provide many exciting opportunities for asset protection. When you consider the power available to you and other people by being able to create legal people at will, the benefits become clear. You've probably heard the old saying, "Don't put all your eggs in one basket". Well, we might say don't put all your assets into one corporation. By limiting the amount of assets in each corporation, you limit your exposure to liability. This can be an enormous benefit, especially if you are hit with a lawsuit.

WHEN TO INCORPORATE IN THE REAL WORLD

UNTIL YOU'VE REACHED A CERTAIN POINT IN YOUR BUSINESS, LIKE MAKING \$50,000 PER YEAR.

Such advice as that above totally ignores the possibility that a person could be sued. That advice only takes taxes into consideration, and taxes pale in comparison to the possibility of losing everything. One should consider taxes AND liability

when thinking of incorporating. The sad part about all of this is such advice isn't even good tax advice. It's true you have to earn some revenue before you can reap all of the tax benefits of incorporating, but it's only fair to mention there are tax benefits by losing money with the corporation too, and when you look at the tax benefits available to you through incorporating, even if you never make a profit, you will see advice such as the above is actually a disservice to the one receiving it. This is especially true when you consider both taxes and the urgent need for liability protection.

If you're in business or going into business, the time to incorporate is now, actually yesterday would not have been too soon. If a lawsuit comes tomorrow, the amount of money you spend to incorporate will seem like peanuts. Further, you really don't lose tax benefits by incorporating. Advice to the contrary is simply based on a lack of understanding and a failure to consider all the facts.

When someone says don't incorporate now, they are generally arguing in favor for one of the following two positions:

First, if you incorporate and lose money, you lose your personal tax loss deduction on your personal return. The corporation would have the tax loss and not you.

Second, you shouldn't spend the money on a corporation until you are sure you are going to make an income and actually benefit by lower corporation rates up to certain income levels, pension plans available to corporations, medical reimbursement plans available to corporations, and passive loss deductions available to corporations.

These are the arguments from those who say don't incorporate until you're making a certain level of income. Consider, however, these points:

If the first argument is the case and you are worried about taking personal tax deductions for your business losses, consider the fact that the law allows you to create what is commonly called an S-Corporation. The S-corporation will pass through the losses to you, and you can take advantage of personal tax losses. Further, even if you don't elect S status for your corporation, if your business becomes worthless and it's incorporated, Section 1244 of the Internal Revenue Code allows you to write off those losses on your personal tax return up to \$50,000 if you're single, and up to \$100,000 if you're married and filing a joint return. You simply do not lose personal tax loss benefits if you do things right.

Now let's consider the second argument, which is you don't benefit from corporate perks and lower tax rates up to certain income levels if you're not making money. That may be true, but you can benefit by the losses now and the lower rates later. Not only can you get the personal benefits from the losses like we've talked about above, but the corporation if it's a regular corporation, as contrasted to an S-corporation, can carry forward its losses for 15 years. That's right, if a corporation loses money this year and goes into the hole for, say \$20,000, then it's got a \$20,000 loss going into next year. If it makes \$20,000 next year it pays no tax.

Tax benefits for the corporation are there, even if it loses money, and this translates into benefits for you. Further, even if you did not take advantage of the corporation's losses personally while it was losing money under Subchapter S, and your business didn't become a success, you still get to write off the value of the money you put into the business by claiming a stock loss under Section 1244. Thus, you still get personal tax benefits from corporate losses, and while you've been trying to make money with the business, you've been doing it with the personal protection of a corporation, and your personal assets have not been put in jeopardy.

“Tax benefits for the corporation are there, even if it loses money, and this translates into benefits for you.”

Those who tell you that you must make at least \$50,000 a year are telling you that you'll probably fail. They're telling you that because 90% of new businesses do fail within the first five years. Such people are presuming you'll fail too, and not make a profit and not gain any tax benefits because of it. They're saying your corporation is going to lose money and you'll not gain any benefit from the loss, and that's just not true if you do things right, even if you do fail. It's like one successful salesperson said to another, who was unsuccessful, when the successful one asked, "Why are you so successful?" The successful salesperson simply replied, "It's all in knowing how." So, when should you incorporate? Now, mainly for liability protection, but you'll come out well in taxes too.

IF IT LOOKS LIKE A DUCK AND ACTS LIKE A DUCK, IT MUST BE A DUCK

You've probably heard about lawyers piercing the corporate veil - going through the corporation to hold the owners of it personally liable for its debts. This is tragic - especially since it's so easy to prevent.

In order for a corporation to be treated as a corporation, it must look and act like a corporation. Just like the old saying, "if it looks like a duck, walks like a duck, and quacks like a duck, it's a duck". Well, if a corporation looks like a corporation and acts like a corporation, it's a corporation, if not, it is not a corporation, and the courts won't treat it like one.

So, how do you make sure a corporation looks like one and acts like one? Well, first all of your letterheads, stationery, business cards, statements, etc. - anything you write or say about your business should say "Inc.", "Corp", "Co.", "Ltd", a "California Corporation" or a "Nevada Corporation". Then it looks like one - you hold it out to the public as being one.

Further, when you set up a corporation you should give it a reasonable amount of money for it to carry out its purpose. You can do that by buying stock in your corporation. This need not be a lot of money, in fact, in most cases a few thousand dollars is sufficient.

Now let's talk about a corporation acting like a corporation...this involves corporate formalities.

Possibly, corporate formalities are the most important thing, in the final analysis, regarding the operation of your corporation. What are corporate formalities? They are, simply stated, the responsibilities of keeping your corporate record book or records in compliance with all the laws and regulations.

As previously noted, a corporation can do everything you can do except think. The corporation's thinking is done for it by its Board of Directors. Therefore, when the corporation has thought, those thoughts must be reduced to written form and contained in the corporate records as proof it was, in fact, the corporation that thought and acted. Each time a corporation makes a major, out-of-the ordinary decision, it should be noted in the corporate record book in the form of minutes or resolutions. When that is done, the corporate entity is preserved and safe.

In fact, the fewer stockholders that a corporation has, the more important this becomes. Certainly in the case of a one-man corporation, it is literally EVERYTHING!

Alter Ego

You may hear of the Alter Ego theory. That is where outsiders attempt to prove that the corporation was not a corporation as such, but simply another instrument or charade, if you please, of an individual. Whether or not that is developed as a fact depends on whether or not the corporate formalities have been properly observed. The same tests as above generally apply.

You hear of outsiders penetrating the corporate veil. We submit that this is entirely blown out of proportion and it cannot be penetrated if the corporate formalities are properly followed and there is no fraud or wrongful intent perpetrated. That is why it is all-important to observe corporate formalities. Courts look at the corpo-

rate records to determine if the corporation has acted as a corporation or as an individual. If it has acted as a corporation, all decisions are documented as proof that it was the corporation acting, and not the individual. Therefore, if the corporation documents its acts by minutes or resolutions, then the individual is insulated from the acts of the corporation.

The bottom line is, to be treated and recognized as a corporation, you must look and act like a corporation and observe the corporate formalities which are primarily as follows:

- a. **REQUIRED MEETING:** Annual meetings are required of the stockholders and Directors. Therefore, these must be properly recorded in the corporation record book.
- b. **MINUTES OF MEETINGS:** When a meeting is held for any purpose, it is important to observe the corporate formalities and document said meeting in the corporate record book.
- c. **RESOLUTIONS:** Aside from the required annual meetings, we believe the easiest way to govern and observe corporate formalities in a small private Corporation is by resolutions signed by a quorum of its directors or stockholders as is applicable. These are much simpler and faster to prepare than minutes of a meeting, and in fact; they simply require the signatures of the directors or stockholders as the case may be. Put lots of resolutions in your corporate record book concerning everything you do, and you will be protecting both the corporation and the individual stockholders. That is observing corporate formalities.
- d. **ARTICLES/BYLAWS:** The corporation must comply with the rules and regulations set forth by the corporation in these documents. Study them closely, comply with them, observe them, and again, you will be observing corporate formalities. Nothing about a corporation is irrevocable. If you as a majority do not like either of those documents at any time, or you think they should be changed, it's very simple. Change them.
- e. **CORPORATE SEAL:** In most states, the corporate seal is required on official documents of the

corporation...it is not required in California but many think it is, so it's important nonetheless.

f. Never commingle your personal funds or expenditures with those of the corporation. The corporation will have its own checking account and probably you have your own. Do not pay personal expenses out of the corporate checking account. For instance, you do not write a corporate check for groceries. Nor do you write a corporate check for baby food or simply for cash without any explanation as to where the cash went. Keep your accounts clean. Do not commingle funds. Also, for tax shelter reasons, it is vital to put adequate explanations on the corporate checks you write and to have receipts or cash tickets to back them up. For example, in the case of a company car, the corporation pays all the expenses, but the checks must be made out so this is readily ascertainable. You as an individual may accumulate, for example, cash tickets for gasoline, oil changes and so on. When the corporation writes you a check for those items, the check should be identified as "Reimbursement for cash tickets attached"; then they should be broken down. The very separateness between you and the corporation helps to keep your accounts clean and helps you to keep better records and do a better job of bookkeeping. In reality, we believe it makes it much easier.

g. Another important formality is when you sign anything on behalf of the corporation, particularly invoices, delivery receipts, contracts or other items of indebtedness, you always put the name of the corporation; "by (name of individual)", and then, following the individual's name, his title. In other words, sign everything "XYZ Corporation, by John Doe, President" (or Secretary, or Treasurer, or whatever your capacity is). This gives public notice you are signing as and for the corporation and not as an individual. That is one of the formalities that precludes piercing of the corporate veil. If you sign only as an individual, anyone can say they thought that's what you obviously intended, because that is what you said.

In order to be treated like a corporation, your corporation must look and act like one. If you don't treat it like a corporation, no one else will. It's so easy to do, just several pieces of paper per year and it's so important.

EXACTLY WHAT IS AN S-CORPORATION?

An S-Corporation is a regular corporation whose stockholders elect to qualify it under Section 1361 to Section 1379 of the Internal Revenue Code. A common misconception is there is something special, peculiar or extra to be done in “forming” an S-Corporation. This is not true. An S-Corporation is just like any other corporation at the outset. It is a regular corporation.

For example, the newly formed corporation may remain a regular C-Corporation, or you, the shareholder(s), may convert it or elect to qualify it as an S-Corporation under the IRS Code.

Those who have not had experience working with S-Corporations usually believe there is some horrendous procedure to go through or some mysterious red tape that must be coped with in order to become or qualify as an S-Corporation. Not true.

In fact, to elect S-Corporation status with the federal government, the stockholder(s) simply fill out a one page form, front and back, and mail it to the IRS. That’s it. In income tax states such as California, it is also necessary for the corporation to file a form with the state if it wants to be treated as an S-Corporation for state income tax purposes.

An S-Corporation is one that generally pays no income tax. It is exempt from paying income tax by virtue of its S-Corporation election or qualification. Instead of the corporation paying tax, the profit or loss of the corporation flows through to the individual stockholders’ personal tax returns in the pro rata amount of their stock ownership in the corporation.

An S-Corporation election does have to be filed within certain time frames and according to certain time limitations. If your corporation is newly formed,

you should file Form 2553 within 75 days of your date of incorporation. Actually, the rule says that you must file for your election within 75 days from the beginning of your tax year.

If you want to get picky (the law can be that way), then your S-Corporation election must be made before the 15th day of the third month in the first tax year of the corporation (in English, that is 75 days).

Now that we have firmly established that you must file within 75 days from the beginning of the corporation’s tax year, you can probably see the importance in knowing when, according to the law, the first taxable year of the corporation begins—remember, you have 75 days to file after the beginning of your tax year. So when does the taxable year begin? Well, the first month of the corporation’s initial taxable year begins at the time the corporation issues stock, acquires assets, or begins doing business, whichever comes first.

Therefore, you can wait longer than 75 days after the date of incorporation if you have done absolutely nothing with your corporation. In other words, if you have purchased a newly formed corporation shell, you really have 75 days from the date that you issue the stock to the Shareholders, commence doing business, or from the date the corporation acquires assets. Prior to that time, you cannot have done any business as a corporation. You cannot have transferred any assets to your corporation. If you even so much as open a corporate bank account with \$10, this avenue is not available to you. Note that this does not mean that your corporation cannot elect S status-it simply means that your corporation cannot elect S-Corporation status for that current tax year-it can be treated as an S-corporation for the next tax year.

“Fortunately, you don’t have to be super rich to take advantage of using corporations to reduce your tax liability.”

If you have an existing corporation, as opposed to a new one, you can elect S-Corporation status within 75 days after the beginning of any given corporate tax year.

I have a client who races go-carts. He used to spend all that money each year and not get a dime's worth of tax benefit out of it. Nowadays he sells advertising on his go-cart and businesses pay him to go race his go-carts. Unfortunately, (fortunately as it turns out though), he hasn't made a profit yet. There is no law against being stupid. He tries hard because in order to be a business you have to try to make a profit, but he just can't seem to do it. He's made business expenses out of what would otherwise be personal expenses. Now, he gets a tax refund check at the end of the year. An S-Corporation can work well for people in this circumstance.

The reason is that an S-Corporation really pays no taxes, it passes through its losses to you, its shareholder. If an S-Corporation makes a net income, that passes through to its individual shareholder as well. So if you incorporate a hobby and make it a for-profit business and that S-Corporation business loses money, you get the benefit of the tax deduction that could result in a refund check. Take a look at what personal expenses could be business, you could save a bundle.

Another time to consider an S-Corporation is if you have a business which is going to earn over \$160,000 in net taxable income after all corporate deductions and fringe benefits are taken out.

HOW TO MAKE AN S-CORPORATION WORK FOR YOU

It seems everybody hears a lot about S-Corporations being the tax deduction of today. Of course, no business exists for the purpose of being a tax deduction, but any business trying to make a profit can lose money. Here's how:

1. First, of course, you incorporate.

2. Then the corporation acquires, for your business use, by purchases or whatever, various and sundry assets such as a company car and/or airplane, for example.

Note: There is nothing new about any of this, it is done all the time. If others can do it-you can do it.

These assets cost a lot of money and they cost a lot to license, insure, operate, maintain, store and garage or house.

3. This expense is all necessary to the conduct and pursuit of the corporation's business, in the judgment of the corporation, as reflected in the corporate record book in the form of resolutions or minutes. That judgment may be good or bad. It may be successful or unsuccessful. It may be profitable or unprofitable, and it may go on for up to five years or so. The corporation continues trying to make a profit.

If it is unprofitable, and the corporation loses money, the corporation obviously has a loss. That loss under S-Corporation status is a direct deduction from your personal 1040 federal income tax return up to what you have invested in the corporation!! THIS IS A TAX DEDUCTION. You have made or saved money!

That's why the law is there. Congress created subchapter S to eliminate certain unfairness they saw to small businessmen under the old rules. If you fail to take advantage of the opportunity the government has created for you, that's your fault. Seize the opportunity; help yourself toward success.

“Instead of the S-Corporation paying tax, the profit or loss of the corporation flows through to the individual stockholders' personal tax returns...”

4. There are many other expenses the corporation will obviously have which may in turn result in a bigger loss to the corporation and a bigger personal tax deduction for you. Some examples are: office rent, telephone bills, travel expense, and on and on.

5. By now you are probably thinking, “Very good - that’s all great - BUT, where does or did this newly formed corporation shell we started out with get the money to spend for these expenses and assets in the first place?” That is very simple too.

You use the money you normally would have spent for those items to purchase stock in the corporation. That money is not taxable to the corporation and it is money you have invested in the corporation that the corporation can use to purchase the assets we talked about in Step 1.

So, you buy the stock in the corporation, which gives the corporation money to spend, and the corporation spends the money for the expenses we have discussed. If the corporation loses money, then that loss is a deduction for you, instead of just money out the window.

6. Under tax regulations, the loss deduction you take from the S-Corporation cannot exceed the investment (basis) you have in the ownership (stock) of the S-Corporation. So, we suggest you stick to putting money in or investing money in the corporation stock through equity investment instead of loaning money to the corporation. By the same plan, **LAWYER AND LEGAL EXPENSE** can often be handled through the corporation as a corporate expense instead of a

personal expense and, therefore, become a tax deduction for you.

These are all ideas and the list could go on and on, but hopefully they will stimulate your thinking and show you how to operate an S-Corporation. Keep in mind that under S-Corporation status, the corporation is NOT taxed. In the event the corporation has a profit, that profit is passed through to your 1040 personal tax return just like the loss we discussed above. This eliminates double taxation. Otherwise, the profit would be taxed first on the corporate level, and second, when the individual received it from the corporation.

S-CORPORATIONS, WHEN AND WHY?

One reason to have an S-Corporation is if you need a personal tax deduction and the corporation can lose money. There are things you spend money on every day that could be business expenses to a corporation...an S-Corporation. Think about your car. It could be a corporate car. Think about the money you currently spend on entertainment. It could possibly be business entertainment. I have never yet bought a friend dinner where I haven’t tried to sell him some stock or borrow money...a very legitimate business expense. Think about the money you spend on travel. That could be business travel. Think about the money you spend on education. That could be business education. Now, we’re not suggesting that you just make up business expenses, what we’re suggesting is that you take advantage of what you already do. Many people have hobbies that could just as easily be businesses.

WHICH STATE IS RIGHT FOR YOU?

One of the first decisions you have to make upon deciding to incorporate involves selecting the proper state of incorporation. Since you are not required to incorporate in the state where your business will primarily operate, you can choose from any one of the 50 states or the District of Columbia.

A number of important factors must be weighed to determine the proper state or states:

1. the location of your physical facilities,
2. a cost analysis comparing incorporating in the state of operation versus qualifying to do business as a foreign corporation in the state of consideration,
3. determining the advantages and disadvantages of each state's corporate laws, tax structure and privacy orientation, and
4. your personal, financial goals. What benefits, specifically, you are seeking to obtain? Are you primarily concerned with liability protection, tax-savings, privacy or a combination of all three?

Let's make it simple. If your intention is to incorporate a new or current business which will conduct business in a specific state (usually the one where you live or where the "storefront" or operating facilities are located), that usually is the best state in which to incorporate. You'll enjoy limited liability protection, receive the "benefit of benefits" not available to a sole proprietor or partnership and profit from a choice of tax situations.

If, on the other hand, you are already incorporated in your home state and wish to create a second entity for purposes of income splitting, protecting assets, building a firewall of financial privacy and want to significantly reduce or completely eliminate your state

income taxes, you might consider incorporating in a "preferred state" such as Nevada or Wyoming.

WHEN, WHY TO INCORPORATE IN YOUR HOME STATE: PROS & CONS

When and under what circumstances do you want to incorporate in your home state? Why would you want to incorporate in a state that you don't live in or do business in? Those questions can seem to be complex. Like most complex questions, the answers or solutions are simple when the subject is understood and the facts assembled.

Keep in mind that our purpose is to take the mystery out of corporations and their use—to strip them of their unnecessary complexities and to make them simple so all can benefit. So, where should you incorporate?

There are many cases where you are better off to incorporate in your home state. There are many cases where you should incorporate outside of your home state. You should know the pros and cons of each alternative.

When should you incorporate outside of your home state? This is one of the subjects regarding corporations that is greatly misunderstood. In all candor, we believe people are many times misled by wrong advice from their attorney or accountant. Often times that is because the attorney or accountant does not understand the ramifications or because he is afraid of losing the individual's business if he does not lead him into forming a corporation in his home state.

Of course the attorney or accountant practices in that state and therefore, may keep the individual "locked-

in.” By having that person incorporate in his home state, the professional obviously profits from having the individual “locked-in” regardless of whether it’s in the best interest of the individual.

Let us point out a fact. Most of the large, successful corporations are incorporated in the State of Delaware. When those corporations started in business, Delaware had the best corporation laws in the U.S. You may be surprised to find that most of the corporations with whom you are doing business in your home state are NOT incorporated in your home state! Common sense tells you that there has to be a reason. What’s the reason? Obviously the reason is that people who really understand the ball game know it pays to incorporate in the state with the most advantageous corporation and tax laws.

Once upon a time, that was Delaware. That is no longer true for those interested in privacy, flexibility, tax savings and asset protection. Now, Nevada has the best corporation and tax laws in the United States; it’s a fact you are going to learn more about, and a fact you are going to learn to make work for you.

A corporation is a citizen of the state where it is created or incorporated. A corporation does not cease to be a citizen of the state in which it is incorporated by engaging in business or acquiring property in another state.

You are a citizen of the United States. When you go into Mexico or Canada you do not lose your citizenship, but you do become subject to the laws and taxes in Mexico or Canada. However, since you are a U.S. citizen, you have certain rights as a result of that citizenship, and you also have the right to return to the United States. When you return to the United States you are subject to its laws and entitled to many rights.

That is one valid, valuable reason why it is often wise to incorporate in the state with the best corporation and tax laws, regardless of where you are going to do business. If for any reason you ever need to, you do

have a HAVEN to which you can return, retreat or withdraw.

When you are in the process of incorporating, you probably cannot know if that haven might ever be of value. All too often unanticipated problems can arise in your home state, particularly if that state is tough on business and taxes. If your business grows and begins to make a major profit, then it can be a Godsend for the corporation to be able to abandon or abort operations in your home state and retreat to a home base for the protection of the laws of the state under which it is incorporated. It is no accident that Nevada happens to be the best state in which to incorporate.

“...we believe people are many times misled by wrong advice from their attorney or accountant.”

One of the benefits to incorporating in a preferred state is that regardless of where the corporation does business, its inner-workings are governed by the state of incorporation. You’ll find the inner-workings Nevada prescribes to be very advantageous to the person who runs the company, generally you.

WHEN TO INCORPORATE IN YOUR HOME STATE

If, for example, you are starting a small retail business in your home state and you never intend the business to become involved in interstate operations or sales, then you are probably well-advised simply to incorporate in your home state. Or yours may be a small business where it is reasonably certain that the business is never going to flourish or expand. If taxes become a problem for you in your home state, you may then develop a corporate strategy that will lessen or eliminate those taxes

Many persons mistakenly believe that they can form a corporation in Nevada or elsewhere, and then simply proceed to do business wherever they are. That is usually not true. Each state has exceptions to its legal definition of “doing business within that state.” You

“Many persons mistakenly believe that they can form a corporation in Nevada or elsewhere, and then simply proceed to do business wherever they are.”

somewhere does not necessarily permit you to do business everywhere (without either qualifying to do business in each additional state or being legally exempt from qualifying or registering).

You should ask your attorney or possibly your secretary of state's office what constitutes doing business in your state. You must determine what the exemptions are in your own state before you can be sure whether your activities constitute transacting business within your state. For example, a Nevada corporation can own property in any state without having to qualify or be incorporated in that state. Therefore, in owning or buying real property, you are exempt from incorporating or qualifying to do business in your home state. When that circumstance exists, you would certainly want to incorporate in a preferred state and let that corporation in the preferred state own the property.

If activities of your business require you to qualify in your home state, then you must make the decision whether it is best to incorporate in your home state, or to incorporate in Nevada and qualify to do business in your state. It is an important decision and you should consider it carefully.

should find out what the legal definition and exceptions are in your state.

If the law in your home state legally defines your activities as doing business within that state, then you must either incorporate in your home state or qualify your Nevada corporation or any other out-of-state corporation to do business in your home state. Simply because you have formed a corporation

WHAT ABOUT DELAWARE

For years, Delaware has been the leading state of choice for businesses wishing to incorporate. Delaware drafted an excellent body of statutory law. Delaware was very, very flexible and allowed ease of operation throughout the United States. But over the last few decades, a new state has risen and has taken Delaware's place as the preferred state for new businesses, and that state is Nevada. Let's consider several points and after we do, I am certain you will agree with me that Delaware is no longer the best state in which to incorporate.

- First, Delaware has a franchise tax, Nevada does not. Delaware's franchise tax is based on authorized capital stock and can be inexpensive or quite costly, depending upon your situation.
- Secondly, Delaware has an income tax, Nevada does not. It is true that the 8.7% income tax applies only to revenue earned within Delaware, but this may change. In any event, that also means reporting, public disclosure, forms, red tape, etc., you do not need. It also makes state income tax reductions impossible or at least very remote in using a Delaware based corporation. Using a Nevada based corporation such a tax benefit is easily attained.
- Third, Delaware is now regulated by a corporation commission, Nevada is not. You should be aware that any time a state or federal bureaucracy is created it immediately begins to make rules and regulations to promote, enlarge, and enhance itself and make itself indispensable and necessary at your expense and inconvenience. No, you don't need added regulation. When Delaware was a preferred state, it did not have a corporation commission.
- Fourth, Delaware, like every one of the other states except Nevada, reports tax data to the Internal Revenue Service. Nevada even refused to join an interstate tax information sharing organization.
- Fifth, some states make a major item out of the fact they recognize S-Corporations. The status of a corporation as an S-Corporation really has no signifi-

cance to the corporate owners if the state has no income tax. In Nevada, whether you have an S-Corporation or not really doesn't matter to the Department of Taxation since allocation of taxable income from corporations to the individual has no effect on the state's revenue. Delaware, however, does recognize S-Corporations and therein lies the rub. A Corporation can get S-Corporation treatment to the extent its owners are residents. If there are shareholders who are not Delaware residents, the corporation is taxed on the level of that non-resident ownership. But that's not all, consider these other points:

- First, in Delaware you must disclose the date appointed for the next annual meeting of stockholders for election of Directors. You do not have to divulge any information like this in your Nevada corporation.
- Second, in Delaware you must disclose in your annual report the location of principal places of business outside of Delaware, this is not required in Nevada.
- Third, in Delaware you must list the number and value of shares of stock actually issued. This could be dangerous to you and it is not required in Nevada.
- Fourth, in Delaware you must report the transfer of stock, not so in Nevada where maximum flexibility is always maintained.
- Fifth, the annual cost to maintain your corporation with 25,000 shares as active in Nevada is the modest sum of \$85. This is the fee for filing your annual list of officers and designation of registered agent. For a similar Delaware corporation, the annual fee is more than \$200.
- Sixth, in Delaware you must pay tax on income earned in Delaware. The state of Nevada has no income tax either on the corporate or individual level. In fact, Nevada's constitution prohibits personal income tax. In Nevada none of these problems apply, you're free from the regulating hassles which afflict corporations in Delaware. To maintain maximum privacy and to obtain the least expensive and best

protection that a corporation can give you and to cut or eliminate state income taxes, clearly the best place to incorporate is Nevada, the state of the future, the frontier state with new horizons. The smart move is to keep in step with progress, to turn from the old to the new. Many states levy taxes on various actions involved in stock transactions, this is not true in Nevada where the state has a policy of minimal involvement in business and corporation transactions. Shares can be sold or transferred with no state tax consequences in Nevada. There is no tax on corporation shares. Some states levy taxes on corporations according to the number of shares issued, not so in Nevada. Nevada has no succession tax. This added type of inheritance tax is found in many states, but not in Nevada. Stockholders and Directors are not required to live in or hold meetings in Nevada, in fact, such meetings may be held anywhere in the world. Of course, travel expenses are usually reimbursed by the corporation, and are fully tax deductible.

Privacy can be a major concern in today's litigation mad society. Nevada made sure corporation stockholders enjoy the maximum privacy and anonymity found in the United States. Nevada also gives directors maximum freedom to adjust the corporation to changing conditions. Nevada allows corporations to determine what type of stock will be issued. Nevada law allows bylaws to be changed by directors. Initial or minimum capital is not required in Nevada, anonymity, privacy, secrecy of owners or stockholders of a Nevada corporation are maximized.

Nevada is the only state in the Union which refuses to share tax and other official data with the Internal Revenue Service. It's interesting to note that the last attempt by the I.R.S. to obtain Nevada information occurred in 1991. The I.R.S. wanted Nevada's records from the Department of Taxation, Department of Motor Vehicles, Employment Security, Gaming Control Board and the Secretary of State's office. The I.R.S. was totally unsuccessful. Corporations incorporated in Nevada continue to have more privacy than anywhere else in the United States. Unlike elsewhere, the I.R.S. cannot go on fishing expeditions in Nevada browsing through private information in the hope something will turn up. This means the I.R.S.

will have the burden of proof in cases, just the way it should be. In addition, Nevada recently refused to join an organization of states sharing tax information among one another. Nevada looked on the concept as a back door way for the I.R.S. to gain information from Nevada records by going through the other states to get it.

The owners or stockholders of Nevada corporations are not a matter of public record. Only Officers, Directors, and resident agent are disclosed. If the actual owners wish to remain anonymous, they can simply appoint others to the position of Directors and Officers. Remember, one person may occupy more than one office in Nevada. Also, even though you the stockholders or owners are anonymous and not a matter of public record, you nonetheless control the corporation and have the power and authority to fire Directors and Officers on a moment's notice. And where are such resolutions kept? Only in the corporate record book which you have control of and keep or have kept in the custody of whomever you decide.

“Nevada is the only state in the Union which refuses to share tax and other official data with the Internal Revenue Service.”

Meetings can be held anywhere at the option of the Directors, a feature of Nevada law that can be very, very valuable to you. Nevada corporations have freedom to do business practically anyplace on the globe, where such activity is legal. The corporation is

free to engage in almost any business activity, from buying widgets to selling real property. As you can see, the state of Nevada offers maximum flexibility, maximum privacy, and a minimum of regulation and red tape. Why do Madonna, Prince, Michael Jackson, Chevy Chase, Paul Simon, Rodney Dangerfield, and Diane Keaton all incorporate in Nevada? These are people who can afford the best legal and tax help available anywhere, and their advisors all advised them to incorporate in Nevada. You, too, can have this advantage. You, too, can take advantage of the same opportunities that they have taken advantage of. You, too, can gain the benefits of incorporating in Ne-

vada, and when you do incorporate in Nevada you will find that you have a corporation which will allow you to accomplish all of your goals and all of your objectives.

HOW TO GET STARTED

The value of incorporating, and the possibilities which exist through incorporating for the savvy business person are virtually endless. What is necessary more than anything else in implementing corporation strategies is action. It's not nearly enough to know things that can be done, what matters in life is whether or not we do the things which need to be done. Unfortunately, this is where most people fail. So take the first step, become incorporated.

To put these strategies into action is the key to your future success. While the information contained in this report is great, putting it into action is the only way to benefit, so what now? Basically, you have three choices:

1. Hire an attorney familiar with the process of incorporation, pay them \$2,500-\$5,000 for the privilege and let them handle it.
2. Contact the secretary of state in Nevada, secure the necessary forms and fee schedules, draft original articles of incorporation, pen by-laws, locate a regis-

tered agent (a statutory requirement for service of process) to coordinate the filing and pay the fees. Then, upon receiving your corporate charter, you will need to locate a corporate service provider (or an attorney) to prepare a corporate minute book—the internal backbone of your corporation—and it's a done deal.

3. Simply call us or visit our internet website and let us handle the particulars. There are no documents to sign; all you need to do is pick out a name!

Trust Val-U-Corp Services, Inc. for all your incorporation needs. We serve people just like you who are interested in value-oriented corporation services.

In addition, we specialize in proving tax-free Nevada corporations—the perfect solution to many corporate tax-saving, asset protecting, privacy enhancing strategies.

We urge you to call us before you proceed if you have any questions whatsoever.

Val-U-Corp Services, Inc.

1802 North Carson Street, Suite 212

Carson City, Nevada 89701

1-800-555-9141

1-775-887-8853

Fax 1-775-887-0738

Web <http://www.val-u-corp.com>

E-Mail val-u-corp@val-u-corp.com



VAL-U-CORP SERVICES, INC.

1802 N. Carson St., Suite 212 Carson City, Nevada 89701 (775) 887-8853 (800) 555-9141 Fax (775) 887-0738

Price List

Corporations

Nevada Corporation \$99.00 + State Filing Fees*
 Nevada Limited Liability Company \$150.00 + State Filing Fees
 Expedite Fee \$125.00
 Already Formed (Shell) Corporations Call for Quote

Resident Agent Service

First Year (Included with Nevada Corporation) \$80.00 + State Filing Fees
 Each Year Thereafter \$80.00
 (When switching from another Resident Agent, we'll serve the remainder of their term free of charge, State filing fee not included.)

Corporation Kits

Deluxe Kit (Includes Corporate Seal, box-style leatherette binder) \$100.00
 Value Kit (Corporate Seal not included, black binder) \$50.00
 Corporate Seal \$30.00

Mail Forwarding Service

Weekly forwarding \$200.00/year
 (Not to exceed 100 pieces/month—normal #10 size envelopes.)

Value Suite Program

Telephone answered 8 am - 5 pm Mon.-Fri. (excluding holidays)
 Mail Forwarding Service — Business Address
 Access to an office (by appointment, limited to two hours per month)
 (three month minimum term, payable in advance, 25% discount for yearly prepayment) \$100.00/month

Bank Account (No charge if Value Suite Program is purchased) \$100.00 + \$200.00 Deposit

Corporate Nominee

Corporate Officer/Director Nominee service \$500.00/year (referral)
 Keeping of Corporate Minutes/Resolutions \$250.00/year additional (referral)

* State filing fees depend on initial capitalization of the corporation. They are usually \$215.00. Limited Liability Company filing fees are \$215.00.



**Val-U-Corp
Services, Inc.**

Is Your Nevada Corporation Important To You?

In order to take advantage of the tax-free, business-friendly environment of Nevada, you need to have:

- An actual office in Nevada
- A Nevada phone number
- A business license
- A Nevada bank account
- Employees in Nevada

When you incorporated your business in Nevada, you incorporated in the state with the best tax laws in America. Nevada has no personal or corporate income tax. How can you take advantage of this?

It's easy. You must have a legitimate base of operations in Nevada. A mail drop won't work. A post office box in a Mail Boxes Etc. can't be your corporate headquarters. There's not much room for a desk in one of those.

Of course, to open a small office in Nevada on your own would cost a small fortune... there must be a better way. There is — it's called the Val-U Suite Program.

With a Val-U Suite, you get an actual office available to you by appointment, a shared telephone number and contract employees in Nevada. All of these are valuable elements of proof of a legitimate

corporate operation in Nevada. We can also get your Nevada corporation a local business license and a Nevada bank account.

What does all this cost? You might expect to pay up to \$3,000 a month to open an office on your own. To get a contract office from other, higher-priced services, you might pay \$3,000 a year. Val-U-Corp Services, Inc. offers the Val-U Suite to you for much less. You can get our friendly, personal service for as low as \$75 per month, the lowest-priced full office service available in the state!

Don't hesitate. Call 1-800-555-9141 NOW to obtain your Nevada corporate headquarters with your Val-U Suite Program.

Here's what you get:

- An actual Nevada address — not a P.O. box or a mail drop
- Personalized mail forwarding service
- Shared Nevada telephone number with a live receptionist
- Nevada fax number
- A Nevada bank account can be arranged
- A Nevada business license is available
- Real contract employees to answer your phone and greet your callers
- Notary service
- Secretarial service
- Privacy
- The best contract office value in Nevada