

Starting a New Business in Missouri

A reference guide on the basic requirements to start and operate a business in Missouri

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The Basics

Owning and operating a small business can be a fulfilling and rewarding way of life, but it is not always an easy one. Don't make the decision lightly. A great deal of thought and research should go into making a decision that will affect you and your family for a long time to come.

Consider that:

- The failure rate for new start-up businesses is high.
- If you need financing, you will be expected to provide 20% or more of the total funds.
- Small business owners spend many long hours every week on business activities.
- To obtain a business loan you will be expected to personally guarantee repayment.
- It is normal for small businesses *not* to earn a profit in the first two years.
- The number one reason that small businesses fail is because they did not have enough working capital to survive the first two years of operation.
- Grants to start a for-profit business enterprise are virtually non-existent. Even not-for-profit businesses can expect intense competition for funding.

Good management is key to a successful business. The chances for success are improved if you have abilities in the following three crucial areas:

Marketing strategies – Developing market strategies requires knowing the type of product or service your customer wants, how to target and reach your customers, and how to sell your product or service at a price

your customers are willing to pay that provides the profit you need.

Technical ability – You must consistently get the work done when expected and correctly to have satisfied customers. Your technical knowledge of the product or service you provide is essential.

Financial knowledge – Financial management is required to plan and control your business' cash flow, raise or borrow the money you needed, and get through tight periods without being caught short of cash. Your credit history is one measure of your ability to manage money. A poor credit history will reduce your ability to obtain financing.

Registering and Licensing a Business

- **Register the name of your business** with the Secretary of State (573) 751-4153 by filing the necessary forms and paperwork. The way to register a name is different for each type of legal structure. Choices of **Legal Structures** are sole proprietorship, partnership, limited partnership, Limited Liability Company (LLC), or corporation. A discussion of the issues involved in the legal formation of your company can be found at:

www.missouribusiness.net/doingbusiness/legalform.pdf. Each legal structure has unique registration requirements, which are outlined below:

- **Sole Proprietorship and Partnerships** - file a "Fictitious Name Registration."
www.sos.mo.gov/business/corporations/forms.asp

- **Corporations and LLC** - file the articles of incorporation or articles of organization (LLC), which can be found at: www.sos.mo.gov/business/corporations/forms.asp
- Information on federal requirements on LLCs can be found on the web at: www.irs.gov/pub/irs-pdf/p3402.pdf
- S-corporation status - Requires that you form your Missouri corporation or LLC and also file IRS Form 2553: www.irs.gov/pub/irs-pdf/f2553.pdf

To check on the availability of a business name, you can search the Secretary of State's database online at:

www.sos.mo.gov/BusinessEntity/sos/kb/csearch.asp

- Obtain **local business licenses** through the city or county government (generally this is the city clerk or county clerk). Check your local phone book for the phone number.
- A **sales tax number** or use tax is needed if you will be selling at retail. Collection of sales tax is required by any business making retail sales. Those businesses operating solely as a wholesaler should complete a Form 149 Sales/Use Tax and provide it to their supplier. Go to the Missouri Department of Revenue site at: www.dor.mo.gov/tax/business/sales/forms/ or call at (573) 751-2836 to get a sales tax number or sales tax exemption.

- **Federal Identification Number (EIN)**. Generally required only when you have business partners, hire employees, form a corporation or LLC; however, your bank may require an EIN to open a business account. Go to the IRS web site at www.irs.gov/pub/irs-pdf/fss4.pdf to get form SS-4.

Professional Services

It is advisable to enlist the services of an accountant and a lawyer when considering a new business operation. Their advice and guidance can help you choose the form of business organization best suited for your particular situation.

Lawyer

Your lawyer should be experienced in business matters. Ask for recommendations from business owners or other trusted sources such as your banker or your local chamber of commerce. In the initial interview discuss fees and ask about their experience with businesses similar to yours. A reputable lawyer will welcome an open discussion on both subjects. Do not feel obligated to hire the first lawyer with whom you discuss your business plan. Find one with whom you are comfortable and you feel you can trust.

The Missouri Lawyer Referral Service operated attorneys will confer with you for up to 30 minutes for a fee of \$25. The telephone numbers are:

- Kansas City: 816/221-9472 (Clay, Jackson, Platte and Ray counties)
- St. Louis City/County: 314/621-6681
- Jefferson City: 573/636-3635 (out-state Missouri)
- Springfield: 417/831-2783 (Greene County only)

Accountant

Although an accountant is not mandatory for starting a new business, it is highly recommended that one be consulted. Again, seek recommendations from your lawyer, banker and other business associates. Don't feel obligated to hire the first accountant that you interview. For assistance in locating an accountant, contact the Missouri Society of Accountants, 6132 Blue Ridge Blvd., Raytown, Missouri 64133 at 1-800-959-4276.

Record Keeping

An accounting system provides an organized method to track all of business activities generated by each transaction and provides the information required by taxing and regulatory authorities.

Sound accounting practices can mean more profits because it provides a tool to evaluate the performance of your business. The system used should accomplish the following:

1. Maintain a record of all business transactions.
2. Provide financial statements (Profit and loss statement, balance sheet, cash flow statement and key financial ratios) that show operating results and the company's financial condition.
3. Protect the assets of the business from errors, fraud and carelessness.
4. Provide a basis for business planning by showing the results of past decisions and facts needed for future decisions.
5. Generate information that is periodically required by taxing and other regulatory authorities.

There are numerous computer software programs on the market as well as accounting forms and systems. Many trade

associations offer standard accounting systems for member businesses. The Missouri Small Business Development Centers offer classes (www.missouribusiness.net/training/) on financial management. If you wish, you can consult an accountant for assistance in setting up an accounting system, or hire one to do your books for you. If you need assistance in locating an accountant, you can contact the Missouri Society of Accountants at 1-800-959-4276.

Developing a Business Plan

An important first step to a successful business is to properly plan. The business plan describes the business as well as its product or service, market, staffing and financing needs. A well-prepared business plan serves several purposes:

- For the new business, it helps the owner determine the feasibility of their business idea.
- For the company seeking financing, it provides a basis for making a presentation to a lending institution or outside investors.
- For an existing company, the business plan forms the basis of a more detailed operational plan and thus becomes an important management tool for monitoring the growth of the firm and charting future directions.

A business plan is the written expression of your business idea. The process of writing down everything involved in bringing the business idea to reality requires that all aspects of running a business be considered. A business plan guide will help you organize yourself and examine areas that may limit your success.

A business plan consists of the following:

1. **Name of Firm**
2. **Owner or Owner-to-be**
3. **Information on the Business**
 - a Type of Business and Product or Service
 - b History
 - c Office/Plant
 - d Personnel
 - e Professional services used (Accounting, legal, others)
 - f Inventory, Supplies, Suppliers, and Equipment
 - g Future Plans
4. **Market Analysis**
 - a Customers (market)
 - b Industry trends
 - c Competition

- d Competitive Advantages and Disadvantages
- e Market projections
5. **Market Strategy**
 - a Sales strategy
 - b Promotion strategy
6. **Management**
 - a Work experience, education and key skills of managers
7. **Financial**
 - a Source and Uses of Funds
 - b Financial statements (e.g., balance sheet, income statement, cash flow, etc.)

Worksheet #1, Start-up Costs, provides a method to assist in estimating start-up costs, which are the one-time expenses necessary to start your business. Examples are provided in the worksheet.

Worksheet # 1: Start-Up Costs		
Capital Requirements	Purchased:	Needed:
Organization expenses (legal & accounting)	\$	\$
Truck & Vehicle	\$	\$
Tools & Supplies	\$	\$
Furniture & fixtures	\$	\$
Machines & Equipment	\$	\$
Building improvements	\$	\$
Land & Buildings	\$	\$
Starting inventory	\$	\$
Cash (Working Capital)	\$	\$
Living expenses during start-up	\$	\$
Other	\$	\$
TOTALS:	\$	\$

Worksheet #2, Sales and Earnings, provides a template to project your earnings over the first three years of operation. This template only provides room for an annual summary; your plan should show monthly sales and earnings for the first year and quarterly for the second and third year. Projections beyond three years are generally not considered useful or reliable.

Worksheet 2: Sales and Earnings			
	1st Year	2nd Year	3rd Year
Gross Sales	\$	\$	\$
Less returns, allowances & discounts:	\$	\$	\$
Net Sales:	\$	\$	\$
Less cost of goods sold:	\$	\$	\$
Gross Profit:	\$	\$	\$
Less Operating Expenses:	\$	\$	\$
Rent	\$	\$	\$
Payroll	\$	\$	\$
Payroll (other)	\$	\$	\$
Telephone	\$	\$	\$
Utilities	\$	\$	\$
Interest & Amortization	\$	\$	\$
Postage	\$	\$	\$
Advertising	\$	\$	\$
Travel	\$	\$	\$
Vehicle Expenses	\$	\$	\$
Taxes (payroll)	\$	\$	\$
Taxes (other)	\$	\$	\$
Supplies	\$	\$	\$
Attorney/Accounting fees	\$	\$	\$
Insurance	\$	\$	\$
Repairs	\$	\$	\$
Other expenses	\$	\$	\$
Total Operating Expenses	\$	\$	\$
NET PROFIT BEFORE TAXES	\$	\$	\$

A number of commercial software packages are available to assist you in putting together your business plan. It is important, however, that the plan reflects the unique characteristics of your business that gives it a competitive edge. Standard packages will get something down on paper, but your plan should be *your work*. Understand the information in the document and avoid the “cookie cutter” business plan.

The Marketing Plan

The business plan outline above includes a market analysis section. A key element of the marketing plan, whether included in your business plan or as a separate document, is to know your customers—their likes, dislikes, buying habits, location, expectations, etc. You can incorporate these factors in your market strategy to capture and maintain market share.

A marketing plan helps answer the following questions:

1. Who are your customers?
2. To what specific market will you target?
3. How are your customers/markets segmented?
4. Are your markets growing? Steady? Declining?
5. Is your market share growing? Steady? Declining?
6. How will you obtain or increase your market share?
7. How will you promote your business to your targeted customers?
8. What pricing strategy have you devised?

Legal Formation

Missouri law allows businesses to operate under four forms or organization:

- Sole Proprietorship
- Limited Liability Company
- Partnership
- Corporation

Each structure has its own advantages and disadvantages and there are variations within these forms. Selecting the best legal structure considers the following factors:

1. The ease to form and maintain
2. Liability protection
3. Taxation.

In choosing a legal structure, consult with both a qualified accountant and attorney who are familiar with

Check with the Secretary of State's office (573-751-3317) to determine if the business name you have selected is

your resources and objectives. If circumstances and conditions change, it is possible to change to a different legal structure after the business is established, though this will require additional expense and time to accomplish.

The Four Types of Business Structures

Sole Proprietorship

This is a business owned by a single individual or jointly owned by a married couple.

The primary advantage of a sole proprietorship is the ease to form it. In addition, the owner is free to operate as she or he chooses without the input of partners, directors or shareholders.

The primary disadvantage of a sole proprietorship is the owner's personal responsibility for all obligations, debts and other liabilities the business may incur. While insurance is available for protection from some of these liabilities, large judgments may not be covered by insurance. Growth of a sole proprietorship will usually result in a change from this structure.

Partnership

A partnership is the joining of one or more individuals, corporations or other entities under a partnership agreement. The law does not recognize the partnership as a separate distinct entity; rather, it considers the partnership to be all of the partners acting together.

All powers, liabilities and authorities of the partners are controlled and limited by the partnership agreement. However, it is possible for a partner to exceed his or her authority and for the partnership to be bound when the person with whom the partner does business is not aware of the limitations contained in the partnership agreement. Partnership agreements are in writing and, if there are limitations placed upon individual partners, such agreements should be made available to any person or company with whom the partnership does business.

There are three types of partnerships recognized under the law: general partnerships, limited partnerships and limited liability partnerships.

General Partnerships

Missouri, as most states, regulates the formation of general partnerships. Missouri has adopted the Uniform Partnership Law—the standard in many states. Since the uniform law is not identical in every state, notice should always be made of the unique aspects of the law within each state in which the partnership is conducting business.

The advantages of a general partnership are that partners may conduct any legal business and the income and expenses of the partnership are directly taxable to each individual partner based on his or her proportionate interest within the partnership. The partnership files an information tax return and pays no income tax itself.

Limited Partnerships

Missouri law permits the formation of a partnership in which the liability of most of the partners is limited. Limited partnerships must have at least one general partner who is responsible for all debts, liabilities and other obligations of the partnership.

As a general rule, the liability of the other partners, referred to as limited partners, is limited to the amount that each partner has

invested or agreed to invest in the partnership. A limited partner should not take an active role in the business. By taking an active role, a limited partner risks becoming a general partner.

The advantage of a limited partnership over a general partnership is that most of the partners limit their liability while preserving the right to participate in profits and/or tax advantages.

A general partnership can become a Registered Limited Liability Partnership (RLLP) by filing the required certificates, annually, with the Secretary of State. The only difference between a general partnership and an RLLP has to do with the liability exposure of the partners.

While limited partnerships lost some of their usefulness under the Tax Reform Act of 1985 and the adoption of the Limited Liability Company (LLC) law in 1993, they still remain a viable structure for certain types of businesses.

Corporation

Before considering the advantages and disadvantages of a corporation as a business structure, it is important to understand the concept. A corporation is a legally created entity with rights, duties, powers and responsibilities in and of itself. Each state has a section of law covering those aspects of corporations. The law is similar in each state, but not identical.

A corporation cannot act except through individuals. When individuals perform on behalf of a corporation, the actions are usually attributable to the corporation and not to the individual. The ownership of property, the incurrence of debt, and the performance of services and sales of goods are the responsibility of the corporation rather than the individuals in the

corporation. Shareholders contribute capital to the company and are the owners of the corporation. Shareholders are not responsible for the debts or liabilities of the corporation.

One advantage of the corporate structure is that shareholder liability is limited to the loss of the shareholder's investment unless a shareholder accepts additional responsibility such as guaranteeing a loan to the company. Limitation of liability was the original reason for the creation of the corporate entity and it is still a basic consideration in the formation of any new business using the corporate structure.

An additional advantage of corporations is the ability to bring other individuals into ownership of the business to raise additional funds.

The disadvantages to using the corporate form in setting up a business are the costs incurred for incorporating and meeting the requirements of filing reports.

Both state and federal governments recognize the existence of a corporation and levy an income tax against the corporation. However, an S corporation may elect to be taxed as an individual.

Corporations are subject to the following requirements:

- File articles of incorporation;
- Adopt a set of bylaws;
- Observe other corporate formalities on a regular basis such as the election of directors by shareholders and appointment of officers by action of the board;
- File Form SS-4 with the IRS to obtain an Employer Identification Number (EIN), even if there are no employees;
- File the required state and federal estimated tax, quarterly;

- File federal income tax on Form 1120, or Form 1120-S for an Subchapter S Corporation, and state income tax on Form 1120 or 1120-S;
- File an annual report and pay annual fee to continue corporation with the Secretary of State's Office.

General Business Corporations

While there are four types of corporations, entrepreneurs will most probably use the general business corporation. The most common form of corporation, the general business corporation, is also known as a for profit corporation.

A general business corporation may engage in most activities except those that are specifically prohibited by law. It may not engage in business for the purpose of practicing one of the licensed professions, such as the practice of law or medicine (see Professional Corporation below). A general business corporation may pursue other businesses such as banking, insurance or financing if state approval is obtained.

Subchapter S Corporation

An S-Corporation provides the legal protection of a corporation, but for tax purposes the income or loss is passed on to the shareholders in proportion to their ownership. It is important to note that to be recognized as a Subchapter S Corporation, the corporation must apply to the Internal Revenue Service (IRS) for "S Status" (request form 2553) within 75 days of the formation of the corporation.

A corporation can elect "S" status if it meets the following requirements:

1. It must be a domestic corporation.
2. It must have only one class of stock.
3. It must not have more than 35 shareholders.
4. It has a calendar tax year or a business purpose for adopting a fiscal year.

5. It must have only individuals and their estates and certain trusts as shareholders.
6. All shareholders must be citizens or residents of the U.S.
7. It must not be a member of an affiliated group of corporations.

Close Corporation

Missouri law allows for the creation of close corporations (sometimes referred to as “C corps”). Missouri’s law is based on the Model Business Corporation Act. Missouri’s Close Corporation Law is designed to make it easier for one or a few persons to do business as a corporation. Under this law, a close corporation can choose not to have a board of directors, annual meetings or bylaws if so stated in the article of incorporation. (See Section 351.315 of Missouri Statutes for more information).

A regular business corporation may become a statutory close corporation if it has fifty or fewer shareholders and amends its articles, with a 2/3 vote, to state that it is a statutory close corporation.

Not-For-Profit Corporations

The main distinction between a not-for-profit corporation and a general business corporation is that a not-for-profit corporation has members who receive certificates of membership rather than shares. The profits and properties of the corporation do not belong to the members.

A not-for-profit corporation may pay reasonable compensation to its employees and may make a profit, which means that it has more income than expenses. Hospitals are good examples of not-for-profit corporations. To qualify as a not-for-profit corporation, the company must have an ultimate purpose, specified by law, such as a charitable, educational, civic, religious, or cultural purpose.

Many not-for-profit corporations are tax-exempt. However, merely forming a not-for-profit corporation under Missouri state law does not guarantee that the state or federal government will treat the organization as tax exempt. Separate qualifications are required for tax-exempt status.

Professional Corporations

Professional corporations are formed for the single purpose of practicing one of the licensed professions such as law, medicine, engineering or architecture. The key feature of this type of corporation is that all of the stock must be owned by individuals licensed to practice the profession for which the corporation was formed. Although this type of corporate structure has limited application, it should be considered where appropriate.

Professional corporations register with Secretary of State using the same standard corporation form, striking out “General” and writing/typing in “Professional.” All licensed professions need to obtain a copy of Form #76 from the Secretary of State’s Office and submit the form to the Division of Professional Registration for completion of licensure information. The completed form must be attached to their corporation forms. Contact the Secretary of State’s office at 573/751-3317.

Limited Liability Company (LLC)

An LLC is not a corporation, partnership or trust, but has corporate-like liability protection for the owners and partnership-like flexibility in capital and management structure. Members of the company can be actively involved in the management of the business, but they are shielded from liabilities. A variety of different business owners are choosing to organize their businesses as limited liability companies.

Limited liability companies are relatively easy to organize and maintain. In Missouri, a limited liability company can conduct any business activity. Business owners use this type of organization because it can combine the liability protection of corporations with the flexibility and tax advantages of partnerships.

Any person may form a limited liability company by signing and filing Articles of Organization with the Secretary of State's office. LLCs are also required by state law to have an "operating agreement" (plan on how you will operate your business). Limited liability companies must be properly structured and maintained for their members to be taxed as if they were a partnership or a corporation.

Fictitious Name Registration

Missouri law requires any person (as opposed to an LLC or corporation) who regularly transacts business in the state, under a name other than his/her own "true name," to register that business name with the Secretary of State's Office under a Fictitious Name Registration. For a sole proprietorship or partnership, a business name is generally considered "fictitious" unless it contains the full name (first and last name) of the owner or all of the general partners and does not suggest the existence of additional owners. Use of a name which includes words like "company," "associates," "brothers," or "sons," suggest additional owners and make it necessary for the business to file for a fictitious business name.

To obtain the necessary forms to register your business, visit:

www.sos.mo.gov/business/corporations/forms.asp

Sales Tax Number

Any business making retail sales must obtain a Missouri Retail Sales License from the Missouri Department of Revenue. A bond, based on projected monthly gross sales, must be posted at the time of application. An application form (Form #2643) to register for sales tax can be obtained from the Missouri Department of Revenue. Generally, a wholesaler or manufacturer will present a Sales/Use Tax Exemption Certificate (Form #149) to their suppliers showing the sale is exempt from sales tax.

Tax Considerations of Business Structure

Tax considerations are essential during the formation of a new business and during its entire life. When a business is just starting out, it may have little or no income or assets, and the choice of structure may not seriously affect its tax liability. However, as the business grows, the tax implications become more significant.

Choosing a particular structure does not necessarily determine how the business will be taxed. While a corporation can elect to be taxed as an individual, there are strict limitations placed upon such an election. Since the income of a sole proprietorship is taxed directly to the individual proprietor, sole proprietors should keep open the option of incorporation, which would change the tax impact on the business. The following table indicates the state and federal forms that must be filed for different business structures and compares the tax liabilities for the most common business structures.

Tax Forms and Liabilities Associated with Each Business Structure

Limited Liability Company			Corporation	
Sole Proprietor	Partnership	Corporation	C-Corp	S-Corp
File Schedule C on your 1040 (State and Federal)	File 1065 (State and Federal); tax based on percentage of ownership; LLC must issue each partner a K-1 for his or her personal income taxes.	File 1120S(State and Federal) AND Federal 2553 “Flow Through Tax” (this differentiates the LLC from a corporation). Tax is based on percentage of ownership. LLC must annually provide each investor with a K-1 form to file with their personal taxes.	No flow through tax (e.g., the corporation pays income tax on its earnings). If shareholder draws from corporate earnings, the shareholder pays income tax on the amount through their personal income tax. File “Closed Corporation” form for taxes. Owner can be an employee of the corporation and paid a salary and benefits.	File as a general corporation to become a Subchapter S Corporation, which is a federal designation for flow through tax (form 1120S), must file 2553 form with US Internal Revenue Service. If form is not filed, the corporation is considered a general corporation.
No annual meeting, no by- laws, no annual reporting, no annual renewal fee, no stockholders. Must have operating agreement, but does not need to be in writing.	Same as sole proprietor	Same as sole proprietor	Can, through by-laws, exempt the organization from having a board. Can elect to not have by-laws. Must hold annual meeting. Annual renewal fee of \$45 and annual reporting to SOS. If these are not done, the corporation ceases to exist.	Must have annual meetings, annual report, board of directors and stockholders meeting. Annual renewal fee of \$45 and annual reporting to SOS. If these are not done, the corporation ceases to exist.

Corporate taxation allows choices, and time must be taken to understand these choices. Obtaining professional tax advice is highly recommended.

The most complicated tax structurally is that of a partnership and professional advice is required for the structuring of a partnership to take fullest advantage of the opportunities available under the tax laws.

Purchasing an Existing Business

Before you purchase an existing business, be sure that you obtain a “Certificate of No Tax Due” (issued by the Missouri Department of Revenue) from the previous owner of the business. Without this document, you may also be purchasing existing sales tax and/or withholding tax obligations. If you have any questions concerning Successorship, call 573/751-9268, or write the Missouri Department of Revenue, Collections and

Taxpayer Services Bureau, P.O. Box 3666, Jefferson City, MO 65105-3666.

Federal Employer Identification Number (EIN)

Every employer transacting any business in Missouri and making payment of wages to a resident or nonresident individual must obtain a Federal Employer Tax Identification Number, which sometimes can be referred to as FEIN, FIN, or EIN. Federal law requires this number if you are an employer, partnership or corporation. Some entities, such as financial institutions, may require a business to have an identification number. The application form (SS-4) is available from the Internal Revenue Service (IRS).

The instructions and application form (SS-4) are available from the Internal Revenue Service or online at:

www.irs.gov/businesses/small/article/0,,id=102767,00.html.

Licenses, Zoning and Permits

Occupational Licenses

The state of Missouri licenses or certifies a variety of professions, occupations and activities. If you are uncertain about licensure requirements for your business, you can check the “Occupational Licenses” list found within the “Legal Formation” document on our website at www.missouribusiness.net/doingbusiness/legalform.pdf

Local Licenses and Permits

Contact your local (county, city, township) government offices early in the planning stages of your business. The requirement for local licenses and permits vary by county and city. Most cities, and some counties, require businesses to be licensed. Check with the city business/merchant license office and/or the county collector’s office for the requirements in your area. These offices can be found in your local phone directory or via the internet.

Local Zoning Regulations

Be sure to check with the local city and/or county planning/zoning department to make sure that the site you have selected for your business is zoned to accommodate the activities of your business. This is especially true if you plan to operate your business from your home.

Protection of Intellectual Property

Intellectual property includes patents, trademarks, copyrights and trade secrets. Some or all of these may be assets of a business.

Patents

Under well-known antitrust principles, a business cannot obtain a monopoly by actions that keep out competition. However, if a business creates a new product, and the product meets certain tests, that creative contribution can be covered by a patent. A patent grants a monopoly for a period of twenty (20) years with respect to newly created products. As a result, the incentive to invent is rewarded. The monopoly granted takes nothing from what already existed and is of limited duration. Upon expiration of the patent the invention becomes public property.

Trademark and Service Mark

A trademark identifies the source or origin of products or goods being marketed, whereas a service mark identifies the source or origin of a service. Words, symbols, logos and slogans are commonly used as trademarks or service marks and, if the marks are used in commerce, they may be registerable on the Federal Register. Since a trademark or service mark must identify source or origin, it cannot resemble another mark to the extent that confusion as to source or origin would be likely. If a proposed mark is generic or merely descriptive of the goods or service, it is not capable of identifying source or origin and cannot function as a trademark or service mark.

Contrary to popular belief, the registration of a trademark or service mark does not create the mark. Ownership originates by virtue of use of the mark. Consequently, the date of first use of a mark can be crucial, and any business adopting a new mark would be well advised to incorporate the mark promptly in a correct manner of trademark or service mark usage.

In the case of a trademark, the creation results from using the mark on or in connection with the sale of the goods. For a service mark, use can be on or in connection with the sale or advertising of the services. Under U.S. law such use is required before the mark can be registered. Accordingly, the first rights in a trademark or a service mark are necessarily common law rights acquired by virtue of use of the mark.

For more information on patents, trademarks and service marks, please consult with a patent attorney or other qualified individuals. The SBTDC at Warrensburg offers assistance with patents and trademarks; for more information on their services call 660/543-4402 or visit www.cmsu.edu/x70577.xml. You can also contact the U.S. Patent and Trademark Office (web site: www.uspto.gov) at 703/308-4357 for information.

Taxes

Federal Taxes

FICA

The Federal Insurance Contributions Act provides a federal system for old age, survivors, disability and hospital insurance (Medicare). The Social Security Tax finances the old age, survivors and disability portion, while the hospital insurance portion is financed by the Medicare tax.

Self-Employment Tax

You must pay Self-Employment Tax if:

- You were self-employed and your net earnings from self-employment

(excluding any church employee income) were \$400 or more; or

- You performed services for a church as an employee and received income of \$108.28 or more. However, if you are a member of the clergy or a religious worker, you may not have to pay Self-Employment Tax.
- You are self-employed if you carry on a trade or business as a sole proprietor, an independent contractor, a member of a partnership, LLC, or are otherwise in business for yourself.
- You do not have to carry on regular full-time business activities to be self-employed. Part-time work, including work you do on the side in addition to your regular job, may also be self-employment.

A trade or business is generally an activity carried on for a livelihood or in good faith to make a profit. The facts and circumstances of each case determine whether or not an activity is a trade or business. Regularity of activities and transactions and the production of income are important elements. You do not need to actually make a profit to be in a trade or business as long as you have a profit motive. You do need, however, to make ongoing efforts to further the interests of your business.

The Self-Employment Tax rules apply even if you are fully insured under social security or have started receiving benefits.

For more information, contact the IRS by calling 1-800-829-3676 or visit their web site at www.irs.gov

Corporate Estimating Tax

A corporation must file with the state a Declaration of Estimated Tax (MO Dept. of Revenue [form MO-1120ES](#)) and a Federal Estimated Tax (IRS [form #1040ES](#)). Missouri forms can be obtained from

dor.mo.gov/tax/forms and Federal forms from www.irs.gov/formspubs

Excise Tax

The federal Government imposes excise taxes on various types of business activities. Some excise taxes are on the production or sale of certain goods, while others are on services or the use of certain products or facilities. Still others are imposed on specific types of businesses.

For further information on excise taxes and other federal taxes, refer to IRS [Publication 510, Excise Taxes](#). For more detailed information on other federal taxes, refer to IRS [Publication 334, Tax Guide for Small Businesses](#).

State Taxes

Corporate Income Tax

State law sets the corporate income tax rate at 6.25 percent of Missouri taxable income. In addition, Missouri allows 50 percent of federal income tax liability to be deducted before computing taxable income.

Sole Proprietorship/Partnership/S Corporation

All net business income is taxable to the sole proprietorship or to the partnership/S Corporation according to each partner or shareholder's share of ownership. Your personal income tax rate depends on your level of total personal income. On your federal return you may be able to deduct from your gross income some personal expenses that are directly related to your business.

Withholding Tax

Every employer maintaining an office or transacting any business in Missouri and making payment of wages to a resident or nonresident individual must obtain a Missouri Employer Tax Identification Number. State tax is then withheld from the employee's payroll and remitted to the Missouri Department of Revenue. For more information contact: Tax Administration Bureau, P.O. Box 999, Jefferson City, MO 65108-0999; phone: (573) 751-5752.

Retail Sales Tax

Any person or company that has a business location in Missouri from which they sell or lease goods to a final consumer is required to collect and remit Missouri sales tax. Also, any company that leases motor vehicles (including boats, trailers, and outboard motors) is required to collect and remit Missouri sales tax. If the lease period is 60 days or less, the sales tax is based on the address of the lessor. If the lease period is more than 60 days, the sales tax is based on the address of the lessee. It is the business' responsibility to ensure that sales tax is collected at the correct tax rate. You must have a Missouri Retail Sales License prior to making sales. Conducting retail sales without a valid Missouri Retail Sales License may result in a penalty of up to \$500 for the first day and \$100 for each subsequent day, not to exceed \$10,000, in addition to any other penalties or interest that may be imposed. For the first twenty days this penalty does not apply to persons opening a business in the state of Missouri for the first time.

A bond must accompany the application for the license. The amount of the bond is based on your estimated monthly gross sales. Complete information on the various types of bonds is included in the Missouri Tax Registration Application (MO Dept.

Revenue form 2643), which can be found at www.dor.mo.gov.

A table of sales tax rates for Missouri counties and cities can be found at: www.dor.mo.gov/tax/business/sales/rates/

Vendor's Use Tax

Out-of-state businesses making sales of goods to the final consumer located in Missouri may be required to collect and remit Missouri vendor's use tax. They must obtain a Missouri Use Tax License and post a bond.

Out-of-state businesses that lease goods to Missouri customers from an out-of-state business location are required to collect and remit Missouri vendor's use tax. They also must obtain a Missouri Use Tax License and post a bond.

Consumer's Use Tax

If your business is located in Missouri and is purchasing goods from an out-of-state vendor for consumption, when Missouri tax was not collected at the time of purchase, you are required to remit Missouri Consumers Use Tax. You must register for the payment of Use Tax; however, no bond is required. For more information, call (573) 751-2836 or (800) 877-6881.

Unemployment Insurance

Most companies doing business in Missouri are required to pay unemployment insurance to protect their workers during unemployment. This applies to most businesses having one or more workers on the payroll for 20 weeks during the calendar year, and to businesses paying an individual employee \$1,500 in a given quarter. File form 2699 to determine liability status for Unemployment Insurance which can be found at www.dolir.mo.gov, or for more

information call (573) 751-3328 or 751-3215.

Workers' Compensation

All businesses with five or more employees (except agricultural or domestic labor) must provide workers' compensation insurance to protect their workers in case of job-related injury, illness or death. Construction companies, regardless of the number of employees, must provide workers' compensation insurance. Companies can offer this protection through a private insurance carrier or they can become self-insurers. Premium rates vary, depending on the risks associated with special occupations. As in most states, the premium rates apply to an employee's total annual salary. The maximum weekly benefit for temporary total disability, temporary partial disability, permanent total disability and death is currently computed as 105 percent of the average weekly wage, determined annually on July 1st. For more information, contact the Division of Workers' Compensation (800) 775-2667 or (573) 751-4231 or www.dolir.mo.gov.

Tax Records Retention

The following list includes the most common documents that should be kept. All businesses should retain items 1 through 6. If you are operating a business that makes retail sales, you should also keep items 7 through 10.

1. Copies of Federal Income Tax returns (retain at least three to five years).
2. Sales journals and/or receipts journals (retain at least five years).
3. Purchase journals and/or check registers (retain at least five years).

4. General ledgers (retain at least five years).
5. Detailed depreciation schedules (retained until items are fully depreciated, or at least five years, whichever is longer). Note: The depreciation schedule should show detail as to where the item was purchased. It is also suggested that all purchase invoices listed on the depreciation schedule be filed separately rather than with the other expense purchases.
6. Copies of paid bills for goods and services (retain at least five years).
7. Copies of Letters of Exemption to support claims for exemption regarding sales to tax exempt entities. You should be aware of the expiration date on each letter of exemption.
8. Copies of the checks from tax exempt entities to prove that payment for the tangible personal property or taxable service was made from the funds of the tax exempt entity and not those of an individual member of the tax exempt entity.
9. Updated and fully completed resale exemption certificates. (Resale exemption certificates must be signed by an owner or officer and must be updated every five years.)
10. Copies of the sales and use tax returns and backup documents used to prepare these returns (these should be retained at least five years).

The following payroll records should be retained for at least three years in the event of a withholding tax audit:

1. Copies of W-2 forms

2. Monthly payroll records showing the actual Missouri withholding
3. Copies of the MO941 reports

The nature of your business may require that you keep additional records. Please use these lists as a general guide, but consult with your tax practitioner for advice about your specific needs.

Hiring Employees

Before you actually hire, we recommended that you consult with your accountant or with an employer service representative at your local Division of Workforce Development Office. The local Division Office can assist you with locating employees. A great deal of information can also be found on the Great Hires! Website at <http://greathires.org> and at: www.dolir.mo.gov/Resource.pdf.

You can obtain a copy of publication 15, Circular E, Employer's Tax Guide from your local IRS office or call 1-800-829-3676 or download it at www.irs.gov/pub/irs-pdf/p15.pdf. Circular E explains federal tax withholding and Social Security tax requirements for employers as well as containing up-to-date withholding tables for you to use to determine how much federal income tax and Social Security tax is to be withheld from each employee's paycheck.

Tips on Hiring

Before you hire that employee:

- ❑ Obtain a Federal Employer Identification number (IRS form SS4) www.irs.gov/pub/irs-pdf/fss4.pdf
- ❑ Obtain a Missouri Employer withholding number by filing Missouri Department

of Revenue form 2643 [Missouri Department of Revenue (573) 751-5752] <http://www.dor.mo.gov/tax/business/registry/forms/2643f.pdf>

- ❑ File form 2699 to determine liability status for Unemployment Insurance www.dolir.mo.gov/es/ui-tax/2699-5-ai.pdf contributions to the Missouri unemployment compensation fund. For more information, contact the Missouri Division of Employment Security (573) 751-3328 or 751-3215; on the web at www.dolir.mo.gov
- ❑ Make appropriate arrangements to pay Workers Compensation Insurance. For more information call Missouri Division of Worker's Compensation (800) 775-2667 or (573) 751-4231 or on the web at www.dolir.mo.gov

Once you have hired the employee:

- ❑ Each employee must complete the IRS form W-4 and a Missouri form W-4. A copy of the federal W-4 or the Missouri form must be forwarded to the Missouri Department of Revenue within 20 days of the new hire. For more information, visit the IRS website at www.irs.gov
- ❑ The employee must complete an I-9 and the employer keeps this form on hand in a separate file. Download the form at: www.uscis.gov/files/form/i-9.pdf
- ❑ With the first payroll you will:
 - Withhold state income tax and federal income tax at a percentage determined by salary and exemption information stated on the form W-4.
 - Withhold 6.2% of the employee's salary for Social Security taxes.
 - Pay 6.2% of the amount of the employee's salary for Social Security taxes.
 - Withhold 1.45% of the employee's salary for Medicare taxes.

- Pay 1.45% of the employee's salary for Medicare taxes.
- Make monthly payment of these taxes to an approved banking institution on the 15th of the month.
- File reports with the government on a quarterly and annual basis; and, issue W-2 reports to employees at the end of the year.
- For more information, visit the IRS website at: www.irs.gov IRS Publication #15 is a good resource.

The employer is required to display appropriate work posters informing employees of their rights regarding discrimination, unemployment benefits, worker compensation, Equal Employment, Federal Minimum Wage, FMLA, OSHA, and Polygraph Protection Act. These posters can be downloaded from www.dol.gov/osbp/sbrefa/poster/main.htm.

Review OSHA guidelines and check workplace safety procedures with all employees. OSHA Region VII (816) 426-5861 or www.osha.gov

Additional resources related to hiring employees can be found at www.dol.gov/compliance.

Financing Your Business

Funding for a business usually comes in two forms: debt and equity. Debt is obtained from borrowing and must be repaid from cash flow. Equity is contributed by owners or investors and is not repaid from operations. Retail and service businesses are difficult to finance. Funding for these enterprises is usually used for working capital, inventory and fixtures. The value of this kind of collateral is much lower than the original purchase price if the loan goes into default and the assets are sold at auction to retire the debt. As such, retail and service operations will need a larger equity position from the owner than other kinds of businesses.

Lenders prefer to finance business that use borrowed funds to purchase assets such as real estate or equipment because the value of these assets remain close to their purchase price if they must be sold by the lender to retire a debt.

Most lending institutions require a business plan that outlines the amount of money needed and demonstrates the company's ability to pay back the loan. Along with a business plan, your lender may require a credit application for new business loans.

Keep in mind that the number of small business failures is high, causing the lender to show skepticism and consider risk. You must display the ability to manage all aspects of the business and meet all your financial commitments.

Private Sources

Your local bank is the first place to approach for your business financing needs. Commercial lending departments deal specifically with small business and may

offer special services to small business owners. Many alternative financing programs require a letter of denial or partial funding from a bank before they will consider your application.

State Sources

Recognizing the important impact that small businesses have on Missouri's economy, the State of Missouri has developed programs that provide financing options to small businesses through a variety of agencies. For more information on State financing and incentive programs, visit www.missouribusiness.net/doingbusiness/financing.pdf

Grants

Contrary to popular belief, grants of cash for business are virtually nonexistent. There are rare instances where a cash grant has been given for some highly specialized type of business or for some unusual situation, but there are no cash grants available to virtually all start-up businesses. Beware of any organization that promises to guide you to sources of free money for a fee, such as to purchase a book or attend a seminar.

There are many government grants designed to assist business, but these usually don't go directly to the business. Instead, they go to agencies and organizations that perform some service for business or benefit business indirectly. For example, grants are made to local communities to help with infrastructure improvements needed to attract business. Other grants are given to agencies to provide educational resources and information to small business owners. Grants given by private foundations are to fund not-for-profit agencies to perform specific activities that are aligned with the mission and goals of the foundation.

The books, websites and late-night television infomercials that tout government grants for business are usually exercises in cleverly misleading entrepreneurship. Read the fine print carefully and “buyer beware.”

Resources

There are numerous organizations, public and private, throughout the state that provides assistance to individuals and new business owners. This following list represents those organizations that offer a statewide service area.

Small Business Development Centers

The Missouri Small Business Development Centers (MO SBDC) helps Missouri small businesses identify problems, explore opportunities, and obtain solutions by offering comprehensive, timely assistance to create positive impact. Assistance is targeted to meet the changing and evolving needs of the Missouri small business community.

Staff are qualified to help small businesses by offering:

- training seminars and programs on a variety of business topics (see www.missouribusiness.net/training)
- low or no-cost personal and confidential consulting services
- referrals to specialized technology and procurement resources

The Small Business Development Center offices serve clients in various regions throughout Missouri. To find a location near you, visit:

www.missouribusiness.net/sbdc/centers.asp

Service Corps of Retired Executives (SCORE)

SCORE counselors, experienced business professionals, provide confidential counseling. Services include business plan preparation, financing, record keeping and problem solving and are provided free of charge. To locate a SCORE office in your area, visit

www.score.org/findscore/chapter_maps.html

Small Disadvantaged Business Purchasing Program

There are different certifying requirements for agencies that have programs for small disadvantaged businesses (SDB) or minority/women business enterprises (MBE/WBE). The two commonly used in Missouri are the SBA programs and the Missouri MBE/WBE certification program. Other agencies may have additional certification requirements.

SBA certifications

The SBA administers the 8(a) Business Development Program (www.sba.gov/8abd/). Under the government’s reformed affirmative action rules, small disadvantaged business are eligible for price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries. The program also provides evaluation credits for prime contractors who achieve SDB subcontracting targets. The program is intended to help federal agencies achieve the government-wide goal of 5 percent SDB participation in prime contracting. Contact an SBA district office to become certified.

Missouri MBE/WBE Certification:

In order for a business to be recognized as an MBE/WBE with the State of Missouri and for the expenditures with that business to be included in the State's participation goals, the firm must be certified as an MBE/WBE. If you currently do business with MBE/WBEs who are not certified, encourage them to apply for certification. The basic requirements for certification are that the business is at least fifty-one percent (51%) owned and controlled by minorities or women.

It takes 60 to 90 days to become certified, however the process can be done more quickly if the business is SBA 8a certified. An 8a certification does not qualify the company as an MBE/WBE for Missouri State participation goals. Contact the Office of Administration to become certified at:

MBE/WBE Certification Program
P.O. Box 809
301 W. High Street, Room 840
Jefferson City MO 65102
(573) 751-8130 or (877) 259-2963
Fax (573) 522-8078
www.oa.mo.gov/oswd/

Assistance to become certified through the SBA or the State of Missouri is provided by the Missouri Procurement and Technical Assistance Program (MO PTAC). Regional offices can be found at www.missouribusiness.net/ptac/centers.asp or call (573) 882-8058.