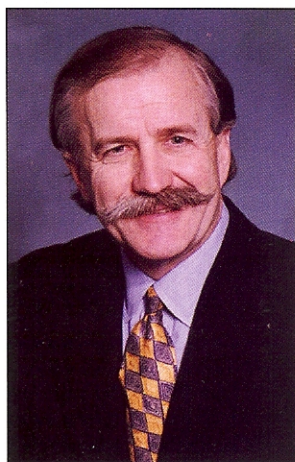


limiting liability



By Mati Jarve
Attorney

IT IS PERHAPS STATING THE OBVIOUS THAT THE HORSE INDUSTRY CAN BE RISKY business for some horsemen. Those individuals that choose to limit their personal liability can do so by either setting up a traditional corporation or by forming a Limited Liability Company (LLC). The choice depends on personal needs and tax strategy. The following brief list of advantages and disadvantages should be considered in making your decision.

CORPORATIONS

Corporations are recognized in every state and have a long history of acceptance as a legal entity. On the other hand, LLC's are relatively new and some states place certain restrictions on them.

A beneficial feature of the corporate structure is the ability to limit self employment taxes to salary only. Profits of the corporation are not subject to self employment tax. LLC's are required to pay self employment taxes on both salary and profits.

Traditional corporations (C-corps) allow shifting of corporate income to minimize overall tax. You may choose to deduct your own salary as an expense, thereby lowering the corporation's tax. Also, you can choose to retain corporate profits for future expenses or choose to distribute them as dividends to the shareholders.

C-corps can be taxed twice. First, the corporation pays taxes on its income, and then the shareholders pay taxes on their dividends. To avoid this double taxation, a C-corp can elect to be treated as an S-corp. In effect, the corporation is treated as a "pass through" entity, much like an LLC.

LIMITED LIABILITY COMPANIES

Probably the biggest advantage that an LLC has over a C-corp is its simplicity. LLC's require much fewer formalities than corporations. C-corps are required to hold regular meetings of the board of directors and shareholders. In addition, corporate minutes must be maintained and annual reports must be filed with the state. Most states do not require LLC's to do so.

An LLC is treated as a "pass through" entity for tax purposes. In other words, all of the LLC's profits are passed directly to its members, who then pay taxes at their individual tax rate. The LLC itself pays no taxes. Similarly, as stated above, a C-corp can avoid the potential for double taxation by electing to be treated as an S-corp.

Since company profits and losses are passed through to the members of the LLC, operating expenses are deductible against the individual's income. In a traditional C-corp, operating expenses are deducted against corporate income, not dividends. Also, a member of an LLC is not required to pay unemployment insurance taxes on income. Corporations however, are required to pay unemployment tax.

On balance, given the ease and simplicity of forming and operating an LLC, it is probably a better choice for most horsemen. However, the final decision should be made only after consulting with an experienced attorney as well as an accountant. No matter which form of business you decide to use you should have the documents drafted, or at least reviewed, by an attorney so that you can be confident that the documents appropriately fit your circumstance.

Mati Jarve is the managing partner of the Marlton, New Jersey law firm of Jarve Kaplan Granato, LLC. He is certified by the New Jersey Supreme Court as a Civil Trial Attorney and the National Board of Trial Attorneys as a Trial Advocate. Licensed in New Jersey, Pennsylvania and Arizona, he maintains a national practice in civil litigation, including equine related issues. This article is for informational purposes only and is not intended to be legal advice. If you have a specific legal question or problem you should consult with an experienced and knowledgeable equine law attorney. Questions, comments or suggestions can be e-mailed to mjarve@nj-tri-allawyers.com, by visiting www.nj-triallawyers.com or writing to The Way To Go.