

## BANKING & FINANCE

# Forget identity crisis, entity crisis is much, much worse

Entrepreneurism is in the air. It was the week for how-to-choose-a-business-entity seminars in Colorado Springs.

Here are two of this week's take-aways — (and, yes, it's permissible to roll one's eyes at the euphemism.)

One: It's OK to structure your business so that you legally pay the least amount of taxes possible, according to Chris Blees, CEO of BiggsKofford P.C., who gave a presentation at Laid Off Camp-COS.

Two: If you don't establish a business entity, neither proclaimed innocence nor stupidity will save you.

"A partnership is the default when no other entity is established," said JoAnn Schmitz, founder of Schmitz Law Firm LLC. (Note that her company has an entity.)

She and Mark Patterson, tax partner at Stockman Kast Ryan and Co. LLP, were co-presenters at the final seminar in the Investor Ready Series, hosted by Peak Venture Group and the Colorado Springs Technology Incubator.



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the beauty contest," Schmitz said, unless your company needs venture capital or is close to an initial public offering.

LLCs are popular because they offer flexibility in structuring income allocations, cash distributions, etc. They can be managed by members, managers or structured for a single-member, and, as the name implies, the entity offers the protection of

limited liability for owners.

"Interestingly, the state does not require a written operating agreement — but you'd be nuts not to have one," she said.

And if you "create a single-member LLC, you have to be clear whether you own your invention or does the company own it," Schmitz said.

It's easier to start a business in Colorado, Blees said, because the state does not have a business license requirement — but, and here's the caveat that some entrepreneurs miss, most business owners do need a sales tax license.

"The sales tax rules in Colorado are among the most unique, i.e. difficult, in the country," Blees said.

Exactly when is the right time to establish



Schmitz



Blees

**Don't go it alone**

Running a business without an entity is akin to climbing up Class 3 talus on Mount Lindsey's north face at 4 p.m., despite hovering black storm clouds.

Oh wait, yours truly actually did that two Sundays ago — but at least I'm not foolish enough to start a business without first forming an entity.

Here's why.

"It's very easy to argue that someone has formed a partnership with you — just by meeting and talking," Schmitz said. "I want to impress upon you that this can be very broadly construed."

But there are options, of course.

If you're planning to own and operate the business by yourself, without employees, there is the sole proprietorship option.

"Depending on what you're doing, this entity could be good, but in most cases, we advise against it," Patterson said. The disadvantage is that business taxes are reported on a Schedule C, filed with your personal Form 1040, which saves on tax preparation costs. "But the IRS tends to audit Schedule Cs more often, because that's where a lot of abuse is."

And there's the possibility that "the IRS could create a partnership between you and another person," he said.

A better option for single-member (one owner) companies is a limited liability corporation.

"LLCs are the queen currently winning



Patterson

an entity?

Until the entity is formed, an entrepreneur is operating with personal capacity and risk.

Therefore, form an entity "before committing to significant personal risk; before creating rights of ownership/employees/independent contractors, etc.; and before raising any money," Schmitz said.

Once you've established an entity and registered electronically as a new entity with the secretary of state for \$50, you get a computer program for managing finances.

Patterson recommends QuickBooks.

"If you're running your business and you want to be successful at it, you're better off looking at your financials each month," he said. "It's important to have a set of records for your office, so there are no surprises at tax time."

And now back to partnerships, lest, dear reader, you forget how capricious they are.

"Here's the real kicker," Schmitz said. "The nature of liability is that you are jointly and severally liable with your partner. If your partner make a representation, you are equally responsible for it."

So, quit socializing and networking — and for the love of God, don't shake anyone's hand — until you establish a business entity.

*Rebecca Tonn covers banking and finance for the Colorado Springs Business Journal.*