

# BUSINESS BASICS

A Guide For New Business In Oklahoma





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For center locations and additional information, please visit our website at [www.osbdc.org](http://www.osbdc.org).

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# Legal Structures

Every business has some form of legal structure. Often when a prospective business owner comes to our office and we ask what legal form their business is, they may have a rather blank look on their face. "Well, it's just going to be me." Whether or not it's just going to be you, or if you have someone else going into business with you, you'll need to know every business actually has a legal structure and some tax implications that go along with that.

## THE CHOICES OF LEGAL STRUCTURES

### SOLE PROPRIETORSHIP

### PARTNERSHIPS

- General Partnership
- Limited Partnership
- Limited Liability Partnership
- Limited Liability Company

### CORPORATION

- Regular C corporation
- Subchapter S corporation



There are variations on each of these types. Most of the differences involve liabilities to you, and how taxes are handled. The easiest, simplest and cheapest form of legal structure is the sole proprietorship. You can always "move up" to a more sophisticated legal structure at a later date if you find the need to do so. If you have a business where someone would be more likely to sue you for one reason or another, you might want to look at another kind of structure.

## "IT'S JUST ME" TYPE OF BUSINESS – SOLE PROPRIETORSHIP

The simplest form of business is called the sole proprietorship. Sole means one, and proprietor means owner. This is a one-owner business. (Note: Sometimes a husband and wife may operate as a sole proprietorship). It's just you. If you want to bring someone else into the business in an ownership position, then you'll need to be some other form of company. Sole proprietorships can be great for many businesses for the whole of the business life, or just in the beginning for others.

Do you need to file any kind of business license to get started as the legal form known as the sole proprietorship? No. There are a few things that you might want or need to file, and those will be found in the following sections on employees, licensing, business names and trademarks, and sales tax.

### ADVANTAGES OF A SOLE PROPRIETORSHIP

- It's the easiest form – no corporate paperwork, seals, minutes and so forth
- At the end of the year, you file a Schedule C along with your 1040 return
- You do not need an Employer Identification Number (EIN) unless you have employees, you just use your Social Security number.

### DISADVANTAGES OF A SOLE PROPRIETORSHIP

- You and your business are one and the same – unlimited liability
- Limited to one owner
- Not able to take some tax benefits

## WHY PEOPLE FORM CORPORATIONS AND PARTNERSHIPS

- If you have more than one owner or want to bring in additional owners
- If you are concerned about liability and being sued
- If the company is doing very well financially it might be more beneficial from a tax standpoint.

If there are more than one of you in an ownership position, or if you want to raise money for your company by selling a piece of ownership of your company, then being able to sell stock or bring in partners can be a way of doing that. If the company is doing well financially, then it may be advantageous to be a corporation or LLC to take some tax benefits not available to sole proprietors. Ask your accountant if that is the case to see if there is a benefit. More than anything, the driving force we see behind being a corporation or partnership is due to liability issues. We are a "sue happy" society, and this is a way of protecting your personal assets and property.

**HOWEVER** – If you choose to be a form of partnership or corporation, there are some rules and paperwork to follow. If you don't, you could be open to some tax issues. If someone went against the corporation or partnership, it is very possible to "pierce the corporate veil" and be able to sue you personally as well as the business.



## TYPES OF CORPORATIONS

- Regular, or C corporations
- Subchapter S Corporations - the name subchapter S comes from the portion of the tax code that talks about this kind of corporation.
- Limited Liability Company (This is really a hybrid between a corporation and partnership).

## TYPES OF PARTNERSHIPS

- General Partnership
- Limited Partnership
- Limited Liability Partnership

## TYPES OF COMPANY STRUCTURES THAT ARE VERY RARE FOR NEW BUSINESSES

“Regular” or C Corporations – This type of structure is very rare for a new business. It is also an absolute stand alone company. If you hear about corporations being “double taxed”, it is talking about this kind of company. In addition to the heaviest tax burden, it has the heaviest paperwork burden as well. In fact, it’s so rare for a new business, we’re not going to spend more time talking about this. If you want to know more, go to your public library for books on the subject, or ask your accountant or attorney for advice.

Limited Liability Partnership – This type of structure is found more in oil and real estate deals. Often, a large number of people invest a small amount of money into a project as a limited partner. The limited partner has no say in company matters, is limited in rewards if it does well, and also is limited in losses to only the amount of money invested. Most people who invest in a new business are going to want more say than in a limited liability partnership.

## TYPE OF COMPANY STRUCTURE WE DO **NOT** RECOMMEND

### GENERAL PARTNERSHIPS

Often people get into a general partnership by accident. Two friends, for example, talk about going into business together, start operating, but never put anything in writing, never formalize a legal structure and so, by default, they end up as a general partnership. This is very dangerous because everybody is responsible for everything. If I am your general partner and go out and make a bad decision and obligate the company, not only is the partnership responsible, but each of us as an individual person is as responsible for it as if you had made the same decision yourself. There is no sheltering of liability here. As a result, there are too many problems with this kind of structure.

## MORE LIKELY FORMS OF STRUCTURES FOR START-UP COMPANIES

- Subchapter S Corporation
- Limited Liability Company (LLC)

In many ways, these structures are very, very similar.

### SIMILARITIES

- Each protects an owner from being personally liable.
- Each may have one or up to 75 people who can have an ownership position.
- Each business will need to file organizational papers with the Secretary of State and will need to get an Employers Identification Number (EIN).
- Each type has some sort of written “rules of the road” for the business to operate.
- Each type is what is called a “pass through” entity, in that profits or losses from the business pass through to the owners. The company does not file its own separate tax return, but it is attached to the owner’s 1040.
- Each type requires an owner to be personally responsible for the income and Social Security taxes on his/her portion of the business profits.
- Each type allows owners to be hired as an employee of the company, draw only profits from the company, or a mixture of both.
- Each type has paperwork that documents decisions made by the company, and particular meetings that must occur regularly. The subchapter S has a little more paperwork.

### DIFFERENCES

- Terms for owners – owners in a sub S corporation are called stockholders. They are called members in an LLC.
- Terms for organizational paperwork – In a sub S, they are called the Articles of Incorporation. In an LLC, they are the Articles of Organization. An LLC should have another agreement stating whether it is managed by a manager, a member, or several members.
- The LLC may offer more tax flexibility. For example, a single member LLC can file as a sole proprietorship, corporation, or partnership on a tax return. The IRS does not recognize the LLC (that does not mean that it is not legal nor does it take away from any shielding of liability). That just means that the LLC must choose how it is to be taxed. Your accountant may be able to better advise you.
- When you file as a corporation with the Secretary of State, you are automatically a Regular C corporation. After your state filing, within 75 days you need to file an IRS Form 8832 to

request to be a subchapter S corporation. If you miss that window, you'll be taxed like a regular corporation, and will need to change that designation the next year. If you miss the window, your accountant can help you if there are any tax ramifications for changing structure. It's easier if you just do this right up front!

## HOW TO DECIDE

Unless a new business owner has decided on the sole proprietorship, we see many people who have great anxiety about whether to choose an LLC or sub S status. They are both fine structures, and as you can see from the above list, they are extremely similar, and in most cases, either choice will be fine. The LLC is a newer form of business. You will find some attorneys favoring one over the other simply because of their experience and familiarity with the preferred form. We generally find that for most new businesses, the determining factor may be the tax consequences. You may want to find that talking with your accountant will be very helpful in determining structure.

## FRANCHISE TAX

In Oklahoma, every corporation (regular C and Subchapter S) pays an annual "franchise" fee to the Secretary of State. If this is left unpaid, their corporate status is suspended and they are NOT a corporation "in good standing" with the state. LLC's pay an annual renewal fee to the Secretary of State.

## WHERE TO FILE THE APPROPRIATE PAPERWORK

The Oklahoma Secretary of State's Office is where you file for your legal structure. Their website contains their forms, and the [www.osbdc.org](http://www.osbdc.org) website hosts the basic documents for the legal structure required by the Secretary of State. You may also file online at [www.sos.ok.gov](http://www.sos.ok.gov).

### OKLAHOMA SECRETARY OF STATE

[www.sos.ok.gov](http://www.sos.ok.gov)  
State Capitol Building  
2300 Lincoln Blvd., Room 101  
Oklahoma City, OK 73105  
405-521-3911

## CAN I DO THE PAPERWORK WITHOUT AN ATTORNEY?

While we recommend that you get legal advice from an attorney, we do recognize that many business owners want to do as much as possible on their own. There are aids available to help you set up your corporation and several excellent books on the market which can be found at your local public library or bookstore. There are also business filing services who can be of assistance. Your local OSBDC office may have resources on site. We still recommend that you seek some legal advice. An hour's worth of advice can save you much time and trouble later on.



## **AN ADDITIONAL DOCUMENT TO CONSIDER — THE BUY/SELL AGREEMENT**

If you are going into business with another person, plan at the start for how you will get out of the business. Both of you (or more, depending upon the number of stockholders or members) will get out of the business at some time. Whether by choice, other circumstances, or even old age or death, you'll not be part of the company forever. By putting together a buy/sell agreement you can agree as to how the company will be valued, who gets to sell shares to whom, and can avoid a lot of problems. It is easier to agree to things in advance and while things are going well, rather than waiting until a crisis or disagreement hits. We recommend that an attorney help you with this document.

# Tax ID Number



Also known as an Employer Identification Number or EIN, or Federal Employer Identification Number or FEIN.

“How do I get a Tax ID number?” is the most frequently asked question. However, for many companies, they really don’t need one.

When the question is asked as to why they need one, often the answer is that the new company wants to buy things at a wholesale price that they are going to sell to someone else. If that is your concern, then you want a sales tax, or reseller’s permit, which is explained in another section.

If someone asks you to provide a Tax ID number for example, on an invoice, and you are not required to have that number, use your Social Security Number.

## DO YOU REALLY NEED A TAX ID NUMBER?

You need a Tax ID Number if:

- You are a corporation or partnership. In the eyes of the law and the tax code, these are separate beings. Just like each person in the United States needs a Social Security number for identification, a Tax ID number provides that unique number for this entity.
- Your business has employees. If you are a sole proprietorship and you are the only worker in your company, you don’t need to have a Tax ID number. If you do have employees, no matter what the legal structure of your business is, you need to have one.
- You have a self-employed retirement plan – not likely for a new business.
- You file an employment, excise, fiduciary, alcohol, tobacco, or firearms tax return.

## REASONS WHY YOU SHOULD NOT GET A TAX-ID NUMBER IF YOU DON’T NEED ONE

When you apply for a Tax ID number, you get enrolled into several different kinds of government computer lists and some assumptions are made.

- It is assumed that you are already in business and making sales.
- It assumes that you have employees.
  - o This is very important because once you file for the Tax ID/EIN number, you will automatically begin getting mail from the IRS regarding federal income and withholding taxes as well as federal unemployment taxes. You will also get information from the Oklahoma Employment Securities Commission for unemployment taxes, as well as a new hire report.

# The Quickest and Easiest Way to Get a Tax ID Number

The quickest and easiest way to get a Tax ID Number – this is a federal number and comes from the IRS. The form number is called the SS-4.

To register online, go to [www.irs.gov](http://www.irs.gov) then click on "Apply for an Employer Identification Number". It will only take a few minutes to complete the form, get the number, and be able to print out a very readable copy in proper format.

You may download the form from our website [www.osbdc.org](http://www.osbdc.org) or from [www.irs.gov](http://www.irs.gov), then call the IRS at 800-829-4933 to register by phone.

We never ever recommend that you just send the form in by mail and wait. You will wait, and there's no reason to do so!

## Trade Names, Trademarks

This is sometimes a rather confusing issue for new businesses. The underlying concern is: should/can I protect someone from using my business name, and if so, how do I do it?

### **MAKE SURE YOU ARE NOT USING SOMEONE ELSE'S NAME**

The first thing you want to do is some research to make certain that the name that you are choosing for your business is one that is free to be used! The reason is that if you use someone else's name and they are protected, they can legally force you to quit using it. It would be a disaster if you were already known under a name and had signage and other materials and then had to not only reprint them all, but let everyone know the new name. More than likely they may think that ownership has changed as well!

### **WHERE TO SEARCH**

- Federal Trademark search – <http://www.uspto.gov/main/trademarks.htm> - There is also a Patent and Trademark Depository Library at Oklahoma State University, call 405-744-6546.
- State Trademark search – Oklahoma Secretary of State – Business Filing Division - 405-521-3912 or visit <https://www.sos.ok.gov/trademarks/default.aspx>
- Telephone directories – Many public libraries will have the Oklahoma Business Directory and access to other online directories or databases.
- Official Oklahoma State Web Site – <http://www.ok.gov/genthree/businessdir.php>
- Internet search –
  - o Search engines on web pages or news articles, remember to search the local newspaper sites specifically if possible.
  - o online directories
  - o domain names search like [www.whois.net](http://www.whois.net)

### **FILING A TRADE NAME REPORT**

Filing a Trade Name Report with the Oklahoma Secretary of State means that you are notifying the public that you are doing business as (dba) a name other than your given name. For example, John Thomas, a sole proprietor, files a Trade Name Report to register his dba name, Computer Solutions. The cost of a Trade Name Report is \$25. You may file online at [www.sos.ok.gov](http://www.sos.ok.gov), or you can download the form from that website or [www.osbdc.org](http://www.osbdc.org).

## WHY FILE A TRADE NAME REPORT?

- The Secretary of State will not register another name that is just like yours.
- It provides notification that you are doing business under a particular kind of business name. A sole proprietor may file a trade name, but other forms of business may do so if they are doing business in a name other than the official corporate name. For example, the official name of the company might be JJJ, Inc. and they may want to register their trade name as Triple Jay Ranch.
- Especially if you are a sole proprietorship with no outside employees, home-based, and selling services, the new account officer at a bank may want to see something that is an “official paper” to show that you really are a business, in order to open up a business account.

## WHO FILES A TRADE NAME REPORT?

Unincorporated business (Sole proprietorships and Partnerships). Corporations may file if they have a dba name that is different from the company’s legal name such as the example given earlier.

## WHAT IS A TRADEMARK?

A trademark is either a word, phrase, symbol, or design or combination of those. A Trademark identifies and distinguishes the source of goods or services of one party from those of others. Dr. Pepper is an example of a trademark. A service mark is the same thing as a trademark, except it identifies and distinguishes the source of a service rather than a product. An example of a service mark is Stainmaster. Normally, a mark for goods appears on the product or on its packaging, while a service mark appears in advertising for the services.

In the most basic terms, trademarks are connected to usage. You must actually be using the name in interstate commerce (doing business outside of your own state) in order for it to be registered. If you see a trademark with the ®, that mark has been registered with the US Patent and Trademark Office. There is some legal protection for you if you do not register a trademark. If you would go to court, you would have to prove that you were first in the usage of that mark.

## IS REGISTRATION OF MY MARK REQUIRED?

No. By using your trademark or service mark, you establish rights to that mark. However, officially registering can provide some advantages:

- A notice to the public that you own that mark and have exclusive rights to use it.
- The ability to sue in federal court
- The use of your US registration to obtain foreign registration.
- The ability to file with the US Customs Service to prevent importation of foreign goods that would infringe on your mark.



## ESTABLISHING TRADEMARK RIGHTS

Trademark rights arise from either:

- The actual use of the mark.
- The filing of a proper application to register a mark in the Patent and Trademark Office (PTO) stating that the application has a bona fide intention to use the mark in commerce regulated by the US Congress.

## HOW LONG DOES A TRADEMARK LAST?

Unlike copyrights or patents, trademark rights can last indefinitely if the owner continues to use the mark to identify its goods or services. The term of a federal trademark registration is 10 years, with 10 year renewal terms. However, between the fifth and sixth year, after the date of initial registration, the registrant must file an affidavit setting forth certain information to keep the registration alive. If no affidavit is filed, the registration is cancelled.

### USE OF THE TM, SM AND ® SYMBOLS

You may use the TM (trademark) or SM (service mark) without federal registration. It alerts the public to your claim to use that mark. The registration symbol ® may only be used when the mark is registered in the PTO. It is improper to use this symbol at any point before the registration is issued.

## HOW TO FILE FOR A FEDERAL TRADEMARK

Intellectual property such as patents, trademarks, and copyrights are a legal specialty. You may find it worth seeking legal advice.

Online filing is preferred by the PTO at their website [www.uspto.gov](http://www.uspto.gov) or mailing to:

### COMMISSIONER FOR TRADEMARKS

2900 Crystal Drive  
Arlington, VA 22202-3514

## STATE TRADEMARKS

It is possible to get an Oklahoma Trademark by filing a state trademark form with the Oklahoma Secretary of State. Registration is \$50. This basically prevents other businesses in Oklahoma from doing business in that name, and it certainly establishes a time when the mark started to be used by the company. A name can be researched for availability prior to registration by telephone, mail or in person. A name can be reserved for a period of 60 days by written request or in person. Fee is \$10. You may file online at [www.sos.ok.gov](http://www.sos.ok.gov) or download the form at [www.osbdc.org](http://www.osbdc.org).

A US Trademark gives you the most protection and would provide more rights than a state trademark. If you do business beyond state borders, you may want to look at the federal registration. Again, this is a legal specialty. You may want to seek the advice of a patent and trademark attorney. If one is not in your local area, they are more likely to be found in the metro areas.

## Domain Names and Web Sites

Just as there is a value in having a good business name and protecting it, there is also a value to a domain name for your internet website. Unless you have a business that is extremely localized (say a small quick stop), more businesses than not find that a web site presence is helpful.

Even if you don't actually sell anything on your site, it offers you an opportunity to talk about your company and its products and services in much greater detail. Your domain name should always be on your business card and other printed materials, so that your prospective customer can go in at any time of the day or night to look at your company information.

Obviously, the most desirable name for your website is that of your company. It's easy to remember and people intuitively type in the name with .com to see if they can find you.

Check to see whether your name is available by typing in the name you'd like. To register your name or search to see who already owns that name, there are several services that can help you with that such as [www.whois.net](http://www.whois.net), [www.networksolutions.com](http://www.networksolutions.com), or [www.register.com](http://www.register.com).

You'll want to have an email address that uses your company's domain name. Contact your Internet Service Provider (ISP) or the company that registered your domain name. It is just more professional to have your business domain name rather than an email address that is generic with [aol.com](http://aol.com) or [earthlink.net](http://earthlink.net), or the domain of your local ISP.

There is a cost for having the domain name with renewable periods. The longer the time you pay for, the more affordable it becomes, and if you are going to stay in business, you'll want to keep that address. It becomes as good a contact information as your phone number.

## Resale Permit or Sales Tax Permit

This number is used to purchase tax exempt inventory from suppliers, wholesalers, or distributors that you will resell to others.

When new business owners ask for Tax ID numbers, most of the time they really want a number to purchase tax exempt inventory from suppliers at wholesale prices. This is called a reseller's permit, resale exemption certificate, or sales tax permit.

### HOW TO GET A SALES TAX PERMIT

This will be registered with the Oklahoma Tax Commission. You can download this form from our website at [www.osbdc.org](http://www.osbdc.org), the Tax Commission website at [www.tax.ok.gov](http://www.tax.ok.gov), or call the Oklahoma Tax Commission at a statewide toll free number 800-522-8165 x1-3279, in the Oklahoma City metro at 405-521-3160 or in the Tulsa area at 918-581-2399. There is a free tax workshop that we highly recommend. We are not going to be able to tell you everything you need to know in this booklet!

### COST OF A PERMIT IS \$20 AND IS GOOD FOR THREE YEARS.

The form you complete – the Oklahoma Business Tax Registration Form is rather lengthy, because this form is used for a number of things, all the way from a new corporation registering to apply for a vending machine tax stamp.

#### WHY SALES TAX IS IMPORTANT TO STATES AND COMMUNITIES

State and local government receive significant operating funds from collecting sales tax. In the State of Oklahoma, generally, only product sales are taxable, most services are not. There are some exceptions to this. Sales and use tax rules and regulations can be found at <http://www.tax.ok.gov/rules/rule6506.pdf>

#### SALES TAX BASICS

This is not meant to be a comprehensive discussion on sales tax, but will fit most business situations. We recommend that you attend one of the regularly scheduled workshops hosted by the Tax Commission.

These are the basic scenarios we will address:

- Businesses that sell products
- Businesses that sell services only
- Businesses that sell both products and services
- Businesses that sell products via the internet or mail order

#### BUSINESSES THAT SELL PRODUCTS

You will definitely need a resale permit and you will need to collect, report, and pay sales tax. Sales tax is charged to the end consumer – the person who is going to buy and use that product, as opposed to

turning around and selling it to someone else. For example, Joe's Hardware Store buys inventory that they will sell to a retail customer. When Joe's bought the inventory, they purchased it at a wholesale price and did not pay sales tax to the supplier. When Joe's Hardware sells the product to the customer at the retail price, they will collect and send in sales tax based on that retail price.

### **BUSINESSES THAT SELL SERVICES ONLY**

In general, service businesses do not pay sales tax. If I own White Glove Cleaning and I have a contract to clean your building, I charge only for the service. I do not collect sales tax. When I buy the products that I use in providing services, such as soap, mops and buckets, my company is the end user or customer, and I pay sales tax. There are some exceptions to this, and you can search the Tax Commission website at <http://www.tax.ok.gov/rules/rule6506.pdf>.

If someone who is tax-exempt buys from you, be certain to get the appropriate documentation for your files, and in your reporting you will be exempt from remitting tax on those types of sales.

### **BUSINESSES THAT SELL BOTH PRODUCTS AND SERVICES**

Smith Bike Shop sells both products and also provides labor services on fixing and repairing bicycles. When the ticket is written up, there is a separate charge for parts, and a separate charge for the labor that was provided. Only the parts are subject to sales tax. You do need to keep track of how much of your income comes from either parts or labor. While the labor portion is not subject to sales tax, you will be asked for the total information on your monthly sales tax report.

### **BUSINESSES THAT SELL PRODUCTS AND SERVICES, BUT BILL THEM AS A SERVICE**

I have a small home renovation company. When I quote you the job, all materials are included and I am providing a service, even though it requires some product for me to provide that service. When I go to the lumberyard to pick up my supplies, my company pays sales tax since we are the end consumer. The tax is properly paid, but I am not the one that has to keep track of it.

### **INTERNET AND MAIL ORDER BUSINESSES**

You will probably have customers both inside and outside the state. For customers who are in Oklahoma, you are required to collect sales tax on sales of products. Then the question becomes – since sales tax differs from community to community, what tax do you collect? Tax is figured on where the product is delivered. So, if I live in Weatherford, call in an order to a store in Oklahoma City and drive to pick it up, Oklahoma City gets the tax. If you know that you are going to do an internet or mail order, when you apply for your tax permit, check the box that you sell out of more than one location. You'll get the right form monthly as well as the latest information on sales tax rates for each county and community.

## OUT-OF-STATE SALES

Unless you have a significant business presence in a state, such as a store or office, you are not required to collect sales tax for other states. This will likely change at some point in the future due to the impact of the Internet and easier availability to products from other states.

## USE TAX – THE LITTLE KNOWN TAX

You may see an ad on television or receive an offer in the mail for purchase of items from an out-of-state company. After the order has been placed and the company has been billed for the purchase, you notice a charge for Oklahoma tax.

The tax charged is known as a vendor use tax, and while it is technically different from sales tax, these out-of-state vendors registered with the Oklahoma Tax Commission to remit tax collected to the State. The primary reason for use tax in the Oklahoma law, or in any other state law, is to protect in-state businesses from unfair tax discrimination where buyers try to obtain bargains by avoiding sales taxes.

Use tax laws also protect in-state business further by requiring purchasers to pay the use tax when vendors do not collect it from them. This consumer use tax, as it is called, is due whenever tangible items are purchased from out-of-state and brought into the state for personal or business use and no Oklahoma sales tax or use tax is collected by the out-of-state vendor. If you paid sales tax to the state where the item was purchased and the amount is at least as much as Oklahoma tax, you're okay. The Tax Commission registers and provides use tax reporting forms to in-state businesses who regularly purchase, for the business's use or consumption (not for resale), products from out-of-state. You can download use tax forms at <http://www.tax.ok.gov/oktax/btforms/21-3.pdf>.

Use tax rates are the same as sales tax rates for the State and for each city. Counties that already have a county tax can also adopt a county use tax in the same amount.

## FILING SALES TAX

Once you have your sales tax permit, the State will begin sending monthly sales tax reports to you for completion. Even if you have not sold anything yet, but you start getting the reports before you are completely open, fill it out and send back the report! Even if you show zero sales. This is important! You may file by mail, or online at <http://www.tax.ok.gov/qtindex.html>.

If you collect more than \$50 in sales tax per month, you'll file monthly. If under that, semi-annually. Unless you specifically choose to report semi-annually, the Tax Commission will send reports to you monthly, and if after six months you have a small volume of sales, you will pay semi-annually. The Oklahoma Tax Commission sends you a report form and a return envelope, so you will be automatically reminded.

### FOR MORE INFORMATION

We strongly encourage you to attend one of the trainings on sales tax and other taxes that the Oklahoma Tax Commission handles. You can find the schedule and register, as well as, asking questions at the Taxpayer Assistance Offices.

Statewide	800-522-8165 x 1-3160
Oklahoma City	405-521-3160
Tulsa	918-581-2399



## Employees

Many business owners start out with themselves, a spouse, or others who are in an ownership position in the company. When you add that first employee, however, there is much more paperwork to be done, and federal and state agencies to deal with.

### DO YOU HAVE AN EMPLOYEE OR INDEPENDENT CONTRACTOR?

The first thing to consider is, do you have an employee or independent contractor? In our experience, it is rare that you really have an independent contractor relationship. Most of the time we see business owners wanting to have an independent contractor relationship to avoid having to fill out the paperwork and have the costs associated with an employee. Unfortunately, that status can often be abused and misunderstood by both the employer and the “independent contractor/employee”. The Department of Labor, the Internal Revenue Service, the Oklahoma Tax Commission, and the Oklahoma Employment Security Commission are the agencies that relate to employees and trust us, you want those folks working with you in advance for compliance, not in enforcement. You can open your company up to some large fines and penalties for not following the law. Agency employees are usually very friendly and helpful on the front end.

This is sometimes confusing because the IRS, Department of Labor, and the Employment Commission have some differing opinions of who an independent contractor is and is not. From the IRS and the Oklahoma Tax Commission standpoint, the interest is in the employee’s Social Security and income taxes. The Department of Labor is interested in Worker’s Compensation Insurance and the Employment Security Commission is interested in the unemployment taxes for when an employee is laid off. It is possible to have an independent contractor according to the IRS, but an employee according to the Department of Labor.

### HOW DO YOU TELL THE DIFFERENCE?

In general, someone who performs services for you is your employee if you can control what will be done and how it will be done. The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. They fall into three main categories:

**Behavioral Control** – Facts that show whether the business has a right to direct and control. These include:

Instructions – an employee is generally told:

- when, where, and how to work
- what tools or equipment to use
- what workers to hire or to assist with the work

- where to purchase supplies and services
- what work must be performed by a specified individual
- what order or sequence to follow

**Training** – an employee may be trained to perform services in a particular manner

**Financial Control** – Facts that show whether the business has a right to control the business aspects of the worker’s job include:

- The extent to which the worker has unreimbursed expenses
- The extent of the worker’s investment
- The extent to which the worker makes services available to market outside the company
- How the business pays the worker
- The extent to which the worker can realize a profit or loss

**Type of Relationship** – facts that show the type of relationship include:

- Written contracts describing the relationship the parties intended to create
- Whether the worker is provided with employee-type benefits
- The permanency of the relationship
- How integral the services are to the principal activity of the company

## **EMPLOYEES MEAN MORE PAPERWORK AND TAX BURDEN**

OK, when getting to the next part, don’t get too overwhelmed. Whenever you add employees, you will add greatly to your paperwork, as well as, to your tax burden. There is an easier way, and a way that will keep you within the law and obligations. This is one of those items where we believe you will do better to pay someone to help you with this.

Choices include:

- Hiring a payroll service such as Paychex, or ADP. Look in the local Yellow Pages under Payroll Services.
- Have an accountant or bookkeeper prepare this for you. The Oklahoma Society for CPAs has a referral service and you may ask for a free 30 minute consultation. <http://www.oscpa.com>
- Hire the employee through a temporary service or Employee Leasing Service. The advantage of this is that while the hourly rate will be higher, they take care of related employer costs such as worker’s comp, withholding and so forth, and can offer additional benefits, such as group health insurance.



Internal Revenue Service – [www.irs.gov](http://www.irs.gov) – 1-800-829-1040. Note that there are taxpayer assistance offices in Oklahoma City, Tulsa, Enid and Lawton where you can walk in and ask for assistance. Numbers and locations can be found at <http://www.irs.gov/localcontacts/index.html>.

Oklahoma Employment Security Commission – [www.oesc.ok.gov](http://www.oesc.ok.gov)  
888-980-WORK (9675) Toll Free or 405-557-7100

Oklahoma Tax Commission – [www.tax.ok.gov](http://www.tax.ok.gov) or call 405-521-3108

Federal Online Calendar of when federal items are due:  
<http://www.tax.gov/calendar/>

(Note: If you use Mac's icalendar, you can subscribe to dates <http://www.apple.com/ical>)

NOTE: All forms mentioned here are available on the download page at [www.osbdc.org](http://www.osbdc.org).

## **BEFORE THE EMPLOYEE IS HIRED:**

Get your Employer Identification (EIN or Tax ID) Number - file online at [www.irs.gov](http://www.irs.gov)

OES-1 Employer Status – (Oklahoma Employment Security Commission) – this form is used for state unemployment insurance (SUTA). Note that when you apply for an EIN, this will automatically be sent to you.

## **WHEN THE EMPLOYEE IS HIRED:**

Form I-9 Employment Eligibility Verification - [www.uscis.gov](http://www.uscis.gov)

What this does is makes certain your employee is legally eligible to work in the United States. The I-9 should be held in your personnel records file.

W-4 Withholding Certificate – most of us are familiar with this – it tells an employer how much to withhold for income tax purposes.

W-9 Taxpayer Identification Certificate – this is like a W-4, but for Independent Contractors who work for you.

OES-112 New Hire Report – Each time a new employee is hired, this is to be reported. You may file online at [www.oesc.ok.gov](http://www.oesc.ok.gov) and click on New Hire Reporting.



## QUARTERLY PAPERWORK

Form 941 – Report FICA and Federal Withholding – This is an IRS form to be filed quarterly, you will send in the employee’s tax withholding and Social Security taxes as well as the employer’s Social Security match. If your business grows, you may have to pay monthly, but not typically for a new business.

OW-9 – Oklahoma Withholding Forms – From the Oklahoma Tax Commission. This form is filed quarterly, UNLESS you withhold more than \$500 per quarter in state withholding, then you must file monthly. Not typical for a new business. This tax may now be paid electronically at <http://www.oktax.state.ok.us/oktax/quicktax.html>.

## AT THE END OF THE YEAR FORMS

W-2 – Report at the end of the year showing withholding for employees. Forms are from the IRS, but are sent to the Social Security Administration at the end of the year. You may file this electronically at <http://www.socialsecurity.gov/employer/>.

**1099** – This is for reporting what you paid Independent Contractors for the year.

**Form 940** – Federal Unemployment Tax (FUTA). Paid annually, unless your tax is more than \$100 per quarter, then paid quarterly. Again, typically for a new business, this will be annually.

## Licenses and Permits

Many businesses and occupations require some form of license, permit, or bond in order to operate in Oklahoma. Some regulated businesses include plumbers, electricians, doctors, attorneys, beauty shops, and pawn shops, to mention a few.

The requirements for businesses are set by elected officials, such as city council, state legislatures, US Congress, and these requirements may change from time to time as the laws are updated and changed.

You will want to check requirements from the governments of:

- City
- County
- State
- Federal

Your local OSBDC office can help provide some information. Also, nearly every kind of business falls under some sort of professional or trade association. These state or national associations can also be very helpful in providing information.

### OKLAHOMA BUSINESS LICENSING SYSTEM

[www.okonestop.com](http://www.okonestop.com)

(800) TRY OKLA (879-6552)

This has been set up to help a new business through any state licensing information which is provided by the Oklahoma Department of Commerce. This does not address any local, county, or federal guidelines, and before searching on the website, you will be asked to agree to a disclaimer, because they do their best to keep up, but items change from time to time.

If you use the website, it will ask you, not only what specific type of business you have, from a long list of businesses, but then you will be asked a series of questions talking about employees, the legal structure of the business, where the business was incorporated, and so forth. All of these questions are designed to help you get the proper forms, depending on the legal structure you have and if there are any other state requirements. After you answer the questions, it will come up with a list of forms and/or agencies to contact, if appropriate. Again, remember, that these are state forms and information.

### HAZARDOUS WASTE

There are some businesses that deal with various kinds of wastes, examples include: solvents, dry cleaning, paints, pesticides, airborne particles. You may want to check with the Oklahoma Department of Environmental Quality to see if you need to comply with any of their rules.

## OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

[www.deq.state.ok.us](http://www.deq.state.ok.us)

800-869-1400 customer service

On the website, go to the customer service page, then go to Public Information – Fact Sheets to look at information regarding specific industries.

### FEDERAL PERMITS

There are some businesses that may be federally licensed, such as giving investment advice, ground transportation, broadcasting and those involved in the production of medical drugs or biological products, producing alcohol or tobacco products, making or dealing in firearms, and preparation of meat products. [www.business.gov](http://www.business.gov) can be helpful in researching what you may need in terms of federal permits.

# Insurance

There are several kinds of insurance you may need, or want to have. This booklet is written for the new business. You may not need or be able to afford, right at the beginning, all the kinds of insurance that you would like to have, especially when it comes to health insurance benefits. As the business grows, however, the more your insurance needs will grow. You will have more to lose and will want to be able to protect that which you have worked hard in acquiring.



## WHERE TO START YOUR INSURANCE SEARCH FIRST

Begin with your current insurance agent. Usually the agent who already has your home or car insurance will be interested in seeing if he or she can fill all your insurance needs.

## DON'T FORGET TRADE AND PROFESSIONAL ASSOCIATIONS

Every business of your type will have similar insurance needs. Sometimes those associations will work with insurance providers who can offer good products and prices because they become knowledgeable about an industry and specialize in that industry or they will know carriers who insure the industry.

## BUSINESS INSURANCE SPECIALISTS

You may find that the company that carries your personal insurance is not able to help you with business insurance especially with liability insurance or bonding. There are companies that specialize in working with businesses. Look in the local Yellow Pages for local agents.

## TYPES OF INSURANCE

### PROPERTY AND CASUALTY

#### COMMERCIAL LOCATION

If you are in a commercial location you will want to have property and casualty insurance. If you own the building, which is not likely for a new business, you'll have insurance on the structure itself. But as a new business owner, you will likely either be renting a commercial location or based out of your home. If you are renting, no matter what insurance the building owner has on the structure, you will not be covered. You will need insurance on your contents. There are sometimes other kinds of specific riders that can be attached if you wish and can afford, such as a specific rider for glass breakage might be advantageous if you have a retail location and large plate glass windows.

## HOME-BASED BUSINESSES

If you currently have homeowner's insurance, your business property may also be covered. Contact your insurance agent regarding what your current policy may or may not cover. You might need to purchase a separate rider for your business insurance. Another term to ask your insurance agent about is a wrap around policy.

If you rent your residence, then you will want to look at renter's insurance to cover your personal property, which, hopefully, will also take care of your business property.

## GENERAL LIABILITY

This can cover different kinds of liability. Again, discuss with your agent as to what specifically might be covered under liability. For example, if you are in a commercial location, you'll want general liability in case someone comes in your place of business and slips on the floor and gets hurt. You might have product liability on a product you make. For example, say you manufacture ladders. The risk is that the ladder could fail, causing harm or death to the customer. Or, you may be in a profession that provides advice, such as an attorney or accountant, and would want a specific kind of liability insurance called errors and omissions insurance. Your insurance agent can advise you. It's not unusual to have a minimum \$1 million policy. Rates will depend on various factors such as the size of building, the number of employees, and the potential risk factors. If motor vehicles are used commercially, personal auto insurance may not cover your activity.

## WORKER'S COMPENSATION INSURANCE — IF YOU HAVE EMPLOYEES

If you have employees, this is a type of insurance that is absolutely required by law. Rates will depend upon the risk factor of the job. For example, worker's comp for an employee who is a roofer will be at more risk and cost more than an office worker.

## WHERE TO GET WORKER'S COMP INSURANCE

While we suggest starting with your insurance agent in asking about Worker's Comp, you will likely find that the insurance through the State of Oklahoma (Compsource) will be the best option. It can be hard, especially for a new company, to get Worker's Comp insurance.

### CERTIFICATE OF NON-COVERAGE

**Note** – if you are the owner, you are not required to carry Worker's Comp insurance on yourself. However, some companies, such as a company in the construction trade who works for a lot of general contractors may be asked for proof of coverage. If you are not subject to worker's comp because of the ownership situation, you may apply for a Certificate of Non-Coverage from the Oklahoma Department of Labor, which tells them you are not subject to Worker's Comp. This form can be downloaded from the OSBDC website or Oklahoma Department of Labor.

## **COMPSOURCE**

[www.compsourceok.com](http://www.compsourceok.com)

405-232-7663 or

1-800-347-3863

Talk to them about quotes, and you can also request quotes online. Additionally, some payroll services provide human resource services which may include Worker's Comp.

## **LIFE INSURANCE**

If you get a loan to begin your business, the principals of the company may be asked to take out an insurance policy in the amount of the loan with the lender named as beneficiary. If, for some unexpected reason, you die, then the loan is paid off. Nobody likes to think about that sort of thing, but it does happen.

## **FIDELITY BOND (ASSURANCE BOND)**

Helps a company or client cover losses due to employee dishonesty at the place of business or at a client's location. For example, bank employees are usually bonded. The next time a plumber or contractor comes to your home or business to do work, you may notice the phrase "licensed and bonded" on their business card. A fidelity bond is what the bonded part means.

## **SURETY BOND**

This is for construction companies and is insurance that they will complete the job they have been contracted to do. Usually a surety bond is required for a larger job, or job that might be done for a governmental agency. It is less than usual for a brand new business to need to get a bond. It is also very difficult as a brand new company to get a bond because it requires the same underwriting as it does to get a loan. Often a young company will be required to post 100% of the face value of the bond in order to get that. That's quite prohibitive from a financial standpoint, so you will see young companies in the construction industry begin as subcontractors.



## Credit Card Sales

In today's society, many transactions are done by credit and debit card versus cash and checks. Obviously, many businesses want to be able to handle selling services and products by using the customer's card.

To take credit cards, you will need to set up what is called a Merchant Account.

### HOW TO FIND A MERCHANT ACCOUNT VENDOR.

- Call the bank that has your business checking account
- Search the Yellow Pages classification under Credit Cards – Merchant Services.
- Talk with your industry trade and professional association to see if they have a service that specializes in your industry.
- Talk to people you do business with as to who they use and their satisfaction with the service.
- Search the Internet – you'll find lots of hits here, however, it will be harder to distinguish reputable companies from those who are not. We'd recommend the previous options first.

### A MERCHANT ACCOUNT IS LIKE A LOAN

In a very real sense, the bank or institution that is providing a merchant account to you is taking a risk and loaning money. While the card might be approved, there are also opportunities for returns, for refunds, and for finding out that someone had made a fraudulent charge to a card. There are a number of reasons that a charge is reversed and then it comes out of your account automatically. If you are running your balances very close, it could cause a problem, not only for the merchant account provider, but for you as well.

Your company will be evaluated and charged fees, partly by how risky your transactions are, and the perceived risk of the business. Since this publication is geared toward a new business, you'll likely get charged the higher fees until the company can see a track record of how much money you run through them, what is your dispute record, and how has your account been handled over time. After you've been in business a year, contact your merchant services again. Ask them to review your account and if they will lower your fees. The worst they can say is no, and if you can save a little on the fees, it goes directly to your bottom line.

### WHAT YOU NEED TO KNOW ABOUT THE LAW AND CREDIT CARD PURCHASES, DISPUTES AND RETURNS

There are certain safeguards that are provided by law to the consumer who purchases via credit cards. A customer has the right to dispute a transaction within 60 days of receiving their statement. On products, the consumer has up to a year to dispute a charge. When an amount is disputed, the merchant service will deduct that amount from your businesses checking account. If it is resolved in

your favor, then the money is put back into your account. This means that every single dollar that comes from a credit card sale is "provisional". It could possibly be disputed and taken away from your account. Obviously, a concern for your new business is that you have few disputes and that if an amount is charged back, that you have the money in the account to cover it.

## **HOW A BUSINESS TAKES THE LEAST AMOUNT OF RISK WITH CREDIT CARD SALES**

A company that deals in merchant accounts will evaluate how you do business. Do you see the customer face to face? If the answer is yes, you have lessened your risk. Your company should have a policy of verifying signatures and IDs, and to see if the signature on the card matches the signature on the slip, and your company needs to keep the slip. If there was ever a dispute, it's much harder for a customer to say he or she did not buy the item when it was purchased in your place of business and you have an actual signature on the charge slip.

The problem is, that if it is a telephone, fax, or Internet purchase, there is no face-to-face contact. There is no way to truly identify this person as well as the face-to-face type of encounter, and there is no signature. This is a higher risk. It is now common practice for a merchant to ask for the three-digit security code on the back of the card, which lessens the risk of fraud that the customer probably has the actual card in hand.

## **EQUIPMENT/SETUP NEEDS AND FEES**

There are a number of different options available, ranging from the portable card stamp, to the swipe card, to telephone touch keys, to software based and web-based applications. Each merchant account provider can give you information on the options. However, be aware that the laws of Oklahoma have changed and due to security and identity theft issues, the method you use must "mask" the numbers on the card with the exception of the last four digits.

There are different fees that are charged. Some are done on a monthly basis plus a percentage of each charge. Some are based only on the amount charged. Some will charge you a little more if you take a card via the Internet but don't have the three-digit security code. Visa fees can be different from Master Card, American Express or Discover. It's dizzying at times. But it is a necessary evil. While each charge sale costs you, and those charges can be substantial if you do a lot of volume, you probably wouldn't be able to do the volume of business without them.

## **INTERNET BASED ACCOUNTS**

There have been some major advances for even a small home-based business to accept credit cards without having to have a full-f edged merchant account. Probably the largest and most popular of these is [www.paypal.com](http://www.paypal.com). Paypal provides a wonderful niche, especially for people dealing with online auctions and selling from web pages to buy and sell in a safe and secure way. You can even accept money from a number of other countries as well. If you do any online auction sales, we absolutely recommend having a Paypal account. You are not charged a monthly fee, but only an amount on the items actually paid for in this manner.



## Credit Reports and Information

You'll find that when you start your new business, your personal credit will be an issue. Lenders and suppliers have a rule of thumb that you will handle your business finances the same way you do your personal finances. If you do well in handling your personal finances you'll probably do the same with your business finances. The opposite is true as well!

We recommend pulling up your credit report and credit score to see what it is, if it is correct, and try to take care of items that might affect your ability to get a loan or a trade account. According to the Public Interest Research Groups, 4 out of 5 credit reports contain errors!!! There are things that happen that affect credit – accidents, medical bills, and divorces can have an impact and so forth. You need to know what is there, in case you need to provide any explanations.

### CREDIT SCORE

This is a number that is given to you based on a number of different factors including paying your bills on time, how long accounts have been open, the amount of credit available to you, the amount of credit you have used, if you've been repeatedly seeking credit, and so forth. Do be aware that if you pull your own credit report online or via the phone, it will not count against you on points. There will be a small charge for this.

This number is extremely important for lenders, and it tells them the likelihood of your repaying bills. The magic minimum number lenders want to see is 650. The higher you are, the better risk you are, the more likely you are to get a yes from the bank, and get the best available interest rate. When you pull your report online, often the reporting bureau will have tips for raising your score.

### CREDIT REPORTING COMPANIES

Experian -	<a href="http://www.experian.com">http://www.experian.com</a>	888-397-3742
Equifax -	<a href="http://www.equifax.com">http://www.equifax.com</a>	800-685-1111
Trans Union -	<a href="http://www.tuc.com">http://www.tuc.com</a>	800-916-8800

### Consumer Credit Counseling of Oklahoma <http://www.ccsok.com> 800-364-2227

This is a reputable, non-profit United Way agency that helps people get out of debt without bankruptcy and learn to manage their finances and debt. We have seen them be extremely helpful for potential business owners who have needed some help in this area. If your personal credit is a mess, a lender will not say yes to a loan. They have relationships with many creditors and history with them that allow them to work with you to better your finances, and can work out arrangements with these companies much better than you could ever do on your own.

### Beware the scams

While there are other debt management organizations out there, many are private businesses, and some are not reputable. Some groups will offer to totally clean up your credit for you. Don't believe it. They won't do anything you can't do to help yourself, and good credit comes from paying your bills on time, over time.

## Grants

We get questions all the time by people who have bought books, attended seminars and paid hundreds of dollars for materials that swear there are grants for everything, including free money to start their business. **We've never seen it.** What we see are promoters who make a great deal of money selling hope, often to the very people who cannot afford to lose hundreds of dollars.

Those books and seminars provide information that will lead you to program information and assistance programs like ours. Their materials are very, very carefully worded. No doubt teams of their lawyers have looked at what they say, so they are leading you to contact assistance groups and state or local resources, which is true. Do people find free money to start their business? No. SBA has never had free money to start a business in the 50 plus years of the agency's existence. There is not, nor has there ever existed, free money from the State of Oklahoma programs to begin a for-profit business.

### **NON-PROFIT (NON COMMERCIAL COMPANIES) CAN BE ELIGIBLE FOR GRANTS.**

If you are a non-profit, what is called a 501 (c) 3, then you can receive charitable donations. But that is not a small business. A non-profit corporation is generally for a charitable, religious, educational or civic purpose, such as arts organizations, low-cost medical clinics, city beautification organizations, homeless shelters, just to name a few examples.

For information on grants for non-profits, you may want to look at the Oklahoma Foundation Directory or other foundation directories. Contact your local public library to see if that is on their shelves. Because the SBA has gotten these kinds of requests for years as well, they have put together a listing of grant resources that you can search online for free. Save your money and spend a bit of time. <http://www.sba.gov/expanding/grants.html>.

### **SOME POTENTIAL EXCEPTIONS**

The Oklahoma Department of Agriculture has a loan/grant program for Agricultural Enhancement and Diversification. Contact 405-522-5515 for information.

Also, see the section in this book on technology and incentives and potential grants for these kinds of businesses.

# Patents

Patents are very complicated. Since there are more new businesses that go into business than need patent help, this section will hit only highlights. For more detailed information, see the assistance providers under Inventors, or visit the U.S. Patent and Trademark Office

## US PATENT AND TRADEMARK OFFICE

[www.uspto.gov](http://www.uspto.gov)

800-786-9199

### WHAT IS A PATENT?

A patent is a grant of a property right by the federal government to give the inventor the exclusive right to exclude others from making, using, or selling the invention. Patents are granted for a term of 20 years (14 years for design patents) which may be extended only by a special act of Congress (except for certain pharmaceutical patents). After expiration of the term, the patentee loses rights to the invention.

### TYPES OF PATENTS – THE PATENT LAW PROVIDES FOR THE GRANTING OF PATENTS IN THREE MAJOR CATEGORIES:

**Utility Patents** – Utility Patents are granted to anyone who invents or discovers any new and useful process, machine, manufacture, or compositions of matter, or any new and useful improvement thereof. "Process" means a process or method; new industrial or technical processes may be patented. "Manufacture" refers to articles which are made. "Composition of matter" relates to chemical compositions and may include mixtures of ingredients, as well as, new chemical compounds.

**Plant Patents** – Plant Patents are granted to any person who has invented or discovered and asexually reproduced any distinct and new variety of plants, including cultivated spores, mutants, hybrids, and newly found seedlings, other than a tuber-propagated plant or a plant found in an uncultivated state.

**Design Patents** – Design Patents are granted to any person who has invented a new, original, and ornamental design for an article of manufacture. The appearance of the article is protected.

## **PATENT PENDING**

The terms “patent pending” and “patent applied for” are used by a manufacturer or seller of an article to inform the public that an application for a patent on that article is on file. A fee is imposed on those who use these terms falsely.

## **PATENT PROTECTION IN FOREIGN COUNTRIES**

The United States patent protects your invention only in this country. Normally a license must be obtained from the Commissioner of Patents and Trademarks before you can file for a patent in another country, unless the filing in another country occurs more than six months after the filing in this country, in which case no license is necessary.

## Copyright Basics

Like patents, copyrights can be complicated. We are providing only very general and basic information since most new businesses will not be filing copyrights. The Library of Congress is the entity that handles copyrights.

### LIBRARY OF CONGRESS

[www.copyright.gov](http://www.copyright.gov)

202-707-3000

### WHAT IS A COPYRIGHT?

Copyright is a form of protection provided to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the copyrighted work in copies or phonorecords (recordings).
- To prepare derivative works based upon the copyrighted work.
- To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.
- To perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial graphic or sculptural works, including the individual images of a motion picture or other audiovisual work, and sound recordings and architectural works.

### WHO CAN CLAIM COPYRIGHT?

Copyright protection subsists from the time the work is created in fixed form; that is, it is an incident of the process of authorship. The copyright in the work of authorship immediately becomes the property of the author who created it. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is considered to be the author.

## WHAT WORKS ARE PROTECTED?

Copyright protects “original works of authorship” that are fixed in:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

These categories should be viewed quite broadly: for example, computer programs and most “compilations” are registrable as “literary works”; maps and architectural plans are registrable as “pictorial, graphic, and sculptural works.”

## WHAT IS NOT PROTECTED BY COPYRIGHT?

Several categories of material are generally not eligible for Federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression. For example: choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded.
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listings of ingredients or contents.
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration.
- Works consisting entirely of information that is common property and containing no original authorship. For example: standard calendars, height and weight charts, tape measures and rules, and lists or tables taken from public documents or other common sources.

## HOW LONG COPYRIGHT PROTECTION ENDURES

### WORKS ORIGINALLY CREATED ON OR AFTER JANUARY 1, 1978

A work that is created (fixed in tangible form for the first time on or after January 1, 1978) is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author’s life, plus an additional 70 years after the author’s death. In the case of a “joint work prepared by two or more authors who did not work for hire,” the term lasts for 70 years after the last surviving

author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 95 years from publication or 120 years from creation, whichever is shorter.

For works created before January 1, 1978, whether not published or created and published before that date, there are specific rules. Again, for the purposes of this book, we make the assumption that your copyrightable items are newer than this. You may seek more information from the Library of Congress.

## **COPYRIGHT REGISTRATION**

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. However, except in one specific situation, registration is not a condition of copyright protection. Even though registration is not generally a requirement for protection, the copyright law provides several inducements or advantages to encourage copyright owners to make registration. Note that if you ever file a copyright infringement suit in court, registration is necessary for works of U.S. origin.

## **APPLICATION FORMS**

Forms may be downloaded from [www.copyright.gov](http://www.copyright.gov).

## Bar Codes/UPC Symbols

; **GS1** UNIFORM CODE COUNCIL, INC.

[www.gs1us.org](http://www.gs1us.org)

(937) 435-3870

It is not required that you have a bar code on your product. Some retail outlets, however, will require that it be coded, so it may depend on where your product is initially being sold and if the fee is not prohibitive to your company. There is an annual membership fee which starts at \$625 and increases based on your annual sales (in Millions of US \$).

To get an official bar code, you will need to file a membership application with GS1. You may register in two ways:

**Online** – go to the website, complete the online form, and pay via credit card.

**Mail** – get the online form, print it out, complete it and mail it.

**NOTE:** You cannot register by phone.





## Home-Based Businesses

Having a business run from the home can be a great thing. It can keep your overhead extremely low and may easily help the start-up of a part-time business grow into a full time business. Here are a few hints in keeping your home-based business productive and legal.

### TELEPHONE

You can have a separate business telephone line installed in your house. While a business line can be a bit more expensive than a residential line, it offers some advantages. If you have a business telephone line, your business name will be listed in the white pages as well as a basic listing in the yellow pages. One of the issues that home-based business often face is one of "legitimacy" – are you really a business, or someone just dabbling. Being in the business pages can be very helpful in having people find you. There are internet directories that people can search for business listings in an area.

Also, you can get the feature of phone forwarding, and if you are in and out a great deal, the phone can be forwarded to a cell phone, for example, so that you can answer your calls whether you are in the office or not.

### THINGS THAT CAN GET YOU INTO TROUBLE

Often, communities are reactive in terms of problems with home-based businesses. That means they are not out seeking violations, but will respond to citizen and neighbor complaints. The ordinances are written to protect the neighborhood – to make sure that a home-based business does not take away from a residential area and turn it into a commercial property or street.

### ZONING

Every community has rules on home-based businesses. Cities and towns call these home occupation ordinances, so when you call City Hall, you'll get to the right people faster if you use that phrase. For cities and larger communities, there may be a separate zoning department.

### TRAFFIC

While a once a day delivery from the postal service may not be a problem, if you have a constant stream of deliveries or clients coming to and from your home, that would be an issue.

## **WAREHOUSING**

Your house or garage is not intended to be a warehouse for your goods. Some gray areas here, but if your garage is full of inventory, you'd probably be in violation. If a closet in your home contains all your inventory, you're probably fine.

## **RETAIL OPERATIONS**

If you have a retail store set up in your home, you're in violation. If you sell Avon, Mary Kay, or online sales, you're probably OK.

## **SIGNAGE**

Each community is different. Some communities allow no signs whatsoever on the property. Some may allow a few square feet attached directly to the dwelling. Big flashing signs and neon lighting can pretty well assure you of violation.

## **FORBIDDEN BUSINESSES**

There may be certain businesses that are absolutely forbidden. Though this will vary from community to community, usually beauty shops, auto repair shops, manufacturing of jewelry are some that are usually forbidden. Often it will relate to chemicals that are typically used in the business, or aesthetic problems. For example, a home auto repair shop with several cars in disrepair waiting in the driveway and on the street would definitely detract from the residential area and guarantee to make your neighbors angry, and justifiably so.

## **RESOURCE FOR HOME-BASED BUSINESSES**

Oklahoma Small Business Development Centers work with many home-based businesses and can help you through setting up your business in a way that is good for you, as well as, your neighbors. Additionally, through the Oklahoma Cooperative Extension Service, there are many resources for home-based businesses.

## **OKLAHOMA COOPERATIVE EXTENSION SERVICE**

Home-Based and Micro Business

<http://www.fcs.okstate.edu/microbiz>

Dr. Glenn Muske

Oklahoma State University

405-744-9931

# Technology Companies

## OKLAHOMA CENTER FOR THE ADVANCEMENT OF SCIENCE AND TECHNOLOGY (OCAST)

[www.ocast.state.ok.us](http://www.ocast.state.ok.us)

405-524-1357

OCAST is the state's only agency focusing solely on technology and its development, transfer, commercialization, and impact on our state's economy. OCAST's legislative mandate is to 1) Support basic and applied research and development (R&D); 2) Facilitate technology transfer and commercialization (SBIR/STTR); 3) Stimulate seed-capital investment in firms commercializing new technologies; 4) Encourage manufacturing competitiveness through modernization.

### OCAST SERVICES INCLUDING:

- Seed funds for human health research
- Matching funds for research with commercial potential
- Assistance with the cost of preparing SBIR proposals
- Modernization assistance for small and medium-sized Oklahoma manufacturers
- Instruction in preparing applications for OCAST peer reviewed funding competitions
- Written expert commentary on all proposals submitted to OCAST funding competitions
- Development of state proposals and management of grants to the state of federal funds
- Supporting manufacturing extension, technology transfer, and commercialization
- Information on federal research and technology transfer opportunities for businesses
- Assistance for small Oklahoma firms with accessing and using federal and state technology resources

For information about current programs, please visit their website at [www.ocast.state.ok.us](http://www.ocast.state.ok.us).

## **OKLAHOMA TECHNOLOGY COMMERCIALIZATION CENTER (OTCC)**

<http://www.otcc.org>

(405) 235-2305 Oklahoma City

(918) 582-5592 Tulsa

1-800-337-6822 Statewide

This is a subgroup of OCAST. This group is operated by i2E, Inc., and this is designed to grow Oklahoma technology related businesses. Because this is very specialized, call, or go to the website.

## **SMALL BUSINESS INNOVATION RESEARCH (SBIR) GRANTS**

This is actually one grant (as in money that need not be paid back), but the key words are Innovation and Research. Also, these are not for start-up companies, but typically those who have been in business several years. The purpose of these grants are to: 1) stimulate technological innovation 2) use small business to meet federal research and development needs; 3) encourage participation by disadvantaged and minority persons in technological innovation; and 4) increase private sector commercialization derived from federal research and development. You may search the agencies that have SBIR grants at <http://www.sba.gov/aboutsba/sbaprograms/sbir/index.html>.

# Oklahoma Department of Agriculture

[www.okag.state.ok.us](http://www.okag.state.ok.us)

405-521-3864

## CONSUMER AWARENESS/MARKETING PROGRAMS

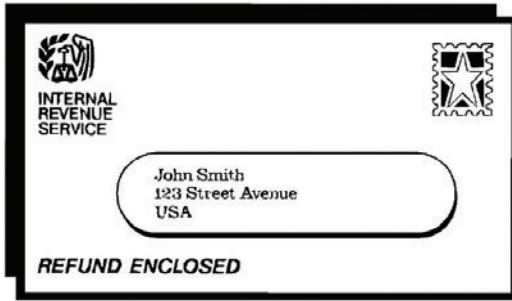
The Department of Agriculture through their Marketing Development Division has two programs that assist those that have food products with consumer programs. These programs are "Made in Oklahoma" and "Grown in Oklahoma". [www.madeinoklahoma.net](http://www.madeinoklahoma.net)

## INTERNATIONAL SALES

The Department of Agriculture also encourages the sale of Oklahoma grown products, both raw and processed.

## LABELS FOR FOOD PRODUCTS

There are many rules regarding what information must be included on food labels. The Food and Agricultural Products Center (FAPC) at the Oklahoma State University developed a great fact sheet called "Food Labeling Made Simple" which can be downloaded from their website, <http://www.fapc.okstate.edu/files/factsheets/fapc119.pdf>. They offer a variety of services and educational workshops which you may find useful. For more information, visit <http://www.fapc.okstate.edu/index.html>. You may also contact Tyler Hicks at (405) 522-5968 for information on labels.



## Internal Revenue Service (IRS)

Many business owners find learning about what the IRS needs from them a very daunting task. Over the last few years, the IRS has worked hard in doing a better job with taxpayer information. If you understand what is needed of you, the more likely you are to comply. Education and information is always preferable over enforcement.

### IRS WEBSITE

[www.irs.gov](http://www.irs.gov)

800-829-1040

### MONTHLY TAX TRAINING – OKLAHOMA CITY AND TULSA

The OSBDC works with the IRS on providing monthly tax training in both the Oklahoma City and Tulsa metro areas. Go to [www.osbdc.org](http://www.osbdc.org) and look at the workshop offerings to see what training is available on the topic or call the following OSBDC offices:

Rose State College SBDC (405) 733-7348

NSU SBDC – Broken Arrow Satellite (918) 449-6280

### INFORMATION AND FREQUENTLY ASKED QUESTIONS

IRS forms and publications can be downloaded from the IRS website. There is a great deal of information on the site, and they've made it very easy to go from the home page to the small business page. They have a number of different FAQs (frequently asked question) pages on many topics.

### ONLINE TRAINING

There are also some online training modules for information that can be quite helpful. It's best if you are using a broadband connection.

#### DIGITAL DISPATCH EMAIL LIST

You may also sign up for an email list, generally received weekly, which has information for small businesses. Because it has broad coverage, much will probably not apply to your specific business, but there are items that will be of interest.

Go to [www.irs.gov](http://www.irs.gov)

## LOCAL OFFICES WITH WALK-IN ASSISTANCE

There are several offices located through the state where you can walk in for assistance. Sometimes it is much more comfortable and less intimidating to deal with a person face-to-face. Call for specific hours of service.

Oklahoma City, 55 N. Robinson	405-297-4057
Tulsa, 1645 S. 101 <sup>st</sup> East Ave	918-622-8482
Enid, 601 S. Harding	580-234-5417
Lawton, 2202 SW A Avenue	580-357-5492

# Oklahoma Department of Commerce

[www.okcommerce.gov](http://www.okcommerce.gov)

900 North Stiles

P.O. Box 26980

Oklahoma City, OK 73104

405-815-6552 or 1-800-879-6552 (1-800-TRY-OKLA)

Oklahoma's commerce department serves as the state's lead agency for economic development. The department supports community and business development in the state through information, and various assistance programs and services. In providing assistance, the agency works closely with individual communities, chambers of commerce, local and regional economic and business development organizations, existing businesses and industries, and domestic and international business prospects.

The major divisions of the department (Business Locations, Business Solutions, Export Solutions, Community Development, Main Street, and Research) administer or provide several programs and services.

For **Small Business**, the department provides general information and serves as an initial point of contact for numerous calls and inquiries. Under the department's Business Solutions Division, information and referral assistance is provided regarding several areas:

- Normal sources regarding small business loans, financing and planning development assistance, in general, including the loan guaranty, and other special assistance programs under the U.S. Small Business Administration (SBA).
- Determining what state licenses, permits, or registrations may be needed to start or to operate a particular type of business.
- Referral to other assistance sources such as existing programs relating to exporting, business incubators, inventions, improved manufacturing functions, and other areas.
- Minority business assistance programs, including "minority-owned certification" sources.
- Women-Owned business certification and assistance.

Persons trying to start or expand a small business are invited to contact the department for information and referral assistance.

**OKLAHOMA'S ADVANTAGE**  
OKLAHOMA DEPARTMENT OF COMMERCE



## Oklahoma Small Business Development Center @WJcwg

East Central University  
E 12th St & S Francis St  
Administration Bldg Rm 251  
Ada, OK 74820  
(580) 436-3190

Southeastern Oklahoma State  
University  
301 W University Blvd  
Durant, OK 74701  
(580) 745-2954

Northeastern State University  
3100 E New Orleans  
Bldg A Suite 325  
Broken Arrow, OK 74014  
(918) 449-6280

Southwestern Oklahoma State  
University - Weatherford  
301 E Davis St  
Ctr for Economic & Business  
Development  
Weatherford, OK 73096  
(580) 774-7095

Northeastern State University  
2400 W Shawnee St Rm 146  
Muskogee, OK 74401  
(918) 444-5412

Southwestern Oklahoma State  
University - Lawton  
711 SW D Suite 203  
Lawton, OK 73501  
(580) 248-4946

Northwestern Oklahoma State  
University - Alva & Woodward  
1038 8th St  
Shockley Hall Rm 107  
Alva, OK 73717  
(580) 327-8608

University of Central Oklahoma  
One Santa Fe Plaza Suite 100  
Oklahoma City, OK 73102  
(405) 232-1968

Northwestern Oklahoma State  
University - Enid  
2929 E. Randolph Rm 124  
Enid, OK 73701  
(580) 213-3197

Langston University  
4205 N Lincoln Blvd Rm 112  
Oklahoma City, OK 73105  
(405) 530-7519

Northwestern Oklahoma State  
University - Ponca City  
Pioneer Technology Center  
2015 N Ash, Ste D118  
Ponca City, OK 74601  
(580) 718-4285

Rose State College  
1720 Hudiburg Drive  
Professional Training and  
Education Center  
Midwest City, OK 73110  
(405) 733-7348

Visit our website at [www.osbdc.org](http://www.osbdc.org) for more information and to sign up for business counseling or upcoming workshops in your area.

# Notes