

## **LLC / S CORP and Insurances**

The following information outlines business structure options when speaking to Artists about why they need WC and should protect themselves (and their representatives) by not only having \*required\* insurances, but a properly formed company. This is for informational purposes only. It has not been prepared by a lawyer or tax specialist. Members are recommended to consult with their legal and tax advisors.

Even when you're the only one in your business, tax and legal matters are inevitable. When it's just you, YOU are the one who has to handle them, so it is crucial to know the best legal and tax structures for your business, the difference between S Corps and LLCs, and how to identify the benefits of each.

LLCs and S Corps are not opposing options, but in fact work together to provide legal and tax benefits for your business. You will also need appropriate business insurance(s), including General Liability and Worker's Compensation.

### **The Difference between LLC and S Corp**

- An LLC or Limited Liability Company, like a corporation, is a legal structure for a business that separates your personal and business assets and protects your personal assets from business liabilities. Forming an LLC also doesn't affect your taxes compared with operating as an individual or independent contractor, since, if you form an LLC without electing S Corp taxation, you will be taxed as a sole proprietorship by default. (See S Corp taxation below).
- An S Corp or S Corporation is NOT a legal or business structure, but rather a tax election for a business legal entity (whether a corporation or LLC), which determines how it is taxed at the federal and state levels. This election could reduce the amount of income on which you pay "self employment tax".

When you work solo as a freelancer, you are the business. There's no distinction, which means you pay personal taxes on everything you make through your business, and all of your personal assets are fair game if you're sued or owe debts.

In either case, formalizing as a legal structure could help you take advantage of the liability protection and tax benefits that come with separating yourself from your business.

**LLC** is the most common legal structure for a small business – other options include partnership or corporation. A single-member **LLC** – an LLC with just one owner/employer, YOU – will be taxed just like a sole proprietorship, meaning you'll be taxed as if you had not formally organized the business. If you are making over \$80k per year, this can have some significant tax implications.

To alleviate this, you can request that the IRS tax your LLC as an S Corp, an election under subchapter S of the Internal Revenue Code, that adjusts how you pay taxes on different parts of your income.

**S Corp** is a tax election wherein your income tax burden is split up between self-employment tax and the personal payroll tax, depending on how much of a "reasonable salary" you draw from your company.

	Description	PROS	CONS
<b>SOLE PROP</b>	<ul style="list-style-type: none"> <li>• A sole proprietorship is a type of business owned and run by <u>one person</u> and in which there is no legal distinction between the owner and the business entity.</li> <li>• You may still need to file a <b>DBA*</b> and obtain a <b>business license</b> within your state in order to operate legally.</li> </ul>	<ul style="list-style-type: none"> <li>• Easy set up.</li> <li>• No paperwork to start.</li> <li>• Taxed once, since separate tax return not needed. You pay taxes on profits in your personal tax return.</li> </ul>	<ul style="list-style-type: none"> <li>• NO personal liability protection.</li> <li>• You are personally liable for your business's liabilities and debts.</li> <li>• You pay 100% of your self-employment tax</li> </ul>
<b>LLC</b>	<ul style="list-style-type: none"> <li>• An LLC, or limited liability company, is a business structure that is owned by its members and is not taxed as a separate entity, but instead passes its profits and losses through to its members.</li> <li>• This includes SINGLE MEMBER LLCs</li> </ul>	<ul style="list-style-type: none"> <li>• You are not personally on the hook for business liabilities.</li> <li>• Taxed as a pass-through. Can be taxed once or twice; you are free to choose which can help minimize taxes.</li> </ul>	<ul style="list-style-type: none"> <li>• There are ongoing filings and fees to stay in state compliance</li> <li>• LLCs are not recognized globally, so you may be taxed as a corporation in other countries</li> <li>• You pay 100% of your self-employment tax</li> </ul>
<b>S CORP</b>	<ul style="list-style-type: none"> <li>• A business tax election suited for small businesses which have formed an LLC or corporation and who want further tax advantages in addition to being a tax pass-through.</li> </ul>	<ul style="list-style-type: none"> <li>• You are not personally on the hook for business liabilities</li> <li>• Taxed once—only shareholders pay on profits received</li> </ul>	<ul style="list-style-type: none"> <li>• There are ongoing filings and fees to stay in state compliance</li> <li>• All shareholders must be US Citizens</li> </ul>
<b>C CORP</b>	<ul style="list-style-type: none"> <li>• A C corporation is a legal entity that is separate from its shareholders and is taxed separately from its owners</li> </ul>	<ul style="list-style-type: none"> <li>• You are not personally on the hook for business liabilities</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• There are ongoing filings and fees to stay in compliance</li> <li>• Must have a board of directors</li> <li>• More admin with strict rules about holding meetings and keeping records</li> <li>• Taxed twice – business pays at the corporate level, and shareholders pay on income received</li> </ul>

**\*a DBA, or “DOING BUSINESS AS” is usually required under state law if you plan to operate your business under a name other than your legal name or an officially registered business name.**

FORMING an LLC is an important step in the protection of your personal assets and creating a separation in liability from YOU personally. As a formed LLC, your agency can pay you via 1099 without blurring the employee/employer lines (which we just fought so hard against with the Fashion Worker’s Act language).

Further electing your business as an S CORP could have significant TAX benefits. But, you have to form an LLC before you can elect to be taxed as an S Corp, since, again, an S Corp is NOT a legal entity.

## Taxes Sample Comparison

	Sole proprietor	S Corp
Profit (after payroll)	\$100,000	\$45,741
Self-employment tax(15.3% on 92.35% of income)	\$14,130	\$0
Employer payroll tax(7.65% + FUTA tax)	\$0	\$4,259
Employee payroll tax (7.65%)	\$0	\$3,825
<b>Total taxes</b>	<b>\$14,130</b>	<b>\$8,084</b>

Case study: COLLECTIVE

No matter what your business structure, you must carry GENERAL LIABILITY insurance for that business. You should also carry Workers Compensation insurance.

**General Liability Insurance** protects your assets by providing protection for liability claims against your business. These can be claims that arise from injuries or property damage that occur on a shoot, or those that are caused by you or your assistants. Claims for physical loss, destruction or damage to tangible property are covered under a general liability policy. Agents typically make every effort to bill for insurance.

**Workers Compensation** is required by the government when you pay any vendor/assistant. Even in the best of situations, accidents happen. Should an accident occur during one of your shoots, this coverage would be used to pay damages. Without workers' compensation coverage, any medical expenses associated with even one major workers' compensation claim could cause irreparable financial harm to your business.

In order to be fully compliant, your agency needs to be named as an "Additional Insured" on your policy, so that this protection for the artist ultimately trickles down to your agency. This should not be an added expense; it is simply something requested from your insurance agent at renewal time.

### **WHY DOES THE AGENCY NEED TO BE NAMED ON THE POLICY?**

Since your agency is typically handling your project's bookkeeping and signing legal Agreements with Clients, including NDAs, POs and more, the agency needs to be named as an additional insured on Artist's policies. The Artist's insurance policy would provide coverage for the Agency in the event of a claim.

Since you are a vendor for your agent, there is a certain amount of liability for them as well. In an effort to minimize your agent's exposure, but more importantly, to limit your own exposure, agents require artists to maintain both policies.