

# Legal and Liability Considerations

Collecting Information to Make Decisions

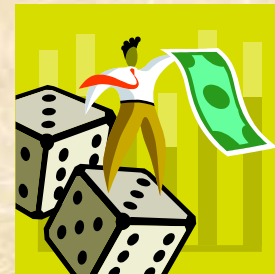


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**The Idea to Enterprise Conference**  
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# What Will We Discuss Today?

- Business Structures
- Business Insurance
- Food Products
- Meat Marketing
- Regulations and Associated Taxes
- Patents, Copyrights and Trademarks
- Risk Assessment



# Terms to Understand

- **Legal Business Structure:** Tennessee has 5 categories; must be state chartered
- **Federal Taxes:** IRS taxes on income
- **State Excise Tax:** tax imposed on the privilege of doing business, based on net earnings
- **State Franchise Tax:** tax...based on net worth



# Legal Structures of Business

- **Sole Proprietorship**
- **Partnership**
  - General Partnership
  - Limited Partnership
- **LLC (Limited Liability Company)**
- **Corporation**
  - C-Corporation
  - S-Corporation
- **Cooperatives**

# Selecting a Legal Structure

- Control
- Capital
- Liability
- Earnings
- Taxes (State & Federal)
- Business Lifespan



# Sole Proprietorship

(one person)

- Owner is responsible for management, makes all decisions, supplies equity, & liable for debts
- Profits belong to the owner
- Taxes:
  - State: no franchise or excise tax
  - Federal: profits are taxed once, as income of owner
- Business lifespan is based on the owner and continues until owner sells, retires, or dies

# Partnership

(two or more people)

- Partners (general and/or limited) share management, provide capital, liable (up to value of property owned) for debts of partnership
- Profits or losses are share by the partners based on the partnership agreement
- Taxes:
  - State: General partners- no; Limited partners- yes
  - Federal: earnings taxed once, as income of partners
- Lifespan determined by life of partners

# Corporations

(multiple owners/stockholders)

- Management controlled by board of directors and officers elected by stockholders
- Capital is raised by selling shares of stock to investors; limited liability of stockholders
- Profits distributed to stockholders as dividends (based on investment)
- Taxes:
  - State: Franchise & Excise Taxes
  - Federal: Double Tax
- Lifespan is continual

# Corporation Types & Differences

- **C-Corporation:**
  - Separate legal entity from owners
  - Taxed on earnings to the corporation; stockholders taxed on income earned from dividends
- **S-Corporation:**
  - Taxation different from C-Corporation
  - Corporation's profits or losses are passed to owners
  - Must: be domestic business, not have more than 35 stockholders, not have nonresident stockholders, only have stock owned by individuals, have only voting or non-voting stock

# LLC's

(multiple owners—benefits of partnership & corp.)

- Members/owners control, provide capital, limited in liability
- Profits or losses shared by members according to operating agreement
- Taxes:
  - State: Franchise and Excise Taxes
  - Federal: Has option of partnership or corporation
- Lifespan is continual

# Cooperatives

(state chartered business, organized as corporation)

- Managed by board of directors, elected by members
- Capital (fees, stock, retained earnings) comes from members; liability is limited
- Earnings or losses allocated to members on basis of use of cooperative (cash, equity)
- Taxes:
  - State: Exempt from Franchise and Excise Taxes
  - Federal: Earnings taxed once (co-op or members)
  - Lifespan is continual

# Tennessee Processing Cooperative Law

- New legal structure for business organization (passed in May 2004)
- Law has benefits of traditional cooperative and LLC
- Capital can be raised from farmer members (patrons) and non-farmer investors (non-patrons)
  - Patron Membership: based on delivery of inputs and capital invested
  - Non-Patron Members: based on capital contribution

# Processing Co-op

- Controlled by board of directors; capital provided by members; limited liability
- Earnings distributed based on use of co-op (cash/equity)
- Taxes:
  - State: Exempt from Franchise and Excise Tax
  - Federal: Taxed once (co-op or members)
- Lifespan is continual

# Business Insurance

- Product Liability
- General Liability
- Property Insurance
- Basic Fire Insurance
- Auto Insurance
- Theft Coverage
- Disability Income Protection



# Food Product Liability Insurance

- Coverage should provide protection in the event that the food product insured causes injury to a user
- No standard rates and can be difficult to estimate
  - Estimate can require specific product and business characteristics such as business and marketing plans
- Retail outlets generally require food products to have a minimum level of product liability prior to carrying the product (at least \$1 million and often \$2 million)

# Domestic Kitchen Facilities

- New rules implemented by TDA
  - Purpose is "to allow individuals to commercially prepare, manufacture and sell 'non-potentially hazardous' foods that are prepared in the home while ensuring that the public's health is protected"
- **Non-potentially hazardous:** products such as jams, jellies, candy and baked goods (do not consist of meat, poultry, liquid eggs, partially cooked egg products, fish, milk, milk products)

# Domestic Kitchen Facilities cont.

- Licensing by TDA's Regulatory Services Division, Food and Dairy Section
- Must comply with any other local or state business license, permit or zoning requirements
- \$50 fee for license
- Operators required to complete Tennessee Food Safety Certification Course
- **Prohibited foods:** low-acid canned foods (vegetables, fish, meat) and acidified foods (salsa, pickled vegetables)

# Agencies Responsible for Regulating Food Establishments

- **Tennessee Department of Agriculture:**
  - Enforce food safety pertaining to processing, handling, storage and sale in Tennessee
  - Inspects retail food stores and food manufacturing businesses
- **Tennessee Department of Health:**
  - Regulates food service establishments
- **United States Department of Agriculture:**
  - Regulates and enforces laws for meat, poultry, and fish products that contain these foods as ingredients
- **Food and Drug Administration:**
  - Enforces laws requiring all food be safe and appropriately labeled for human and animal consumption

# Meat Marketing Considerations

- **Direct Marketing:**
  - Must be harvested, processed and packaged in USDA-inspected facility and labeled with product name, ingredients, source name and address, net weight, and USDA seal
  - If selling direct to consumers > retail permit
  - If selling to distributors, stores > wholesale permit
  - If storing meat (not at USDA facility) > warehouse license
  - Regulated by TN Dept of Agriculture Regulatory Services

# Meat Marketing Considerations cont.

- Not all slaughter facilities are USDA inspected
  - **Custom exempt** facilities slaughter/process animals when the animals will not enter commerce
  - **Example:** A customer purchase a live animal from Mr. Producer. Mr. Producer delivers the animal to a custom-exempt slaughter facility where the customer pays to have the animal slaughtered and processed for their own personal use.
  - Inspected by the TN Department of Agriculture
  - Must meet *Good Manufacturing Practices* like USDA- inspected facilities

# Regulations

- General Regulations
- Employment Regulations
- Permits and Licenses



# General Regulations

- Zoning
- Business License and Taxes
- Sales Tax Collection & Remittance
- Americans with Disabilities Act

# Zoning

- Ordinances regulate the use of land in a specific area
- Regulated by the city (if within city limits) or by the county (if outside city limits)
- May dictate location, height, and size of structures; use of buildings; signage and parking
- Check with local zoning authority prior to investing in or adding to agritourism operations

# Business Licenses & Taxes

- Depending on location, may need both city and county licenses (must be renewed annually)
- Minimum \$15 privilege tax and a recording fee
- Tax rates may vary depending on gross sales and company classification
- Contact city/county clerk for more information

# Sales and Use Taxes

- Imposed by state and possibly county and city governments
- Imposed on the retail sale, lease or rental of tangible personal property, forms of services, and sales for amusements
- May be exemptions for the sale of farm products grown or produced on the operation
- Contact TN Department of Revenue for further information

# Sales and Use Taxes cont.

- **Admission Fees:** charged for any activity described as recreational, entertaining, or for amusement (corn mazes, hayrides, trail riding)
- **Farm or Nursery Product Sales:**
  - >50% of farm or nursery products sold in a calendar year grown or produced by your operation are exempt from sales or use tax

# Americans with Disabilities Act

- Ensures equal opportunities in employment as well as accommodation in public places, commercial facilities and transportation for persons with disabilities (all businesses must comply)
- Contact U.S. Department of Justice for more information

# Employment Regulations

- Fair Labor Standards Act
- Child Labor Act
- Occupational Safety and Health Act
- Workers' Compensation
- Unemployment Taxes
- Income Tax Withholding

# Employment Regulations cont.

- **Fair Labor Standards Act:**
  - Standards for minimum wage, overtime, equal pay, child labor, certain mandatory recordkeeping
  - Minimum wage rate is \$5.15 per hour
- **Child Labor Act:**
  - Prohibits employment of minors
  - In TN, minor must be 14 years of age to be employed
- **Occupational Safety and Health:**
  - Safe and healthy workplace for all citizens regardless of age

# Employment Regulations cont.

- **Workers' Compensation Insurance**
  - Protects a business from lawsuits filed by injured employees and provides insurance benefits to employees while injured on the job
  - Insurance must be obtained if 5 or more full- or part-time employees
  - Employers required to display TN Workers' Compensation Insurance notice

# Employment Regulations cont.

- **Unemployment Insurance Taxes**
  - Provides benefits to unemployed workers who have lost jobs through no fault of their own
  - Administered by TN Division of Employment Security
  - Liable for premiums if:
    - You have a total payroll of \$1500 or more in any calendar quarter of the current or preceding calendar year
    - You employ 1 or more people during some part of a day in each of 20 weeks in the current or preceding calendar year
    - You are liable under the Federal Unemployment Tax Act and have at least 1 employee in TN

# Employment Regulations cont.

- **Income Tax Withholding**

- All employers required to deduct and withhold taxes on wages paid to employees by the federal Internal Revenue Code
- May need to use tax guide for agricultural employers or tax guide for small business entrepreneurs depending on employees involvement in the business
- Contact personal accountant for more information

# Permits and Licenses

(examples for specific enterprises)

- Food Service Permits & Inspections
- Retail Food Store Permits & Inspections
- Animal Exhibitor Licensing
- Nursery Licensing
- Winery Licensing

# Food Service Permits and Inspections

- Tennessee requires a permit to operate a food service establishment
- Applications submitted to local Department of Health 30 days before beginning operation
- Plans for construction must be submitted 15 days prior to starting work
- Inspections occur to ensure compliance
- Contact your local health department for more information

# Retail Food Store Permits and Inspections

- Permits issued by TN Department of Agriculture Division of Regulatory Services Food and Dairy Section
- Defined as any establishment where food and food products offered to the consumer are intended for off-premise consumption
- Plans must be submitted for approval prior to building and operating the business
- Inspections occur to ensure compliance

# Animal Exhibitor Licensing

- Owners/operators required to obtain animal exhibitor license under federal Animal Welfare Act from the Animal Care Division of APHIS
- “Anyone exhibiting farm animals for nonagricultural purposes (exhibition at carnivals, circuses, animal acts, petting zoos, educational exhibits) must be licensed”
- License fees dependent on number and species of animals and expected annual income

# Other Licensing

- **Nursery Licensing:**
  - Licensing and certification overseen by Tennessee Department of Agriculture Division of Plant Industries
  - Certificate required on grounds where nursery stock is grown, kept, or propagated for sale or distribution
- **Winery Licensing:**
  - Regulated by Tennessee Alcoholic Beverage Commission
  - Must obtain winery license to operate a winery in TN; fee of \$150 in addition to \$300 non-refundable application fee

# Patents, Copyrights, & Trademarks

- **Patent:**

- Property right granted to an inventor by the federal government; protects inventor from others making, using, or selling the invention

- **Copyright:**

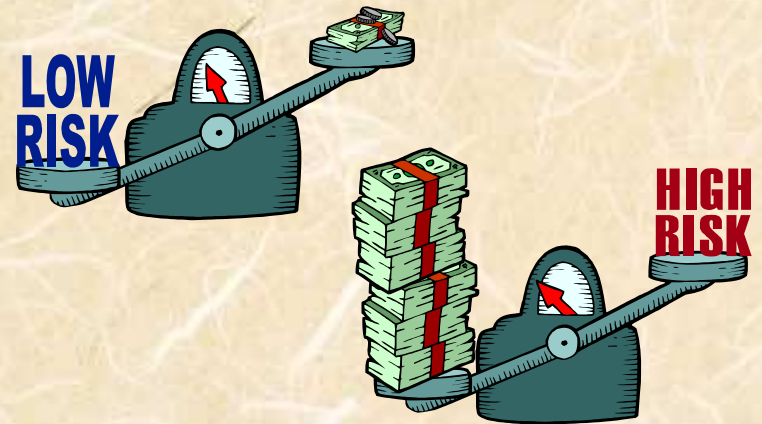
- Protects writings of an author against others copying the work

- **Trademark:**

- Word, phrase, symbol, design identifying and distinguishing a product or item from others; normally appears on the product or package

# Risk Assessment

- Identify all activities and recognize potential risks
- Ways to manage risk:
  - Avoid Risk
  - Reduce Risk
  - Accept Risk
  - Transfer Risk



# Risk Assessment Examples

Activities	Risk Potential 1 to 5 scale (5 as highest)	Safety Measures	Insurance Needed	Estimated cost to adapt or modify activity
Hay Rides	?	Adds rails to wagon, limit speed	Consult insurance agent	\$75
Corn Maze	?	Fence maze perimeter if someone could get lost beyond maze field	Consult insurance agent	?
Horseback Riding	?	Require helmets, guided walking trails, guides must have safety training	Consult insurance agent	Major investments

The distance between  
yesterdays regrets and  
tomorrows dreams is today's  
opportunities.



# References

- Center for Profitable Agriculture
  - <http://cpa.utk.edu>
- Tennessee Department of Agriculture
- Tennessee Department of Economic and Community Development