

## Business Law Update May 2017

PUBLISHED ON  
**May 2, 2017**

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### Free Pass for Taxes Owed to Pennsylvania?

By: Timothy P. Malloy

If you owe back taxes to Pennsylvania, you're in luck.

Through June 19, the [Pennsylvania Tax Amnesty Program](#) will waive all penalties and slash the interest rate on outstanding tax delinquencies that existed as of the end of 2015. Both the state and the Pennsylvania Department of Revenue are participating in the program created in Act 84 of 2016.

The program includes the waiving of all penalties on delinquent taxes, as well as the waiving of all collection and lien fees. In addition, the state will collect all delinquent taxes, known and unknown, and one-half the interest due.

The program includes personal income tax, sales and use tax, gross receipts tax, corporate net income tax, inheritance or estate tax, and other state-administered taxes. To participate in the Amnesty Program, taxpayers must file an online Amnesty Return, file all delinquent tax returns and make the required payments within the amnesty period, according to the state. Some taxpayers claiming that a single payment would be a serious financial hardship may be allowed to make a payment for one-half of the amnesty total liability and pay the balance in two payments during the amnesty program.

Not only must delinquent taxpayers make the required payments during the amnesty period, they must continue to be compliant, otherwise the Department of Revenue may re-impose the original penalty and interest. How serious is the state about this program? Those eligible for the Amnesty Program who choose not to participate will be saddled with a 5-percent non-participation penalty on all eligible tax, penalty and interest.

Not everyone is eligible. Those who participated in the 2010 Tax Amnesty Program, taxpayers currently under criminal investigation for a violation of any tax law, and defendants in a pending criminal action for an alleged tax law violation cannot take advantage of the program. Taxpayers in bankruptcy, or who have previously received a discharge determination of Pennsylvania state tax liabilities also are not eligible for the

program.

Taxpayers that owe delinquent back taxes likely will have received a written notice from the Department of Revenue about the program, or will receive one soon. If you think you may be eligible for the Tax Amnesty Program, preparation for filing tax returns and payment of unpaid tax liabilities should begin immediately. The tax attorneys at Barley Snyder can help guide you through this process.

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## **FDA Delays Menu Compliance Date Again**

*NOTE: This is an update to a previous alert, "[Menu Compliance Counts Starting May 5th](#)."*

The effort to delay the compliance date for calorie labeling in restaurants and other retail food establishments has succeeded, with the Food and Drug Administration pushing back the compliance deadline to May 2018, [according to reports](#).

In April, the National Grocers Association and the National Association of Convenience Stores petitioned to delay the compliance deadline previously scheduled for May 5, 2017. The federal [Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments](#) final rule requires food establishments with 20 or more locations to post calorie counts and other similar nutrition information for each food item available on menus.

This is the third delay of the rule's enforcement date, which was originally meant to take effect in December 2015. The rule has been hotly contested as being overly burdensome for the industry. Those opposed to the rule also have cited constitutional issues. A 60-day comment period on the rule begins May 4.

The April 5 petition did not request a specific time for the delay, though the FDA settled on the one-year delay. Instead, the scope of the rule is the primary outstanding issue. Along with this most recent delay, the FDA has invited further comments from interested parties.

The rule is not exclusive to restaurants. Self-serve and prepared foods at places like a grocery store deli or prepared food offerings are also subject to the labeling requirements. Restaurants and retail food establishments not required to provide nutrition information may elect to do so by registering with the FDA every other year. Nutrition information must be available on in-store marketing materials as well as vending machines.

If you have concerns about how this delay could affect your operation, please contact Barley Snyder's [Food and Agribusiness Group](#).

*This legal update was co-authored by EmmaRose Boyle. EmmaRose is a law student currently attending Vermont Law School and working in an externship program at Barley Snyder.*

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## **LLC Punch List: Ten Things to Do After Forming Your Entity**

By: Brian A. Korman

Related Practice Area: Business

Creating a start-up company is an exciting time for any new business owner. The first legal step for any business owner should be to form your entity in order to protect your personal assets, but there are a few more steps to be taken before you cut the ribbon and open for business.

Here are ten items to consider before you're ready to do business as a limited liability company (LLC) under Pennsylvania law:

## **1. Operating agreement**

Executing an operating agreement is the first critical step to take after forming an LLC because it lays out the rules of the business and governs the way the members will operate. It will, for example, name the officers and set forth each member's ownership share. This step is of particular importance for multi-member limited-liability companies.

## **2. Bill of sale for contributed assets**

If a member wishes to contribute personal assets to the LLC, those assets must be properly transferred to and titled in the name of the LLC through a bill of sale. Certain kinds of assets, like vehicles, will require additional steps to properly re-title in the name of the LLC, but for many assets, a simple bill of sale will do the trick.

## **3. Obtain EIN and consider filing for S-election**

An employer identification number (EIN) is a business's federal tax identification number. It's used for federal tax filings. As a business owner, you should get an EIN for the LLC even if you don't have employees because eventually someone (such as vendors or clients) will require it.

An LLC is taxed as a "pass through" entity, which means the members report business earnings on their personal tax return each year. Making an S-election allows the owners to divide profits into salary and distributions, which could provide a tax benefit in some cases.

## **4. Permits and licenses**

Depending on your industry and location, you may need to obtain a license or permit from the state, county or municipality for the LLC to conduct business. Many businesses are regulated in Pennsylvania, so the LLC will need a license before it can conduct any business in the regulated area. These licenses often are inexpensive and ensuring registration compliance will save future expenses.

## **5. Open a new bank account**

The key to protecting your personal assets is to keep business funds separate from personal funds--never "commingle." The easiest way to do this is to open a separate bank account just for the LLC. You may consider getting a business credit card. This will help keep a detailed log of business spending.

## **6. Trademarks**

Forming your LLC protects the LLC from other people within the state from using the LLC's name. In general, a federal trademark will protect the LLC's brand nationwide. If your business is brand-dependent, you should consider filing for trademark protection as early as possible.

## **7. Insurance**

Insurance is critical to protecting the LLC against losses. A general liability insurance policy will broadly cover the LLC for accidents, injuries and claims of negligence. You may wish to consider additional policies specific to the business conducted by the LLC such as commercial auto coverage for a transportation service, or product liability coverage for businesses selling products.

## **8. Foreign qualification**

If the LLC is formed in one state (Pennsylvania for example) but will be conducting business across state lines, the LLC may need to register with those other states through a foreign business qualification. Such qualification usually involves filing a relatively simple form with a one-time fee but the requirements vary from state to state.

## **9. Fictitious name**

If the LLC plans to operate under or utilize a name different from the name used when registering and/or forming the LLC (such as "John's Apples" instead of "John's Apples, LLC"), then you'll need to file for a fictitious name (also called a "DBA" or "Doing Business As"). As a practice tip, the LLC should file for the name rather than the owners themselves. This will ensure the filing operates underneath the LLC.

## **10. Plan for compliance**

Operating the LLC should, at a minimum, include filing annual tax reports, maintaining accurate book keeping, and holding regular meetings of the members. The LLC should hold and document an initial meeting of the members, and plan for future meetings of the members by identifying future meeting dates and reserving such dates on the calendar.

Starting a business can come with a myriad of challenges, so it's critical to think through these initial steps before forming the LLC. If you have any questions on how best to think through these punch list items for your business, feel free to reach out to me at 717-208-8828 or by email at [bkorman@barley.com](mailto:bkorman@barley.com).

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