

Post-Creation Checklist (Georgia Entities Only)

I. IMMEDIATE POST-CREATION MATTERS

A. Immediate Federal Tax Matters

1. Federal Tax Number

Used on most state and federal tax returns and is needed to create a business financial account. In order to obtain an FEIN, a business must file Form SS-4 with the IRS by:

- Mailing the SS-4 to: EIN Operation Holtsville, NY 00501
- Faxing the SS-4 to: 631-687-3891 or 631-447-9860
- Applying online at www.irs.gov (preferred), or
- Having an officer of the business call 770-455-2360 or 866-816-2065

a. Most Filings will result in a 10-14 day delay. To speed up the process, a request for an FEIN be made by telephone by an officer of the business. If this approach is made, the SS-4 should be prepared in advance. The new FEIN is given to the officer over the phone. However, getting the IRS on the line can be a frustrating task.

b. The SS-4 also contains a number of questions about the new business's activities. Do not leave any blanks on the form. For those decisions which have not yet been made (e.g., tax year), enter "To be Determined." Some entries must be completed (e.g., address).

2. S Corporation.

If the entity will be an S corporation (formerly referred to as a Sub-Chapter-S corporation), file one copy of IRS form 2553 by:

- Mailing it to: Internal Revenue Service
Center, Ogden, Utah 84201; or
- Faxing it to: 801-620-7116 (preferred approach)

a. To be effective for the current tax year, the election must be filed by the 15th day of the 3rd month after the corporation's tax year begins (IRC Section 1362(b)(1)). Make sure the form is properly filled out. An improperly filled out or incomplete form may be returned and the filing deadline may be missed.

b. If the corporation is FORMED at a time other than the first day of the month, the Treasury Regulations provide for a 75-day period to make the election (Temp. Treas. Reg. § 18.1362-1(b)).

c. A number of restrictions must be met to qualify as an S corporation (e.g., many types of trusts cannot be S corporation shareholders). (IRC § 1361 et seq.).

3. Tax Year

Select the business entity's tax year. Generally, once the tax year is selected, it can only be changed with IRS permission. (IRC §§44142). The tax year is selected on the entity's first income tax return. S corporations, LLCs, partnerships, and personal service corporations are generally required to use a calendar year, although some limited exceptions apply. (IRC §§ 441(i), 444, and 1378).

4. Accounting Method

Select the tax accounting method for the entity. Generally, once the tax accounting method is selected, it can only be changed with IRS permission. (IRC § 446). Generally, the business must report its income to the IRS using the method regularly used in keeping its books. For most businesses the choice is between the cash and accrual method. However, the IRC may restrict the client's choice of an accounting method used for tax purposes. Consult with your tax accountant.

B. IMMEDIATE GEORGIA FILING

The Georgia Secretary of State has a First Stop Business Information Center which can provide valuable information to a new business owner. Such information can be accessed at www.sos.state.ga.us/firststop or by calling 404-656-7061.

1. Corporate First Annual Registration

A corporate annual registration must be filed with the Georgia Secretary of State within 90 days of the creation of any corporation (O.C.G.A. § 14-2-1622). The rules differ slightly for LLCs (O.C.G.A. § 14-11-1103) and LLPs (O.C.G.A. § 14-9-206.5). File the annual registration with and filing fee by:

- Mailing registration to: Georgia Secretary of State,
Business Services and Regulation, Suite 315, West Tower,

2 Martin Luther King Jr. Drive, Atlanta, GA 30334-1530,
404-656-2817; or

- Filing online at <http://ivxviv.ganet.org/sosonline/>
(preferred approach)

2. **Georgia Net Worth Tax Return**

All new corporations (both S and C) are required to file a Georgia net worth tax return (Georgia Form 600) by the 15th day of the 3rd month after incorporation. After the initial filing, the return is a part of the annual income tax return.

3. **Department of Revenue-Tax Registrations**

There are a number of filings that must be made for state purposes. The Georgia Department of Revenue has adopted a uniform registration packet to be used in registering for the various state tax numbers. The form is available by:

- Contacting the Department of Revenue, Centralized Taxpayer Registration Unit, P.O. Box 49512, Atlanta, GA 30359-1512, 404-417-4490 or 404-656-7061 or (outside Atlanta) 800-656-4558; or

- Accessing <http://www2.state.ga.us/de-partments/dor/>

forms.

These filings may include Georgia sales tax registration numbers, Georgia withholding tax numbers and other Georgia filings, such as motor carrier applications and tobacco license application filings. These forms are also available online at www.gatax.org.

4. **Department of Labor.**

If a business is expected to have any employees, it should file Georgia form DOL-1A to obtain a Georgia Department of Labor number (DOL number). This form is in addition to the withholding tax number obtained from the Georgia Department of Revenue. The DOL number is used on all filings of Georgia state unemployment tax returns (form DOL-4N). To obtain copies of the form, see www.dol.state.ga.us.

5. **Business License.**

The business should apply for local business or occupation licenses. The license fees are generally due each Jan. 1. Contact both county and city governments to determine what local licenses are required.

6. **Ad Val Orem Taxes**

- a. Real Estate
- b. Property

Caution: If you file a non-applicable tax registration, expect to hear from the respective governmental authorities if you subsequently fail to file the appropriate tax returns.

C. **Document the Transactions Creating the Entity.**

As soon as possible after the business is created, the transactions which created the business should be documented, including property transfers, loan assumptions, and issuance of documents evidencing the ownership interests of the owners (e.g., stock certificates). **If you are creating a new business entity to hold an existing business, make sure to transfer to the new entity the assets, leases, debts, and other aspects of the old business.**

Caution: If the liabilities transferred to the new business entity exceed the basis of the assets being transferred, the transferors may incur taxable income. Consult with your tax advisor.

D. **Opening a Bank Account.**

As soon as possible after creating the business open a bank account. In order to open the account you will generally need the FEIN, copies of the documents filed with the secretary of state to create the business entity, a resolution of the members of an LLC or directors of a corporation authorizing the opening of the account and naming the persons authorized to sign checks. Most banks will provide this last form to you.

E. **Managing the Relationship of the Owners.**

The initial documents filed with the secretary of state's office are the bare bones of the business's legal structure. When there is more than one owner, make sure to document the rights and obligations of the owners, the provisions for income allocations, any voting limitations, any restrictions on the rights of owners to sell their ownership interests, how

the owners will run the business, and how the business relationship is terminated.

II. Ongoing State and Federal Tax Filings.

Among the ongoing State and Federal Filings (see the chart on page 37):

A. Federal Tax Filings.

A business has a number of ongoing federal tax filings. The following list is not exhaustive, but does provide a list of the typical taxes and returns. Consult with your tax advisor.

1. Income Tax Returns.

All active business entities are required to file an annual income tax return. Extensions can be generally granted by filing IRS form 7004. The extension delays only the due date of the return; payment of any unpaid tax liability must be made with the filing of the extension.

2. Estimated Corporate Income Tax Returns.

A regular corporation having more than \$500 in income tax liability must estimate its income tax and pay that tax in equal quarterly installments over the corporation's tax year (IRC § 6655). Each quarterly payment should be deposited at a national financial institution (e.g., national bank or savings and loan) using IRS Form 8109. Failure to prepay sufficient corporate income taxes can result in the corporation's incurring substantial penalties and interest. If the business is a "flow-through" entity (e.g., S Corporation, *LLC* or *LLP*), it does not generally pay entity level taxes. Instead, the entity's taxable income is allocated directly to the owners, who have the responsibility to pay estimated taxes, or assure that their W-2 withholding makes payment of estimated taxes unnecessary.

3. Employment Forms.

A business entity faces a number of employee reporting and tax filing requirements. More information about these filing requirements can be found at www.irs.gov.

a. Employee-completed Forms. When an employee is hired, he or she is required to fill out the following forms:

(1) W-4. Each employee of the business is required to file out a W-4 prior to the first day of employment. The W-4 contains the information necessary to determine the proper federal income tax withholding for each employee. If the employee claims excessive exemptions, the IRS has authority to deny the stated exemptions by notifying the employer.

(2) INS form 1-9, Employment Verification Form. Prior to starting employment each new employee must fill out this form which demonstrates that he or she is qualified to work in this country.

(3) Georgia Form G4. The Georgia equivalent of the W-4 is the G-4 and determines the state income taxes to be withheld.

b. Form 941. Form 941, Employers Quarterly Federal Tax Return, is filed quarterly and provides information on a business's withholding of its employees' income taxes and social security taxes and the business's payment of social security taxes. Withholding tables and form 941 are normally sent to the business as a part of IRS Circular E, which is sent to the business after filing for a FEIN.

c. Form 940. Form 940, Employer's Annual Federal Employment Tax Return, is filed annually and computes the business's federal unemployment taxes.

Caution: Failure to file payroll tax returns or pay the applicable tax as required can result in the imposition of substantial penalties. For example, the parties responsible for withholding the above payroll taxes may be personally responsible for the unpaid tax. See IRC § 6672, which imposes a 100 percent "penalty" on "responsible parties" who do not withhold and pay the tax to the government. Consider hiring a payroll reporting service to handle your state and federal payroll tax filings. The cost is worth avoiding the headaches of missing a payment or filing deadline.

4. Information Returns

In addition to the above tax returns, there are a number of information returns which must be filed. (See the partial list below.)

B. Georgia Tax Filings

A Georgia business may be subject to a number of state and local filings, including:

1. Business Income Taxes

Georgia business entities are required to file an income tax return annually. A C corporation is taxed on its Georgia taxable income at a flat rate of 6 percent. (O.C.G.A. § 48-7-21).

Quarterly Tax Returns (general rules)	
<u>Tax Return</u>	<u>Normal Due Date</u>
Federal Payroll Tax Return - Form 941	One Month After End of Calendar Quarter
C Corporation Estimated Income Tax Return	15th Day After the End of the Calendar Quarter
Georgia Payroll Tax Return - Form G-7	One Month After End of Calendar Quarter
Georgia Quarterly Tax and Wage Report	One Month After End of Calendar Quarter
Annual Tax Returns (general rules for filings with the government)	
<u>Tax Return</u>	<u>Normal Due Date</u>
Federal Unemployment Return - Form 940	By January 31st
Federal Wage and Tax Statements - Form W-2 and W-3	By February 28th (Electronic Filing: March 31st)
Partnership Federal Income Tax Return - Form 1065	By April 15th (can be extended)
S Corporation Return - Form 1120S	By April 15th (can be extended)
C Corporation Return - Form 1120	By the 15th Day of the 4th Month After Year End (can be extended)
Federal Information Returns (e.g., 1098s, 1099s)	By February 28th (Electronic Filing: March 31st)
Personal Property Tax Return	Generally by March 1st or April 1st
Georgia Income Tax Returns	See Federal Filing Dates
Annual Return to Georgia Secretary of State	By April 1st (can be done online)
Tax Returns Delivered to Payees	
<u>Document</u>	<u>Normal Due Date</u>
Federal Information Returns (e.g., 1098s, 1099s)	January 31st
Wage Statements (W-2)	January 31st

a. S corporations are exempt from Georgia corporate income taxes. (O.C.G.A. § 48-7-21(b)(8)(B)). If the corporation has out-of-state residents as shareholders, the S corporation election is denied, unless the out-of-state shareholders pay the Georgia income tax on their portion of the corporate income. (O.C.G.A. § 48-7-21(b)(8)(B)). Use Georgia form 600 S-CA.

b. LLCs and LLPs file returns, but taxable income or losses of the entity are allocated to the members.

c. S corporations, LLCs and LLPs may be required to withhold the Georgia taxes on non-Georgia owners. (O.C.G.A. § 48-7-129)

2. Corporation Net Worth Taxes.

Georgia corporations (both C and S) must file a net worth tax return. The net worth tax is a progressive tax rate based upon the net worth of the corporation. The tax ranges from \$10,000 to \$5000. The net worth tax is due whether or not the corporation has any taxable income. (O.C.G.A. § 48-13-70 et seq.)

3. Annual Registration

All Georgia corporations, LLCs, and LLPs are required to file a registration with the Secretary of State between January 1st and April 1st of each year. See also I(B)(1), supra.

Caution: If the registration is not filed and/or the fee is not paid, the entity may be involuntary dissolved by the Georgia Secretary of State. (corporations: O.C.G.A. § 14-2-1420; LLCs: O.C.G.A. § 14-11-603). LLPs do not have similar dissolution provisions (O.C.G.A. § 14-9-206.7 was repealed), although the failure to file an annual registration for the three consecutive years may allow other partnerships to reserve the LLP's name.

IMPORTANT PHONE NUMBERS AND WEBSITES		
Organization	Phone #	Website
Internal Revenue Service		
* Federal Tax ID#	770-455-2360	www.irs.gov
* Forms	800-829-3676	
Federal Department of Labor	404-562-2444	www.dol.gov
Social Security Administration	800-772-1213	www.ssa.gov
Securities and Exchange Commission	404-842-7600	www.sec.gov
Small Business Administration	800-827-5722	www.sbaonline.sba.gov
Immigration and Naturalization Service	800-375-5283	www.ins.usdoj.gov
Patent and Trademark Office	Not Applicable	www.uspto.gov
State of Georgia Website	Not Applicable	www.state.ga.us
Georgia Department of Revenue	404-656-4165	
* Income Taxes	404-656-4095	www.gatax.org
* Forms	404-656-4293	
* Sales & Use Tax	404-656-4071	
Georgia Secretary of State	404-656-2817	
* Good Standing	404-656-2817	

* First Stop Booklet (for new business)	404-656-7061	www.sos.state.ga.us
* Trademarks	404-656-2861	
* Securities	404-656-4910 or 656-3920	
Georgia Department of Labor	404-656-3061	www.dol.state.ga.us
Board of Workers' Compensation	404-656-2048	www.state.ga.us/sbwc
Tax Forms for Other States	Not Applicable	www.taxadmin.org/fta/link/forms.html
State and Local Governments on the Web	Not Applicable	www.statelocalgov.net/index.cfm
CT Corporation	404-888-6488	www.ctadvantage.com
Paychex (payroll services)	678-354-7776	www.paychex.com
ADP (payroll services)	800-225-5237	www.adp.com
Quicken Business Software	Not Applicable	www.quicken.com/small_business

4. Other State Tax Returns

a. Sales Taxes. In general, Georgia sales tax returns are required to be filed by applicable taxpayers each month. Depending upon the local sales tax options, the sales tax rates generally range from 5 percent to 7 percent.

b. Payroll Taxes. The following tax returns must be filed with Georgia authorities and the taxes paid as noted. Copies of these returns can be obtained by calling the Withholding and Estimated

Tax Section of the Georgia Department of Revenue at 404-656-4181.

- (1) DOL-4. Form DOL4, Employer's Quarterly Tax and Wage Report, is filed quarterly and reports the state unemployment taxes due. Call the Georgia Department of Labor at 404-656-3061 or 404-656-5590 for more information. The unemployment tax is a percent-age of each employee's wages. The federal tax wage base is \$7,000, while the state wage base is 58,500. The percentage is set by a number of factors, including the employer's unemployment record. Payment is made with the filing of the return. You may want to review the Employer's Handbook (DOL-224), available from the Georgia Department of Labor at www.dol.state.ga.us.
- (2) G-1. Form G-1, State of Georgia Employer's Quarterly Return of Income Tax Withheld, is filed quarterly and reports the state income taxes withheld from the employees' wages. Withheld taxes are normally paid before the return is filed.
- (3) G-3. Form G-3, State of Georgia Employer's Withholding Tax Annual Reconciliation, is filed annually by February 28th. One copy of each employee's federal W-2 should be attached to the return.

5. Personal Property Tax Returns.

Georgia's city and county governments impose personal property taxes on the assets of the business. Contact local city and county governments to determine what taxes may be due.

C. State and Federal Employment Related Filings and Notices

There are a number of state filing and notice requirements, including:

1. Worker's Compensation.

Georgia law may require the business to obtain worker's compensation insurance for its employees. (O.C.G.A. § 34-9-1, et seq.) The insurance is obtained from a commercial insurance

company. The cost of the insurance is dependent upon the number of employees and the type of work of each employee. Call the State Board of Worker's Compensation at 404-656-2048 or see www.state.ga.us/sbwc for more information.

2. **Reporting New Hires.**

Georgia requires employers to report the hiring of new employees to the Georgia Department of Labor. More information and online reporting are, available at www.dol.state.ga.us or by calling 404-525-2985.

3. **Termination Notice.**

If an employee is terminated, the employer is required to provide a separation notice to the employee using Georgia Department of Labor form DOL-800. A fine of up to \$1,000 can be imposed for failing to comply with the notice requirement. The form is available at www.dol.state.ga.us.

4. **Hiring Aliens.**

There are a number of pre-employment obligations that must be satisfied before hiring a non-U.S. citizen. See www.dol.state.ga.us and <http://uscis.gov>.

5. **COBRA.**

If an employee loses his or her health care coverage (e.g. because of termination of employment), the employer *may* be required to give the employee notice of his or her right to continue the coverage.

D. **Filing in Other States**

If the entity is doing business in other states, it may be required to file tax returns similar to the State of Georgia returns in those other states. Contact your tax advisor to determine the appropriate taxes. Copies of applicable returns may be found at www.taxadmin.org/fta/link/forms.html.

III. **Other Post-Creation Matters.**

In addition to the above requirements, the following are some of the post-creation decisions that the business's organizers should review.

A. **Maintaining the Entity's Separateness.**

Corporations, LLCs, and LLPs each have a legal existence separate from the legal existence of its owners. In general, owners cannot be held liable for the entity's liabilities. However, if the entity has not been operated as a separate legal entity, its "liability shield" can be pierced and the owners could be held liable for the entity's debts. Always treat the business entity as a business separate from your personal assets (e.g., do not pay personal expenses from the business, document business loans and other decisions, etc.).

B. Trademarks.

Determine whether the business should seek trademarks for its products and services. A federal trademark may provide protection across the United States. You may search the existing records of the Patent and Trademark office at www.uspto.gov. A trademark can be obtained solely for Georgia. (O.C.G.A. § 10-1-440 et seq.). Call the Georgia Secretary of State's office at 404-656-2861 for more information.

C. Trade name Filings.

If the business is going to operate under a trade name other than its legal name, it should register that name in each county where it plans to do business under the assumed name and in the counties in which it has its principal business activity and business domicile. (O.C.G.A. § 10-1-490 et seq.). Call the clerk of the county's Superior Court for copies of the required forms. However, a trade name filing does not grant a company the exclusive right to the name. If you want to protect your business's name, consider filing a state or federal trademark.

D. Property and Casualty Insurance

Make sure you have in place the proper property and casualty insurance to protect you and the business entity from litigation or other claims.

E. Workplace Notices.

Both state and federal laws require that certain employment posters be prominently displayed at a workplace. A list of the forms can be found at www.dol.state.ga.us.

F. Foreign Qualifications

If the business anticipates doing business in other states, determine whether the business must be qualified in those states.

