

# Legal Aspects of Starting a Business

Deciding what form of legal entity your business will take is an important decision. This will have an impact on the future of your business including your protection under the law, and the rules and regulations (for example: federal and state taxes) that will apply to you.

It is recommended that you contact an attorney, CPA, or other qualified individual before you enter into any of the four forms of business. Speaking with someone informed about the legal entities of business will reduce the risk of mistakes in the business set-up.

You can probably do the necessary paperwork and procedures yourself, but it makes sense to leave it up to the professionals. Also, contact the Small Business Development Center for more information.



# Choosing a Legal Structure

## THERE ARE FOUR BASIC FORMS THAT A NEW BUSINESS CAN TAKE:

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

A **sole proprietorship** is usually owned and operated by one person. Under the law, it is not actually considered a legal entity. It is instead considered an extension of the person who owns the business. This individual has sole ownership of assets, but is also solely liable for the debts of the business. All personal assets are reachable by creditors or judgments.

### **Partnership:**

A **general partnership** is comprised of two or more individuals who join to start a business. Each person has proportional ownership of the business assets and proportional liability for business debts. Each person also has authority in running this business. A partnership agreement can be drawn up to address each person's particular liability. However, despite this document, creditors may collect from each and every member of the partnership (this may include personal assets).

A **limited partnership** is made up of one or more general partners as well as one or more limited partners. Limited partners contribute capital and share in profit/losses. These limited partners, however, take no part in the running of the business and are not held liable for the organization's debts.

Whether taking part in a general or limited partnership, it is advisable that you draw up a partnership agreement. This document will detail each partner's rights and responsibilities. Partnerships are required to file both federal and state income tax. While the partnership is not typically taxed, each partner reflects profits or losses for the partnership on his/her personal tax returns.

### **Corporation:**

A **corporation** is an entity, which must be approved by the State of Georgia through the Office of the Secretary of State. A corporation must file federal, state, and local taxes on its operations. One advantage to a corporation is the protection from liability afforded to shareholders. However, when an organization is small, creditors may require personal guarantees from the predominate owners. Another advantage to the corporation is the ease of raising capital through the sale of common or preferred stock. There are two types of corporations: C and S.

The "C" corporations have their own tax identification numbers and pay their own taxes.

The "S" corporation is the opposite. It is not taxed as if it is a corporation at all. Instead it is taxed similarly to a partnership. Its gains and losses are reflected on the personal income tax of the shareholder. The S corporation is a pass-through entity for tax purposes. (The distinctions between S and C corporations can be complicated. It is important to consult with someone who is knowledgeable on the subject before deciding.)





In order to incorporate your business, contact the Office of the Secretary of State. You will then reserve your corporation name. The incorporation process must be completed within 90 days. The Office of the Secretary of State will instruct you in the completion of all documents needed. You will be required to pay an incorporation fee every year by April 1.

**The Office of the Secretary of State**

214 State Capitol  
Atlanta GA 30334  
404-656-2881  
[www.sos.state.ga.us](http://www.sos.state.ga.us)

This incorporation process includes publishing your intent to incorporate in the local newspaper’s legal publication. To publish your intent to incorporate, contact:

**ROME NEWS-TRIBUNE**

305 East 6th Avenue  
Rome, GA 30162  
Phone: 706-291-6397

An attorney can usually perform the necessary procedures for you for several hundred dollars. How much it will cost depends on the attorney and your business.

**Limited Liability Company:**

**A limited liability company (LLC)** is one that is owned by one or more persons known as members. It is a mixture of other forms of organization. This form combines some of the best features of partnerships, corporations, and S corporations. Similar to a corporation, you must reserve a name and file the articles of incorporation. You and your fellow members should write an operating agreement to control the conduct of the business.

**An LLC** shields the personal assets of members as if they were shareholders in a corporation. It also eliminates double taxation. Some state and foreign governments have not yet approved this form. In addition, an LLC may not have a perpetual life. While this form of organization is gaining popularity, you must take great care in the establishment of an LLC to ensure pass-through tax treatment.



# Tradename Registration

In the State of Georgia, every person, firm, or partnership that conducts business has two options regarding tradename registration: 1) The business name must include the last name of the individual owner of the business. 2) If using a fictitious name (one not including the last name of the individual owner), the fictitious name must be registered in the office of the clerk of the Superior Court of the county where the business is located.

A corporation or limited liability company will not need to file this registration, as it will already be registered with the office of the Secretary of State. The fee for tradename registration is approximately \$100.00, but fees are subject to change. The Clerk's office will provide any paperwork that needs to be completed.

Similar to publishing your intent to incorporate a business, you must publish a notice of your tradename registration in the local newspapers. You must also file the required affidavit. Notice of the filing of the trade name registration must be published once a week for two weeks in the legal section of the publication. Prices vary. In order to run your legal advertisement, contact:

**ROME NEWS-TRIBUNE**  
305 East 6th Avenue  
Rome, GA 30162  
Phone: 706.291.6397  
Fax: 706.232.9632

Failure to register a tradename will not nullify contracts signed by the unregistered entity. The court, however, is authorized to assess court costs against the parties who have failed to register the tradename or partnership name at the time an action is filed. Thus the tradename registration prevents a company from having to pay all court costs in an action by or against a company. If you have a question as to whether your business needs to register a trade name, contact the Clerk's office.

## TRADEMARK AND SERVICE MARK

Trademarks and Service Marks may be registered, if desired. The registration lasts for 10 years and requires a small fee. These fees apply where interstate shipments are involved and are obtained from the U.S. Patent Office. A product must be sold, shipped, and invoiced interstate prior to getting such protection from the Patent office. Information and applications can be obtained from the Special Services Division of the Office of the Secretary of State.

### Clerk of Superior Court Floyd County Judicial Building

3 Government Plaza, Suite 101  
Rome, GA 30161  
706-291-5192



### Office of the Secretary of State

214 State Capitol  
Atlanta, GA 30334  
404-656-2881  
[www.sos.state.ga.us](http://www.sos.state.ga.us)

### Special Services Division Secretary of State

214 State Capitol  
Atlanta, GA 30334  
404-656-2881  
[www.sos.state.ga.us](http://www.sos.state.ga.us)



# Local Licensing

## City of Rome (Occupational Tax)

601 Broad Street

P O Box 1433

Rome, Georgia 30162-1433

Web Page: [www.rome.ga.us](http://www.rome.ga.us)

Contact Person: Walt Greene,

Business License Inspector

[wgreene@rome.ga.us](mailto:wgreene@rome.ga.us)

## Business License (also called an Occupational Tax)

If you plan to operate a business in the state of Georgia, you may need to obtain a city or county business license. If your business will be operated in Floyd County and outside the incorporated city limits of Rome, no license is needed. The only businesses required to have a business license outside of the Rome city limits involve alcohol, pawn shops, and self-service motor fuel. You should discuss the details of your situation with the licensing department. The fee for a license is contingent on the location, type, and size of your business.

### If your business will be located within the Rome city limits:

The City of Rome's method of taxation is called an Occupational Tax, rather than a Business License fee. Your new City of Rome Occupational Tax Certificate can be obtained through the City Clerk's office.

You can also apply by mail. You must fully complete, sign, and date the return and mail it to the address below. Applications received through the mail require more time to process because zoning requirements also have to be completed. You will be sent a bill in the mail.

## THE OCCUPATIONAL TAX CERTIFICATE IS A FEE-BASED LICENSE THAT CONSISTS OF:

A \$55.00 Administrative Fee + A Fee based on your gross revenue and number of employees

Businesses licenses run from January 1st to December 31 of each year.

All Payments are accepted at the Clerk's Office. The Clerk's office accepts Cash, Money Orders, Checks, and Credit Cards.

You can contact the **City Clerk's Office** by phone, fax or mail if you have additional questions concerning an Occupation Tax Certificate.

**706-236-4451 (Phone)**

**706-236-4548 (Fax)**

If your business will be located in FLOYD COUNTY, but outside the city limits of Rome, business licenses are not required, as long as your business is operating in an appropriately zoned commercial or industrial area.



## Health Permits

If your business involves food processing, handling, storage, or distribution, you must obtain permits. If you are unsure if your business needs a permit, contact the Floyd County Health Department or the Georgia Department of Agriculture

**Floyd County Health Department**  
**Environmental Health Division**  
(706) 295-6316

**Georgia Department of Agriculture**  
404-656-3600  
[www.agr.state.ga.us](http://www.agr.state.ga.us)

# State Licensing & Permits

Many licensing regulations should be considered when establishing a business or practicing certain regulated occupations in Georgia. Contact the Secretary of State's office for a listing of all occupations that require state licensing. You can find a complete list of occupations requiring state licenses in Appendix I at the end of this guide. Before applying, you would be well advised to check the current licensing regulations through the office of the Secretary of State, the county, and the city. For information, contact the Licensing Boards Division of the Office of the Secretary of State.

\*\*The Office of the Secretary of State offers a timesaving booklet entitled Consolidated Registration Information for Businesses. This book is more familiarly known as the BLUE BOOK. This book contains important phone numbers, addresses, and Internet addresses of offices and departments essential to your business.

## Bulk Sales Law

If you plan to purchase an established Bulk Sales business, you as the purchaser must comply with the Bulk Sales Law. It is required that, at least five days before the actual purchase, each creditor must be notified personally of the proposed sale. In counties of over 200,000 population, it is necessary to publish this intent to purchase one time, not less than seven days prior to the completion of the purchase. By all means, consult your attorney.

# Federal Licensing & Permits

Most new small businesses most likely will not require any type of federal licensing to conduct business, unless you will be engaged in one of the following activities:

- Rendering investment advice
- Making alcohol products
- Making tobacco products
- Preparing meat products
- Making or dealing in firearms

You would also need a Federal permit to start large operations such as a television station, radio station, or to be a common carrier or producer of drugs or biological products. The aforementioned businesses are all heavily governmentally regulated. For more information on federal licensing for these types of businesses, contact the appropriate agency listed on this page.

## Georgia Secretary of State

### Licensing Boards Division

166 Pryor Street SW  
Atlanta GA 30303  
404-656-3900

## The U.S. Department of Alcohol, Tobacco, and Firearms

2600 Century Parkway Suite 3430  
Atlanta GA 30345  
404-679-5130

## The U. S. Federal Drug Administration

60 8th Street  
Atlanta GA 30309  
404-347-4265

## The U.S. Federal Communications Commission

3575 Kroger Boulevard  
Duluth GA 30096  
888-225-5322





# Patents And Inventions

Publications concerning patent laws, trademarks, and inventions are available at the Federal Bookstore and Department of Commerce. Patent attorneys and agents are listed in local business directories or phone directories. Patents are registered at:

## **U.S. Department of Commerce Patent & Trademarks Office**

**2021 Jefferson Highway**

**Washington DC 20230**

**1-800-786-9199**

*NOTICE: The contents of this publication have been obtained from multiple sources. The contents are presented for informational purposes only and should not be considered in any way legal or professional assistance. We encourage you to seek the advice and counsel of a licensed professional when dealing with legal and financial matters. While care has been taken to provide accurate, up-to-date information, the information presented has been collected from numerous sources and is subject to errors and changes and should be further researched for updates and accuracy.*

# Local Taxes

## PROPERTY TAX STRUCTURE

Property tax rates in Floyd County represent local tax liability per \$1,000 of fair market value and apply to real and personal property. The millage rate for the city of Rome is \$33.45 per \$1,000 of appraised value whereas the millage rate for Floyd County is \$29.93 per \$1,000 of appraised value. For more information regarding local tax stipulations, you may find it useful to contact a local accountant or the Floyd County Tax Commissioner.

### Floyd County Tax Commissioner

Historic Floyd County Courthouse  
4 Government Plaza  
Rome, GA 30161  
Phone: 706-291-5148  
Fax: 706-233-0033  
<http://www.floydcountytax.com>

# State Taxes

## Sales and Use Taxes

Every business that sells tangible personal property, such as merchandise, to customers is required to obtain a seller's permit. This is issued from the state sales tax agency. (There are some businesses, however, that are exempt from this requirement.) Typically, a separate permit must be obtained for every business in which the property subject to sales tax is sold. If selling to a retailer, wholesalers and manufacturers usually do not have to collect sales tax on the goods they sell. This, however, is contingent on whether the retailer has a valid seller's permit and can provide you with a "resale certificate." Similarly, retailers are not required to pay sales tax on items you purchase for resale.

You may purchase blank resale certificates at office supply stores (*you can find these stores in the Business Directory on the Chamber's website, [www.rome.ga.com](http://www.rome.ga.com)*). If state law requires that your business collect sales and use tax, you must keep detailed records of your gross receipts from sales and rentals. These records must include all sales/rentals whether or not you believe them to be taxable. Your records must also include evidence of all deductions you claim on sales/use tax returns. In addition, you must record the total purchase price of all tangible personal property acquired for sale, lease, or consumption.

Sales tax forms must be filed monthly. The taxes must also be paid on a monthly basis. You can contact the Georgia Department of Revenue to petition for special permission to pay/file quarterly. The state sales tax is 4%. Floyd County also utilizes a 1% Local Option Sales Tax (for maintenance and operations), a 1% Special Local Option Sales Tax (for education), and a 1% Special Purpose Local Option Sales Tax (for community projects). Combined, these state and local sales taxes equal 7%. **To obtain a seller's permit (sales tax certificate & ID number), try contacting the Rome office of the Georgia Department of Revenue.**

### Georgia Department of Revenue Sales & Use Tax Division

1401 Dean Avenue, SE, Suite E  
Rome, GA 30161-6494  
706-295-6061

### Atlanta Office

1800 Century Boulevard  
Atlanta, GA 30345-3205  
404-417-3209

## **State Excise Taxes**

In addition to federal excise tax, you may be responsible for collecting state excise tax. The categories are comparable to the federal categories. Alcoholic beverages, tobacco products, motor carriers, and trucks with more than two axles are included in the taxed categories. You should contact the Georgia Department of Revenue for complete information. For information on state excise taxes, contact:

**Georgia Department of Revenue**  
**Alcohol & Tobacco Division**  
Atlanta, GA 30303  
404-417-3206 or 800-659-1855

## **State Unemployment Tax**

This tax on payroll is payable on the first \$8,500.00. It applies to all businesses. Employers are classified in accordance with their actual experience in the payment of contributions and with respect to unemployment benefits charges against their accounts so that contribution rates will reflect such benefit experience. An employer rate for any calendar year shall be determined on the basis of his record as of the computation date for each calendar year. Quarterly unemployment reports must be filed and returned to:

**Georgia Department of Labor**  
**Rome District Office**  
463 Riverside Parkway, NE  
Rome, GA 30162  
706-295-6051

## **Worker's Compensation Insurance**

Firms with three or more employees must carry worker's compensation insurance either with a licensed insurance company or as a self-insurer.

**State Board of Worker's Compensation**  
270 Peachtree St. NW  
Atlanta, GA 30303-1299  
404-656-3818 or 404-656-3875 or 800-533-0682  
[www.state.ga.us/sbwc/](http://www.state.ga.us/sbwc/)

## **Minimum Wage and Overtime Wages**

Obtain regulation regarding the minimum wage law as well as overtime wage laws. Even if you don't fall under federal minimum wage and overtime law, you are still subject to Georgia minimum wage law requirements.

**Georgia Department of Labor**  
**Rome District Office**  
463 Riverside Parkway, NE  
Rome, GA 30162  
706-295-6051

## **Estimated State Income Taxes**

The State of Georgia also requires that you pay estimated state income taxes. The payment dates for estimated state tax are the same as those for federal payments. The Form 500ES should be completed for sole proprietorships or partnerships. A 9% per year penalty can be imposed for failure to file an estimated return or failure to pay the correct amount of tax.





# Federal Taxes

## Federal Excise Taxes

There are some forms of business for which the U.S. government requires additional taxation. This will be a tax that you are responsible for collecting. This tax does not come out of your pocket. Typically, it is added to the sale price of your product or service. Form 720 Quarterly Federal Excise Tax Return is used to file most federal excise taxes.

Federal excise taxes can be broken into nine general categories of products and services. They are:

- **Motor Vehicle Use Tax** (vehicles greater than 55,000 lbs. gross weight)
- **Retailers Tax** (certain types of fuels)
- **Retail Excise Tax on the Sales of the Following:** Heavy trucks/trailers, tires and tubes, recreation equipment (e.g. fishing/hunting supplies), firearms and ammunition.
- **Air Transportation Tax** (if you are transporting people by air, you have to collect this tax)
- **Communications Taxes** (e.g. on telephone or teletype services)
- **Wagering Taxes**
- **Taxes on U.S. Mined Coal**
- **Environmental Taxes** (imposed on petroleum products, various chemicals, and hazardous wastes)
- **Alcohol, Firearms, Ammunition, and Tobacco Taxes**

Be sure to contact to IRS for complete information on federal excise taxes.

### Internal Revenue Service

#### Atlanta District Office

401 W. Peachtree St. NE

Atlanta GA 30303

800-829-3676

## Federal Income Taxes

The amount and method you pay federal income taxes will be dependent on the legal form in which your business is organized.

**For a Sole Proprietor or a member of a Partnership:** In either of these arrangements, you will be required to make estimated federal income tax payments. These individual payments are due in four installments. These payment deadlines are April 15th, June 15th, September 15th, and January 15th, for one whose tax year is the calendar year. Any amount left unpaid will be due April 15th, of the following year. The Form 1040-ES is used to file these taxes. 90% of your estimated tax must be paid during the course of the year.

**For a Corporation:** The corporation is responsible for paying estimated corporate taxes if it has taxable income. These taxes can be due as soon as the fourth month of the corporation's first tax year. The proper form for filing these taxes is the Form 8109. You must deposit these payments in a bank licensed to accept federal tax payments. The corporation will be issued a coupon book. These coupons will carry the corporation's tax ID number and are to be used with all federal tax payment deposits.

Forms necessary to file any of the estimated taxes mentioned above are available at your local IRS office. A coupon book will be mailed to you upon receipt of your Form SS-4 (the form filed requesting a tax ID number). For more information, contact the Internal Revenue Service.

## Employer Taxes

There are taxes that, as an employer, you are responsible for both withholding from employee wages as well as paying yourself. For more complete information on employer taxes, see the "Labor and Safety Regulations" information within the "Workforce Issues" section of this guide.

## Federal Tax Identification Numbers

Your federal tax identification number is the number used to file your taxes. It acts in a similar capacity to your social security number on your personal income taxes. In fact, if you are a sole proprietorship you will probably use your social security number. In partnerships and you will need a Federal Tax ID number. To determine whether you need a tax ID number, contact the Internal Revenue Service. The number should be acquired prior to opening a bank account.

## Federal Unemployment Taxes

Federal Unemployment Insurance Tax is the employer's responsibility. This is not withheld from employee wages. Consult the Employer's Tax Guide for more information on the various taxes that you will be required to pay. The Employer's Tax Guide is a booklet designed to help you with all aspects of taxation. Contact the Georgia and U.S. Departments of Labor and Revenue to receive the Employer's Tax Guide and other relevant information. If you are a sole proprietor, you are not required to pay withholding. You are however required to pay self-employment tax. Contact the Internal Revenue Service for complete details.

### Internal Revenue Service Atlanta District Office

401 W. Peachtree  
St. NE  
Atlanta GA 30303  
800-829-3676

### Internal Revenue Service Atlanta District Office

401 W. Peachtree  
St. NE  
Atlanta GA 30303  
800-829-3676

