

FAQs

Long before the law was enacted, the questions were coming in; here are three (3) of the most frequently asked questions we have received from our clients and others.

1. What business is best for me? Do I give up my S-Corp status and go back to a C-Corp?

While this question is best answered on a per taxpayer basis, here's what I want you to understand: *C-Corporation income that is distributed to the owner is double taxed*. First 21% on the company side, then based on your total income, you could be faced with additional taxes up to 24.88% (that's a 45% tax rate; much greater than the highest individual tax rate of 37%). The loss in C-Corp cannot be passed-through to your personal return but remains in the company for future profit netting. Assets held in C-Corps can be the target for creditors.

If your only income is the distribution from the C-Corp and it's below \$38,600, then you may want to consider the change. (Just be aware that you can't flip/flop from S to C-Corp, then back to S-Corp.) Take a long-term view approach and keep in mind that if not extended, this law expires in 2025.

2. I am an independent contractor; do I form an LLC or S-Corp?

My response would be yes since I am looking beyond a tax viewpoint, however, let's first make a correction. S-Corp is **not** a legal entity; it's simply a tax election that the company makes. Before making a decision to form a company, consider the cost to form or organize a legal entity, and don't forget the NYC publishing requirement, that is an added cost.

Please keep in mind that proper books and record should be maintained for the company. You should consider using the service of an accountant to track the financial stability of the company.

If you are interested in forming a legal entity, we can help you to form one that is right for you and assist you with your accounting needs, so please contact us.

Any of these entities, i.e. LLC, C-Corp, etc., can request permission to be taxed as an S-Corp.

That said, forming a legal entity can be beneficial in many ways:

- It protects you from creditors;
- It looks better from a branding and marketing viewpoint;
- It helps you to get better clientele;
- It also allows you to partner with others to bring in talent and other skills that you don't possess.

3. I get a W-2 from my employer, however my role is one like that of an independent contractor, I pay my own health insurance and take care of my own job expenses.

The response to this question is not clear-cut. Beyond tax savings, some employers are simply protecting themselves from Department of Labor (DOL) audits. The penalties can be grave when the DOL reclassifies an independent contractor as an employee. Some industries require that you are classified as an employee.

I would first ask that you evaluate your role with your employer and if you strongly believe you are an independent contractor, consider forming a legal entity. Employees in the media and entertainment industry may be more impacted than others, since the job-related expenses are not deductible under the new law. Here's how [Sally Persons from the Washington Times](#) feels about the impact on these taxpayers.

We can assist you by analyzing your tax impact at a tax planning consultation.