



# LEGAL ASSISTANCE TO MICROENTERPRISES PROJECT (LAMP)

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## **Basic Steps to Starting Your Small Business Restaurant**

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Opening a restaurant is exciting but it can seem overwhelming. This is just a general guide for starting your restaurant. A ‘Resources’ section is included at the end of the guide that includes important phone numbers that may be helpful to you. You should consult an attorney throughout this process.

### **I. Business Structure and Business Name**

#### **1. How do I get started?**

The first step in starting your restaurant will be to pick a business entity. This will determine how you structure ownership of your business. Many small businesses, start off as a sole proprietor or a general partnership. The sole proprietorship is simple and inexpensive. It is formed when an individual goes into business; the business does not legally exist separately from the owner. As the owner, you are personally responsible for the debts of the business.

A general partnership is also simple and inexpensive. It can be formed when two or more persons go into business with each other. Partners are “jointly and severally” liable for all business debts. This means that each partner will be entirely responsible for the entire debts of the business. If you have a partnership, it is a good idea to have a written agreement to set out each partner’s rights and responsibilities.

There are also other structures that are less common among small businesses like corporations or limited liability companies. These have different tax set-ups and the responsibility for business debts is also different. You should consult your attorney before picking a business structure.

You will also need to pick a business name. If the name does not include the last name of the owner(s), the business name must be registered with the county clerk's office; there is generally a small fee for this. Check to see if your restaurant must also be registered with the Corporation Section of the Texas Secretary of State.

## **II. Business Licenses and Permits**

### 1. What types of licenses and permits will I need?

You should check for federal, state, regional, county, and city requirements. When researching, check directly with the appropriate agency and never rely on the fact that an existing business similar to yours didn't need a license or had to meet only minimal building code requirements. This is because new businesses may be held to a higher standard than old businesses if the laws have changed.

The following licenses and permits may be required in the state of Texas prior to opening your restaurant:

- *Food Establishment Permit* – Texas Department of Health (expect to pay about \$258)
- *Tax Permits* - Texas Comptroller (there is no permit fee)
- *Sign Permit* - A restaurant sign may also require a permit. If a sign permit is required, it will usually cost less than \$100. Generally your city or county planning (zoning) office will be able to tell you if you need a permit.

Your restaurant will also have to comply with the local health regulations. To find out what the health regulations are in your area contact your county health department.

### 2. What if I want to sell alcohol in my restaurant?

You will need an alcohol license. Contact the Texas Alcoholic Beverage Commission.

### 3. Do I need a license to play music in my restaurant?

Yes! You will need a copyrighted music license if you plan to play recorded music in your restaurant. See the Resources section for more information on getting a music license.

### 4. What do I need to do to so that my customers can pay with a credit card?

Check with your bank!

### 5. Are there local requirements?

Definitely! You should check to see if there is a centralized office in your city or county that is in charge of handling building regulations, conducting inspections, issuing building permits, and overseeing zoning regulations. If there is not, you may also contact your city or county clerk, the building and safety department, the planning (zoning) department, or the public works department. A member of one of these offices will work with you to determine if your planned business location is appropriate for a restaurant. Contact your local fire department as well to make sure your restaurant follows the fire code compliance and to schedule a fire inspection.

6. I have employees: are there regulations I need to follow regarding them?

You may check federal and state occupational health and safety regulations by contacting the U.S. Occupational Safety and Health Administration and the Texas Department of Health, Division of Occupational Health.

If you need information on the minimum wage, employment tax, salaries, and benefits, contact the Tax and Labor Law Department of the Texas Workforce Commission. If any of your employees are going to be receiving tips (such as waiters), see the IRS website listed below.

In most cases, you are not required to carry workers' compensation insurance in Texas, but for information on that, contact the Texas Worker's Compensation Commission. Worker's compensation insurance would cover wages and medical benefits to employees if they are injured on the job, and would generally limit your responsibility to pay for those wages and medical benefits.

### **III. Insurance**

1. How much insurance should I buy?

Insurance should cover the most common kinds of accidents and losses. You can save money on premiums by choosing high deductibles and saving to cover smaller losses. A deductible is the amount you have to pay out-of-pocket for expenses before the insurance company will cover the remaining costs. For example, if you pick a policy with a \$1000 deductible and an accident causes \$100 of damage to your restaurant, you will have to pay for the damage because the accident caused less than \$1000 of damage.

You should also check your lease and licenses/permits because some may require you to carry insurance. When picking insurance, talk to several insurance agents and get several quotes before making your final decision.

### **IV. Taxes**

1. What types of federal taxes might apply to my restaurant?

There are three main types of federal taxes that may apply:

- **Income tax:** This is a tax on your business income. Your business income = total profits – business expenses. Keep track of your business expenses and save your receipts because that will lower the amount of taxes you will have to pay. A business expense is defined as anything that is an ordinary and necessary expense in your business, trade, or profession, such as the rent you pay for your lease, or the expense to buy or repair an oven for your restaurant.
- **Employment taxes:** This includes money you must pay as an employer and money that you must withhold from your employee's income and pay to the government.
- **Self-employment tax:** This is a tax on money you receive from working in your business, but *not* as an employee of the business. It is equivalent to the total employer and employee's share of employment taxes.

2. What about sales tax?

Under Texas law, sales tax applies to restaurants because they provide food services. As mentioned above, you should get a sales tax and use permit from the Texas Comptroller's Office.

3. What is the Texas Margin Tax? Does it apply to me?

The Texas Margin Tax is imposed on some partnerships, corporations, limited liability companies, and some other business entities.

If the Texas Margin Tax applies to your business, you must file an annual report, which is due every May 15. If your revenues are over \$1 million, you should work with an accounting or tax professional to determine your tax due.

4. What is an Employer Identification Number?

An Employer Identification Number (EIN) is issued by the IRS and used to report tax responsibilities to the state and federal government. You should apply for one 6-8 weeks prior to opening a restaurant. Even if you are not required to get an EIN, having one will make it easier to differentiate between business and personal finances.

5. What other information should I know about taxes?

Keep in mind that in Texas you must report all personal property in your restaurant that is used to produce income, between January 1 and March 31 of each year. This will include inventories, equipment, and machinery. For additional information, contact your county's central appraisal district (CADs).

For more information on income tax, employment tax, and business expenses, contact the Internal Revenue Service and the Social Security Administration. It is strongly recommended that you talk to a professional tax advisor, accountant, and/or attorney before starting your restaurant, as tax law can be very complicated and the above are only general rules.

**V. Leasing**

1. What is a lease?

If you are going to rent a space to run your restaurant, you will need a lease. A lease is a contract between the tenant and the landlord. A written lease will give you more security and help to avoid disputes. Both the tenant and landlord should be identified in the lease. Carefully consider the terms of the lease because when you sign a lease, you become personally responsible for the rent. If you are unable to pay, the landlord may be able to access your personal property.

The landlord may use a preprinted lease that his/her lawyers have drawn up; this will probably be more beneficial to the landlord than to you, but it is a good point to start negotiations. Make sure the lease states the starting date and ending date for the lease, and that it clearly identifies the area being rented, how much the rent is, and how the rent amount is calculated. In negotiating your lease, consider the pros and cons of a short-term and long-term lease. Short-term leases are beneficial if you are uncertain about the

success of your business. However, a long-term lease can offer you and your landlord more protection.

You should also make sure that you identify who has the power to sign the lease as the landlord (not just someone who manages the building). The lease should also cover the price, when payment is due, and how to resolve disputes.

**Resources:**

1. Corporation Section of the Texas Secretary of State: 512-463-5555  
[www.sos.state.tx.us](http://www.sos.state.tx.us)
2. Texas Department of Health: 1-888-963-7111  
[www.tdh.state.tx.us/bfds/lic/applications/retail/RetailESTB-2\\_year\\_Initial-Owner.pdf](http://www.tdh.state.tx.us/bfds/lic/applications/retail/RetailESTB-2_year_Initial-Owner.pdf)
3. Texas Comptroller of Public Accounts: 1-800-252-5555  
[www.window.state.tx.us/taxpermit](http://www.window.state.tx.us/taxpermit)
4. Texas Alcoholic Beverage Commission: 512-206-3360  
[www.tabc.state.tx.us/](http://www.tabc.state.tx.us/)
5. Copyrighted Music Licenses - ASCAP: 1-800-505-4052  
[www.ascap.com/index.html](http://www.ascap.com/index.html)
6. U.S. Occupational Safety and Health Administration: 512-916-5783  
[www.osha.gov](http://www.osha.gov)
7. Texas Department of Health, Division of Occupational Health: 512-834-6600  
[www.lib.utexas.edu/taro/tslac/20031/tsl-20031.html](http://www.lib.utexas.edu/taro/tslac/20031/tsl-20031.html)
8. Tax and Labor Law Department of the Texas Workforce Commission:  
1-800-832-9243  
[www.twc.state.tx.us/customers/bemp/bemp.html](http://www.twc.state.tx.us/customers/bemp/bemp.html)
9. Texas Worker's Compensation Commission: 512-448-7900  
[www.tdi.state.tx.us/wc/indexwc.html](http://www.tdi.state.tx.us/wc/indexwc.html)
10. Employer Identification Number: apply by calling 1-800/829-4933.  
To determine if you are required to have an EIN, see:  
[www.irs.gov/businesses/small/article/0,,id=97872,00.html](http://www.irs.gov/businesses/small/article/0,,id=97872,00.html).

11. Internal Revenue Service: 1-800-829-1040 or 1-800-829-4059  
[www.irs.gov](http://www.irs.gov)

For information on tipping, see  
[www.irs.gov/govt/tribes/article/0,,id=140005,00.html](http://www.irs.gov/govt/tribes/article/0,,id=140005,00.html)

12. Social Security Administration: 512-916-5404 or 1-800-772-1213  
[www.ssa.gov](http://www.ssa.gov)

**Legal Assistance to Micro-enterprises Project (LAMP) provides free legal services for qualified low-income residents of the Texas RioGrande Legal Aid service area start or sustain a small business. LAMP provides useful legal advice and assistance on the laws that may affect proposed and existing businesses, including: formation, contracts, employment issues, tax, health and safety laws, commercial landlord/tenant leases, and lending laws. To complete an application, call toll-free: 1-888-988-9996.**