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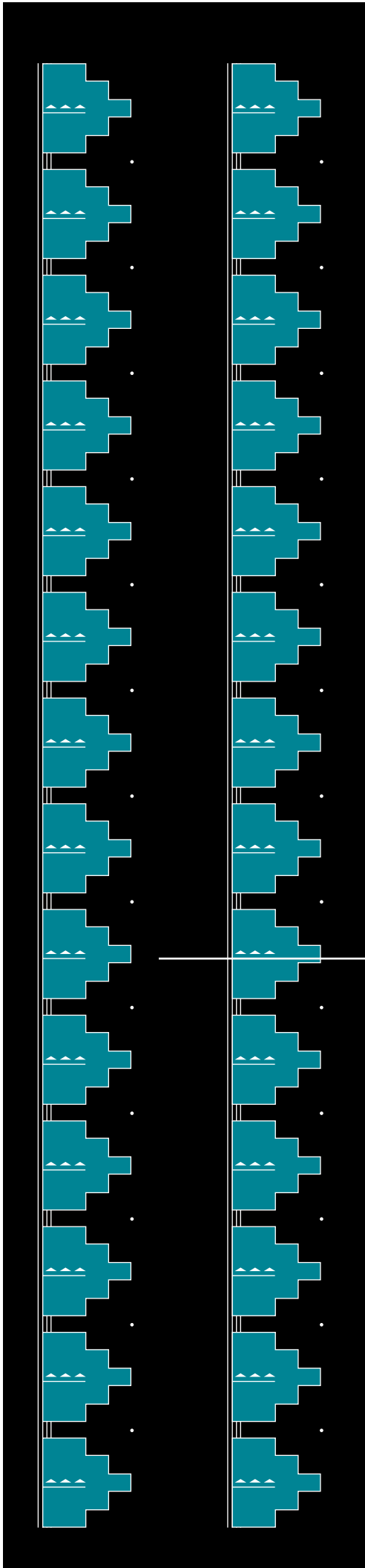
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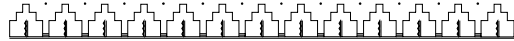
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STARTING OUT

A GUIDE TO CREATING YOUR OWN NEW MEXICO BUSINESS

A publication of The New Mexico Small
Business Development Center in coop-
eration with the New Mexico Economic
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STARTING OUT

A GUIDE TO CREATING YOUR OWN NEW MEXICO BUSINESS

Compiled by Tim Goodwin

CREDITS:

A number of people contributed to the update of this publication. Among those are Kathy McCormick, New Mexico Economic Development Department; and Flo Dow and Roy Miller, New Mexico Small Business Development Center.



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NOTE: In the process of compiling this publication, every effort was made to ensure the accuracy of the information. Due to the evolving nature of New Mexico's business climate and economic development efforts, some material will be out-of-date or some organizations omitted. If you notice any inaccuracies or desire information to be included in future publications, please contact the New Mexico Small Business Development Center at 1-800-281-7232 (in Santa Fe: 428-1362).



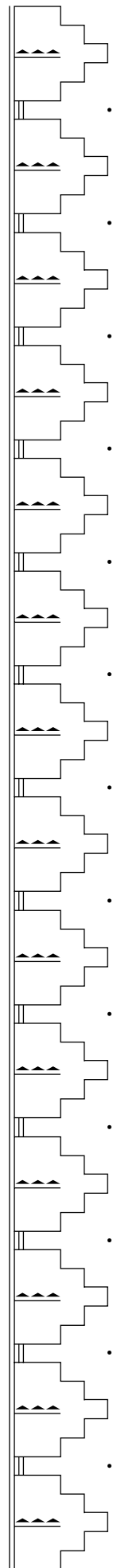
INTRODUCTION

To avoid failure you must be willing to plan and make adequate preparations. You must identify each step necessary for starting a business and not shortcut the process. You don't have to go it alone; there are resources available to help you. In fact, success is unlikely without some assistance.

This guide is designed to help you find out what steps are necessary to get a business in New Mexico off the ground. You'll learn about the resources — both technical and financial — available to you within the state. And you'll meet other New Mexicans involved in the small business community — entrepreneurs, bankers, and business assistance providers — and learn from their experiences.

Just as important as encouraging you to pursue a solid business opportunity, we hope this guide will discourage you from starting a business that would best be avoided, or for which you are unsuited. Early recognition of when not to start a business helps avoid unnecessary failure and its emotional and financial consequences.

Working with this guide, and the business assistance providers you'll meet, you will be able to determine whether you are the right person with the right idea and the right assessment of the market to join the growing number of small businesses in New Mexico.



GETTING IT ALL DOWN ON PAPER:

The Business Plan



IS A FORMAL, written business plan really necessary? No. In spite of all the rhetoric and hype about the importance of business planning, a number of successful companies have been launched without one. Witness Apple Computer and Patagonia.

Nevertheless, is it likely that you will be successful or unsuccessful without a business plan? No. Studies have shown that the failure rate of start-ups without business plans is three times higher than that of businesses whose owners prepared a plan.

One of the great myths about entrepreneurs is that they love to take risks. On the contrary, most prefer not to. A successful entrepreneur knows how to calculate, manage, and minimize risk. Where others see risk, the entrepreneur sees opportunity. When successful companies are founded without a written business plan, they are typically started by gifted entrepreneurs with a strong grasp of their products and markets -- and a well thought-out strategy for connecting the two. Though they appear to be flying by the seat of their pants, these unusual people are quite focused and have a keen sense of direction. They are single-minded in their effort to manage and minimize risk.

Developing direction is the most important reason for writing a business plan. With little or no financial risk, this document allows you to test your business ideas, assess potential markets, refine product or service concepts, and clarify who is going to operate the business and how. In short, it is your chart — and charter — for exploring the business world. Imagine starting a business as like starting a trip. As your journey progresses, your business plan helps you determine whether you are following your route, alerts you to important landmarks, and reminds you of your schedule and budget.

The second most important reason to write a business plan is to plot your financial track. The business plan will help you understand the risks and rewards of the venture you have in mind. You should be able to assess, in a fair amount of detail, the costs of starting the business and bringing your product or service to the marketplace. You should also be able to determine the ongoing costs of being in business, including direct costs of production

and/or sales and indirect costs such as overhead. Using this information, together with projected revenue scenarios, will allow you to see what is necessary to break even, make cash flow forecasts, and build pro-forma financial statements. All of this provides you with the analysis needed to decide whether it is in your financial interest to go into the business.

If you decide to continue exploring the idea, this analysis is critical to obtaining the main thing that fuels the business world: capital. Your numbers help you decide the most appropriate way to finance the venture, at what rate you will “burn” that fuel, and what return can be made by whoever invests with you. All money, whether equity or debt, carries a cost. It may be finance and interest charges on a bank loan. It may be an agreed preferred rate of return to an investor. Or it may be the “lost opportunity” cost of your own money: the profit you would have made had you invested your dollars somewhere other than in your own business.

All of which brings us to the final reason for writing a business plan: raising money. The plan, or an abstract incorporated into a request for financing, helps the prospective investor — be it your banker or brother-in-law — determine the merits of the “deal.” They can understand the assumptions and weigh the risks. They can validate your information with their own data or experience. And they can provide feedback that may be helpful in allowing you to fine tune the business plan.

All of this may sound intimidating. It certainly can take an immense effort. But while there are many business consultants who will offer to write a business plan for you (*for a fee, of course*), most experts agree that the person best qualified to do it is you. You have the most to gain or lose.

There are no rules chiseled in stone for writing the perfect business plan. Much depends on the nature of your business, its history (*if it has one*), the complexity of the organization, the level of technology, and other such factors. Plans can be as short as one page or longer than one hundred; most are between twenty-five and fifty pages in length. They can be terse and follow a rigid format, or have a fluid narrative that weaves a story. Bear in mind, however, that elegant prose will not mask lack of content.

Whatever length and style is suitable for you, your plan should, at a minimum, contain the following information:

- Executive summary
- Business description and/or history
- Product or service description
- Market analysis and approach
- Competition
- Operating plan
- Key personnel
- Financial analysis

EXECUTIVE SUMMARY

Many experts argue that the executive summary should be as brief as possible because busy, powerful executives lack time to read business plans. If most of the people to whom you show your business plan have time only to read the executive summary, then you are probably not prequalifying your readers, managing their expectations, nor positioning your business adequately.

A well-written summary should be precise and persuasive enough to entice powerful people to read on. More importantly, however, it forces you — the entrepreneur — to condense the entire plan into a compact, coherent statement with which you can articulate your intentions and requirements. This provides you with an invaluable tool that enables you to prequalify and approach an investor with an argument that balances their interests with yours. Many people won't read an executive summary, much less the entire plan, unless it has been well positioned in advance.

The summary should not exceed five pages. Preferably it will be half that. In any case, if it is two or more pages, condense it further into a one-page statement. This will be helpful for preparing cover letters and verbal statements that introduce your business.

In fact, you might open the executive summary with your mission statement: a concise phrasing of what the business does, where and how it does it, and for whom it does it. The mission statement synthesizes all of the elements of your business plan.

Be sure to cover the following points in your executive summary:

- Business name and description
- Product/service description and competitive advantage
- Nature of your market
- Overview of the key players
- Summary of financial projections
- Financial structure and requirements

Although this will be the first section in your plan, it should be the last section that you write. Without having thought through all of the subsequent sections you simply don't have enough information to write a good executive summary. For some reason, though, many people try to write the summary at the beginning, become frustrated and give up altogether. You would be better advised to first prepare an outline of the plan, and then begin to fill in the details one section at a time.

BUSINESS DESCRIPTION AND/OR HISTORY

This section provides the background information on the business. It should fully describe the general nature of the business, giving its name, the date and place of formation, legal structure, significant past events or anticipated milestones (*e.g., changes in ownership, structure, products, or acquisitions*) and the key dates or deadlines. It should also describe any subsidiaries or sharing of ownership, as well as the principals and their roles in starting the business.

Detail objectives you have developed that will indicate whether your business is on track. These objectives should be clearly defined, measurable targets. They should be representative of your business's activity, simple to quantify, and easy to understand and present.

Examples might include total revenue, income, return on investment, market share, production targets, and employment (*numbers, type, wages and benefit level, employee satisfaction*). It is important to ensure that you include some measures that directly relate to the interests of your customers. These may include quality and availability measures of your product or service.

For each indicator you intend to track, state what the target is and how you intend to track it. If you are an existing business, provide a base measure based on current performance and your plans for reaching the target.

PRODUCT OR SERVICE DESCRIPTION

Describe in full the product or service lines of your business. State what distinguishes them from other products on the market and outline their competitive advantages. When possible, provide independent product evaluation reports or reviews.

If you are still in the development process, provide the current status and a schedule for completion. Discuss relevant information about

any patents, trademarks, or copyrights that you own or plan on obtaining. If there are any regulatory or other legal considerations needed, such as approvals, give the status of those in this section.

Assess the state of the technology used in your business and the effect new developments will have in the near to mid-term future. Describe how the business will take advantage of these changes and how they will impact new product development.

MARKET ANALYSIS AND APPROACH

Aside from your own ability, the determining factor for succeeding with your business is acceptance by the market. A nebulous, sometimes mysterious concept to define (*as in “the invisible hand of the marketplace”*), it is imperative that you understand the market for your product. Further, you must figure out how to present the product in such a way that it will generate enough sales not only to break even but to permit a return on your investment as well.

In the section on your market, you should describe your industry and the industry size and outlook. Discuss any relevant trends and the expected growth. If your product and service is related to an established industry, there may be plenty of information available to you through trade associations, industry contacts, or government sources.

Identify the main markets for the industry (*consumer, government, commercial, international*) and the effects any political, social, or economic changes may have on those markets as they relate to your product or service. Different markets may be experiencing different growth rates, so be sure to take this into account.

Where possible, identify major customers and include their sales history or future contractual commitments. State what percentage of your sales volume these customers represent.

Each segment or major customer group may have different purchasing habits or policies. Describe how you will approach them, whether through distributors, outside sales representatives, telemarketing, or direct response. Also include the level of contact you have identified as appropriate. Many companies and government agencies have procurement officers. Others work through department managers. Or perhaps you are selling directly to the end user or consumer. Include in this discussion how purchases are to be made, whether they are by the unit, on periodic contract, or through competitive bidding.

If you have conducted any market surveys or polled prospective customers, describe the results in this section. Discuss what product characteristics consumers are looking for and their reaction to the proposed product. Assess their price sensitivity and how that will influence your pricing strategy. If actual product testing was done, provide the results.

Discuss the anticipated demand. Is it seasonal, steady, or perhaps cyclical—tied with some external influence that causes demand to rise and fall?

Finally, discuss the strategy you will use for your marketing and public relations effort. Outline key advertising and promotion plans and events. If you plan to hire a marketing consultant, give the individual's or organization's name, describe their experience in the industry, and provide names of references such as their past clients.

COMPETITION

Having obtained a solid grasp of your market and its characteristics, you should next assess how it is “carved up.” If you are a new business, you may be facing formidable competition from experienced and entrenched companies. Describe your major competitors and assess their strengths and weaknesses. Discuss their market share and how customers perceive them. A word of caution, however: do not take this as a suggestion that you should malign or take thoughtless digs at the competition. To the contrary, your analysis should be respectful and your conclusions thoughtful.

If you are staking out new territory or developing a separate niche, discuss how your efforts differ from those of the competition and how they respond to market demand. If you intend to challenge the competition head-on, describe how you will capture market share and how much business you expect to take away from each key competitor. Carefully think this section through and formulate a compelling argument. Unrealistic assessments of the competition have doomed more than a few new ventures.

OPERATING PLAN

This section will really get to the heart of how your business will run on a day-to-day basis. After writing this section, there should be little doubt as to what your operations will be like and how you and your key employees will spend the average day. Things to consider in this section include the facilities, personnel, manufacturing or business processes, contractors and suppliers, and technologies or skills required to manufacture the product or deliver the service. In short, this section

should cover your business's environment, and its every input, activity, and output.

You should describe each aspect in some detail. In the case of facilities, for example, indicate whether you will own or lease the premises. Provide a general description, including size, location, and features. Discuss how it will be laid out, and insert any renderings, or site and floor plans you may have. If you envision the need to expand in the future, discuss how this will be accommodated. Any plans for capital improvements should be described and budgeted, together with some statement about how and when they will be completed.

You should present your plan for accomplishing production or conducting your service. If you are manufacturing a product, outline the process and describe how the manufacturing or assembly line will be organized. Discuss your individual production or operating advantages, your capacity (*current and planned*), and your ability to monitor efficiency and quality.

If you anticipate contracting out parts of the operation, describe your arrangements. Whether you are manufacturing internally or externally, account for how you will obtain raw materials or key components. Are you relying on sole sources, or do you have back-up vendors? What are the lead times for ordering? Will you be operating on a "just-in-time" basis (*often referred to as "just-too-late"*), or will you or your vendors be carrying an inventory of parts or material?

Your personnel plan needs to detail how the business will be staffed. Indicate the number of employees and provide job descriptions, qualifications, and wages and benefits for each position. Provide an organization chart showing how accountability will be set up. Also set out a master schedule of when the business will be open and how the shift pattern or rosters will likely be structured.

As you can see, this section may become quite lengthy as you develop the key aspects of your business. You may want to make each a distinct section within the plan. For larger or more complex operations, each aspect may be a separate document in itself. For example, some businesses maintain a personnel plan, a facilities plan, and a vendor plan, and then summarize these into a company plan with a top-level view. You may choose a similar approach for your presentation document, provided you have the detail to support it when an investor or analyst poses a question.

While you research and write this section account for all of the costs involved. Determine

which of these costs are up-front expenses and which are on-going expenses of conducting business. For those that are on-going, determine which are fixed expenses and which are variable. Fixed expenses will be those that are required to keep the doors open, regardless of whether there is any production or sales activity. These will include such things as rent, utilities, general and administrative costs, and minimum staffing levels. Variable expenses will be those that can be tied directly to production or sales. These will include the basic costs of the product sold or the components or ingredients of the product produced. Additionally, these expenses include packaging, commissions or royalties, piece-work or production wages, and so forth. By keeping track of all of these costs you will be able to establish the foundation for your financial analysis section. You will be able to plot out the costs involved in operating the business and assess the "break-even" point by looking at various production and sales scenarios. All of this will tie together with your estimated revenues from the market analysis to become the basis for making a "go/no go" decision.

KEY PERSONNEL

This section is different from your personnel plan in that here you are highlighting the principals and key management personnel who bring special talent to the business. Indicate their qualifications, the contribution they will make to the enterprise, and the level of position they will hold within the organization -- but don't make it sound as though you have a complicated and hierarchical organization structure. If there are special salary or stock arrangements, outline these as well.

When discussing the background of key personnel it is not necessary to include resumes for they can always be appended. Nor is it a good idea to overhype the individuals. Instead, you should present a straight-forward, brief biographical sketch of each. The idea is to get the reader to want to meet the individuals and become better acquainted. If the company sounds like a collection of ego-maniacs the reader may be put off.

Finally, if you know there will be a change in key personnel, then say so. Describe its likely impact on the business and how you intend to address the situation.

FINANCIAL ANALYSIS

Earlier, the idea of calculating, managing, and minimizing risk was presented. It all comes down to numbers.



TAYING AFLOAT:

Your Business Plan as a Management Tool

Once you open your business don't think that you have finished with your business plan. The plan should be a dynamic working document, helping you to stay afloat and remain focused on progress during your journey.

Business planning is a continuous cycle. Examining your position against the chart and making course corrections is part of the process. Sometimes, you will find that you've strayed off course or are out of the bounds of your budget. In these instances, you will need to take actions necessary to bring things under control and to get back to your plan. At other times, in working the plan, you may be forced to change it because your original concept just doesn't square with reality, or because unforeseen market changes or product innovations make your assumptions invalid. In any case, at least an annual review and update of the plan will enhance your success.

As part of this review you will want to reconsider some of your major assumptions. What external influences have changed? Consideration should be given to such things as competitors, current and potential customers, suppliers, technology, trends, demographic changes, government policies and regulations, and, of course, the economy.

Against this backdrop, think about your strengths and weaknesses. What new opportunities do you see? What factors are a threat to your business? Ask yourself what your competitors could do to drive your enterprise out of business.

Given this review, think about any changes you should make regarding your assumptions of market share, revenue growth, inflation, and expenses. If necessary, rework the calculations on your financial projections.

Take a close look at your performance objectives. Are they still relevant? Are there others that would be more appropriate? Are you achieving your objectives? Have you met key deadlines? Are your financial controls working?

For most people, coming up with a description of the future expressed as a financial model is challenging at best, and more likely exasperating. Analyzing the future consequences of business decisions is a significant test of one's abilities as a business planner. For some people, this is a test of intelligence, for others a test of imagination, and still others a test of honesty.

While predicting the future may be in the realm of mystics, you must justify the existence of your business to a group of serious, decidedly non-mystical, financiers. You are required to predict the financial result of a series of events that you anticipate will take place over a period of five years. You will attempt to control most of these events, but any one of them can be thrown off by unforeseen occurrences that may wreak havoc on your basic business assumptions.

The fact that few businesses actually meet their five-year projections should neither shock you nor discourage you from undertaking the exercise seriously. Remember, this will be the most critically analyzed section of your plan. Not surprisingly, it is the section most often criticized by bankers and investors as insufficient. Approach writing this section thoughtfully and, above all, honestly.

At this point, you will realize how imperative it is that the previous sections are put together carefully and the assumptions tested rigorously. If you have doubts, reconsider each section. Think through not only your costs, but also your ideas, the state of your industry, and the affect of economic change on your customers.

The next step is to determine how your business will account for its finances. Here you may want to obtain assistance in choosing a bookkeeping system and a set of financial controls that are appropriate to your needs. Consider establishing a preliminary chart of accounts. A chart of accounts is like a filing cabinet: it allows you to file every transaction of your business into a folder or "account" according to type.

Once you've defined how you will account for all capital, revenue, and expense transactions, you can take the numbers generated in the previous sections and begin to categorize them. You may decide to account for revenue by tracking sales according to different product groups. Or you might track sales to different customer groups.

Expenses can be accounted for in a number of different categories. You will want to be able to track your costs of sales based on the inventory you will be purchasing, or the

Identify any barriers that may inhibit or prevent your reaching your goals.

Once you have completed this step, ask yourself a series of questions with the preface “How to....” Broad answers to these questions should provide you with strategies that you may consider for implementation. For example, “How to increase sales to 500 units within six months?” will result in a list of possible answers. Initiate a telemarketing program, increase advertising visibility, and so on. *(You may end up with dozens of answers... the more the merrier).*

Select the two or three of these answers that best utilize your strengths, and begin to look at steps or actions you need to take in order to put your strategies to work. Check your business plan to see if this will result in any changes to your operating, manufacturing, personnel, facilities, or marketing plans.

By undertaking such a process, you should be able to monitor not only the performance of your business, but also those accountable, including yourself, for its success. Nonetheless, you will never be able to eliminate every problem in your business. There will always be room for improvement and the need to push for change.

By following your plan, however, you should be able to respond quickly to both external factors, such as changes in the business environment, and internal factors, including poor performance or a decrease in quality. You will be able to make improvements and cope with change. Most importantly, you will continue to reduce your risks and to find new opportunities.



materials and labor that go into manufacturing your product. Deducting your cost of sales from your gross sales will then give you a gross profit figure from which you can pay operating expenses.

Your operating expense accounts will include such things as payroll and related expenses, rent, interest, depreciation, auto or truck expenses, utilities, office supplies, advertising, professional fees, and whatever else you or your accountant or bookkeeper find relevant to the business and wish to track in a separate account. In the end, every single transaction must be placed into one — and only one — account. Most businesses have a

miscellaneous account in which to place transactions that are not otherwise categorized.

Because you will likely be asked to defend the numbers in your presentation, this is a good time to outline your assumptions. Annotate each category in your financial analysis with a short statement about how you determined the number you set forth. Was it based on industry averages? Your own calculations of local wage rates and anticipated scheduling? Average market rates for rent? Energy estimates from your local utilities? Did you factor inflation into your projections? Do you anticipate a real price rise above inflation for your product during the course of the proforma?

You may decide to present a “best-case” scenario, a “worst-case” scenario, and a somewhere-in-between scenario, which many people refer to as “likely” even though it rarely is. Each scenario should be logical and realistic. Your assumptions should be stated as well.

The general requirements for the type of financial statements to put in the business plan are similar to those required in a financing request (See **Financing**). You should have:

- **Profit and Loss (or Income) Statements**

Covering a three- to five-year period. Often the first year is presented monthly, years two and three quarterly, and years four and five as annual summaries.

- **Balance Sheets**

One for the beginning, and year end balance sheets for each period of your projections.

- **Cash Budgets**

It is highly probable that your cash flow will differ from your profit and loss analysis. This is the one area that trips up many businesses. How often have you heard someone cry “Sales are great, my accountant says I’m making a profit, but I never seem to have any money in the bank!” Cash flow is difficult to manage because we buy goods — either with cash or on credit — then sell these goods to our customers, sometimes for cash and sometimes on credit. The amounts due to suppliers never seem to be the same as what is owed to us, and are certainly never payable at the same time that customers want to pay us. You should have a cash flow projection that takes these discrepancies into account and allows you to plan

for the cash demands of the business. You should then prepare a separate “Funds Flow From Operations” statement that shows the relationship between the business cash flow and the demands on (or return to) capital. These should be prepared for that same period and on the same basis as the Income Statements.

- **Key Ratios**

When you go for funding, you may be asked “What is your quick ratio? Current ratio? Gross profit margin? Inventory turnover? Return on Capital?” Ratios are helpful to bankers in determining the health of a business in comparison to others in the industry. Equally, ratios should be used by you to keep a check on the pulse of your business.

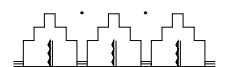
If all of this is beginning to sound too complicated, don't worry. The financial analysis should be kept on a level appropriate to the needs of your business. Each of the analytical tools presented here can be modified to meet your needs and can be made easily understandable. Your nearest Small Business Development Center has someone who can help you develop the spreadsheets. They also have pamphlets and workbooks suited to your experience and background in finance, even if you have none.

Writing a business plan can be hard work. It is especially difficult if you are unfamiliar with what one looks like, or like most people, you have trouble writing out ideas and strategies. Sample plans are available at the Small Business Development Centers. Many centers offer courses or workshops in writing business plans. All offer coaching and feedback that is constructive and non-threatening. These are good “reality checks.”

As you look at plans, listen to ideas, and find resources, don't lose sight of what sparked your initial interest in the business: your vision. Remember that your business will be a unique combination of your talents, as well as those of your partners or employees, blended with the characteristics of your suppliers, customers and community. You may be tempted or encouraged to borrow heavily from other business plans, or to mimic existing enterprises. After all, “why reinvent the wheel?”

Feel free to use available non-proprietary information, but not at the expense of losing the opportunity you have envisioned. You need to retain ownership not only of the business concept but also of the ways and means to make it a reality. Without having articulated your plan for success, and thereby gained an understanding of the intricacies that will make it happen, you handicap your subsequent management ability from the start.

Having explored the variables involved in your business you will have identified, calculated, and learned to manage and minimize inherent risks. Where others see risk, you see — and can now realize — opportunity.



FINDING YOUR IDENTITY

Legal Forms of Business Organization



HAVING DECIDED TO go into business, your next important decision is the legal structure of the business. In short, who is the business and how is it owned? The answers to these questions are important because they affect such issues as taxation, legal and financial liability, and decision-making authority.

The decision on which form to choose will be influenced by the nature of the business, capital requirements, risk assessment, management control, the participation of others, and personal needs. This section describes the options available to you in New Mexico. It outlines some of the advantages and disadvantages of each to help you assess what best fits your requirements. If you are uncertain about determining the legal structure of your business it is a good idea to discuss these options with your business advisory team — especially your attorney and/or accountant.

SOLE PROPRIETORSHIP

Most business owners choose sole proprietorship when they start out for one reason: simplicity. It is easy to set up and easy to manage. A sole proprietorship is owned by, and benefits, one person. As a sole proprietor, you alone are responsible for the business's liabilities. You (*and your spouse*) profit from its endeavors. This money is considered personal income and is taxed as such. Tax losses, if any, are applied against any other taxable income you may have.

For those who wish to be their own boss, sole proprietorship offers the most flexibility. Whether you are working at home alone or have large numbers of employees, you have the choice of determining how decisions are to be made because you have accepted responsibility for the outcome.

Advantages:

- Ease of formation
- Sole ownership, control, and decision making
- Flexibility in responding to business requirements
- Minimal legal restrictions
- Minimal start-up and continuation costs

Disadvantages:

- Unlimited liability
- Difficult access to capital and financing

- Limited viewpoint or experience may constrict decision making
- Hard to attract some highly skilled, entrepreneurial employees
- Continuity of business difficult upon illness or death of owner

GENERAL PARTNERSHIP

General partnerships are the next simplest legal structure to establish. Essentially, a general partnership exists when two or more people come together to pursue a trade or business for profit. If you and a friend decide to pool your talents and look for customers, you've established a partnership. There need not be any written agreement between you for a general partnership to exist. The only registrations you might make are the standard business and fictitious business name registrations.

In spite of this, it is advisable to have your attorney draw up an agreement that outlines the rights and responsibilities of each partner, the management structure, profit-sharing arrangements, and provisions for ending the partnership's affairs and distributing the assets upon dissolution. Formation of a general partnership is governed by the Uniform Partnership Act, although its provisions may be varied under your business agreement.

Each partner in a general partnership is individually liable for all of the partnership's liabilities. Even though you agree to split the debt 50-50 with your partner, from the creditor's perspective you are 100 percent liable if your partner doesn't come through. This liability is not simply limited to the amount a partner has invested, but may extend to non-partnership properties as well. Additionally, any one general partner can bind the partnership (*and fellow general partners*) to a contractual obligation. For this reason, there are no true "silent partners" in a general partnership. Since each is liable for the consequences, each partner will want to have a say in the decisions.

Like a sole proprietor, each partner is taxed on his or her share of the partnership income at an individual personal income tax rate.

Partnerships are not separate legal entities; they have a limited life. They are tied to the individual partners. Upon death or withdrawal of

a partner, or the addition of a new partner, the partnership is terminated. For this reason, as well as residual liability, it is difficult to step out of or sell a partial interest in the business. A new partnership, however, may be formed by drawing up a new agreement, should the remaining partners choose to continue the business under this legal structure.

Advantages:

- Ease of formation
- Flexibility in management still possible
- Broader management base than sole proprietorship
- Direct share of profits by partners
- Minimal legal constraints

Disadvantages:

- Unlimited liability of partners
- Potential for conflict over authority and decision making
- Financing may be difficult
- Continuity of business difficult upon death or withdrawal of partner
- Disposition of partnership interest difficult

LIMITED PARTNERSHIPS

A limited partnership is a variation on the theme of two or more partners coming together to pursue trade or business. In a limited partnership, however, there must be at least one (*though sometimes more*) general partner and at least one (*though often more*) limited partner. A partner is designated “limited” because he or she signs an agreement limiting his or her control over the partnership’s affairs. In return, a limited partner’s liability is usually limited to the amount of his or her original capital investment. In this instance, the limited partner is a “silent partner” in the popular notion of the term. The general partner still has unlimited liability, just as in the general partnership.

Formation of limited partnerships is governed by the New Mexico Limited Partnership Act. For a limited partnership to exist, there must be a written limited partnership agreement and a certificate of limited partnership filed with the relevant office (*see Are Your Papers In Order?*) If the appropriate certificate is not filed, the business is considered a general partnership regardless of what the parties think.

Advantages:

- Obtain equity without surrendering control to investors
- Good structure to raise investment capital

- Ability to raise financing enhanced
- Direct participation in profits
- Limited partners’ risk is limited

Disadvantages:

- Unlimited liability for general partner
- Decisions may be restricted by limited partner agreement
- Partnership may dissolve upon death, withdrawal, or bankruptcy of a general partner
- Disposition of partnership interest may be difficult, since its sale must comply with state and federal securities laws

CORPORATION

A corporation is the most complex and formal business structure. A corporation exists as a distinct legal entity. As a legal “person,” separate from its owners, the corporation can make its own contracts, raise capital, assume liability, and — just like the rest of us — pay taxes. Corporations are usually formed by the authority of a state government. In New Mexico, they are governed by the New Mexico Public Regulation Commission (NMPRC).

If you wish to establish a corporation, specific statutory criteria must be met. (*see Are Your Papers In Order?*)

Having a corporation may provide you with a vehicle for raising capital through the sale of shares of stock to either selected individuals or the general public. While shareholders own the corporation and select the management, they are generally not liable (*in their roles as owners*) for claims against the corporation beyond, of course, the amount they invested in the stock.

The corporation’s status as a separate legal entity provides for continuity of existence. Death of an officer, director or stockholder, or the transfer of shares, for example, do not result in the termination of the corporation. Its management can continue to conduct business as before.

Advantages:

- Limited investor liability
- Transferability of ownership
- Separate legal “person”
- Continuity of existence
- Access to investment capital
- Delegated authority to hired management

Disadvantages:

- Complexity of formation
- Double taxation

- Expense of formation and maintenance
- Charter limitations and government regulations
- Administration of corporate structure
- Dissolving the corporation can be expensive

SUB-CHAPTER S CORPORATIONS

The issue of double taxation should be a concern to you if you are contemplating forming a corporation. Double taxation may occur when the corporation has a profit. Just as you pay income tax when you make money, so does the corporation. For the corporation, however, the tax rate may be even higher than the current maximum rate for individuals. To pass on the benefit of its profits to those who own stock, the corporation declares a dividend and distributes the profits to the shareholders. The individual shareholders receive these profits as investment income. Even though the corporation paid taxes on the profit, the shareholders are now liable for taxes on their additional income.... voila! double taxation.

Corporations with thirty-five or fewer shareholders and which meet certain other requirements may elect Sub-chapter S status. This permits the corporation to have its shareholders assume the business's tax liabilities, based on their share of the corporate income, rather than to be taxed itself. The corporation still files a tax return for information purposes, much like a partnership does. Although profits can be distributed to the shareholders, who then include them with their individual tax returns, often there may be taxable income and no "profit." As in partnerships, the Internal Revenue Service may limit losses that may be claimed for tax purposes by individual investors.

PROFESSIONAL CORPORATIONS

A professional corporation, by statute, is one organized for the purpose of rendering a professional service to the public, and for which the individuals practicing the profession are required by law to be licensed or obtain legal authorization. Moreover, only a licensee can own stock in the corporation. Under the New Mexico Professional Corporation Act, these professions include, but are not limited to, certified public accountants, registered public accountants, chiropractors, optometrists, dentists, osteopaths, podiatrists, architects, veterinarians, doctors of medicine, physicians, surgeons, attorneys, and life insurance agents. Shareholders in a professional corporation are subject to both the regulations of their respective licensing board and the Professional Corporation Act.



CORPORATION... TO BE OR NOT TO BE

Nearly all entrepreneurs at one time or another struggle with the question of whether or not to incorporate their business. Many choose to incorporate even though they may not need to do so. For some it seems a panacea, solving problems from liability to credibility. Others opt for incorporating on the advice of a banker or business consultant because of one specific issue, without considering their business needs as a whole. With so many changes in the tax code, tort cases, and financing laws, incorporation may no longer be the one right answer to some very real business concerns.

One Santa Fe attorney suggests looking at the following key issues in analyzing why you wish to incorporate. There may be simpler, more effective ways of addressing your concerns.

LEGITIMACY — Some see incorporating as a way of obtaining instant legitimacy. Being a corporation is a way of saying you are "real." Further, being "president" of a corporation is seen as prestigious and according instant respect.

Although only a corporation can have "Inc." as part of its business name, even a sole proprietorship can attach "Company" or "Co." to the business name. Becoming president of a company is a simpler process than becoming president of a corporation and looks nearly the same on a business card. Thus, a sole proprietor might have business cards printed with "Andy Gomez, President; The Gomez Co." instead of "Gomez, Inc."

The public, however, has become much more sophisticated about labels. Businesses are scrutinized more thoroughly. Simply incorporating will not guarantee respect. You'd do better to focus on quality, service, price, and other important areas. In other words, get the basics right. Respect will follow.

MANAGEMENT — Corporations are often thought of as having a more formal management structure. True, the shareholders formally elect officers who in turn select the management. Often, though, the issue of formal versus flexible management structure is more a function of management style than of

continued

Corporation *continued*

the choice of business entity. A sole proprietorship can have an elaborate hierarchical management structure, for example, even though it is owned and controlled by and benefits only one individual. Conversely, a corporation can be operated with a *laissez-faire* management style or even a highly participatory method even though it is ultimately controlled by a board.

Flexible management is not desirable when it is a euphemism for disorganization and lack of communication. Although partnerships may not be required to take minutes of meetings, the partners themselves might consider taking notes on those areas of business activity for which they are accountable. Corporations, on the other hand, may be required to take minutes of shareholder and director meetings, but these don't account for every action of the business. Determine what management style works best for your business. You should be able to implement it within the framework of your choice of business entity.

TRANSFERABILITY OF INTEREST—

Certainly, the ability to transfer interests is a major advantage of incorporating. This is particularly true when it comes to transferring partial interests. It is easy to break down the ownership of a corporation incrementally through shares of stock, and then to transfer small, medium, or large percentages of interest in the business. On the whole, however, small businesses may find a very limited market for partial interests. Many investors or business buyers prefer purchasing the entire business and its assets. In this case, having a corporate shell may not add value to the transaction.

PROTECTION FROM LIABILITY —

Liability is often the biggest concern cited by those choosing a corporation for their business identity. The types of liabilities incurred by most businesses can be characterized as debt — either through borrowing, supplier credit, or unpaid bills — or tort liability, through accidents, product claims, or actions of employees.

continued

Corporation *continued*

When it comes to borrowing money, a bank seldom makes a loan to a small business without requiring personal guaranties in addition to the business' collateral. Likewise, trade creditors often require personal guaranties from the principals. Unpaid bills for which the corporation has sole responsibility may, therefore, be a small portion of the business debt.

The corporate structure may or may not protect you from tort liabilities. One Santa Fe attorney suggests anticipating from where the tort is likely to arise. "Is it your act or the act of others...? We are always responsible for what we do." If liability arises from an employee's action, then the employee and the corporation are responsible, but not necessarily the owner. If it is your action, or you were personally supervising the employee's action, then you may have personal as well as corporate liability.

Even when the liability would typically be corporate, the owner may not be immune from the other party "piercing the corporate veil," and thus being held personally liable as well. There are two common instances when this occurs. The first is where the owners have failed to act consistently with the existence of a corporation; for example, by not fulfilling the requirements that a corporation hold meetings, elect officers, pay franchise taxes, or file biennial reports.

The second may occur if the corporation is insufficiently capitalized. While there is no absolute measure of "thin capitalization," a court will look at the anticipated needs of the individual business. If the business does not have enough assets to reasonably address its needs, including anticipating tort liability, nor does it provide insurance as an alternative, then the owner may be held personally liable.

What is the bottom line? Picture yourself down to your last \$500 in start-up money and trying to decide between spending it on insurance coverage or on setting up a corporation. Your best advice may be to purchase insurance.



NON-PROFIT CORPORATIONS

A non-profit corporation in New Mexico is defined by statute as a corporation formed for a purpose not involving pecuniary gain to its members. It pays no dividends or other pecuniary remuneration, either directly or indirectly, to its members. Because a business corporation by its nature is organized to provide pecuniary benefit to its shareholders based on profit (*regardless of whether it makes one*) it cannot be a "non-profit" corporation.

Incorporating as a non-profit corporation does not immediately qualify donations to your organization as tax-deductible, charitable contributions. For that, you must obtain recognition from the I.R.S. as a charitable organization under Section 501.(C).(3) of the I.R.S. Code, using Form 1023. For more information, call the District Office in Albuquerque.

COOPERATIVE ASSOCIATIONS

Five or more natural persons or two or more associations may incorporate as a cooperative association for any legal purpose to buy, sell, or produce goods or services. Each member in the association has only one vote, regardless of the number of shares held. This is distinguished from a corporation, in which voting strength is determined by the number of shares held by each shareholder. Cooperative associations are further distinguished from corporations by the fact that there is a maximum rate set for return on shareholders' investment or membership capital. After the payment of the limited return on capital, net savings are distributed to members or patrons in proportion to their patronage.

EMPLOYEE STOCK OWNERSHIP PLAN (ESOP)

An ESOP is classified as an employee benefit plan that can be used for corporate debt financing. ESOP's are empowered to fulfill many different roles for a business: buy-out shareholders; finance capital; expansion; refinance existing debt; sell off divisions; acquire new operations; and take a company private.

LIMITED LIABILITY COMPANY (LLC)

A limited liability entity is comprised of "members". Liability of members is limited to the amount of their investment similar to shareholders in a corporation. Members may be individuals or entities. The limited liability tax treatment is determined by the new "check the box rules". The limited liability entity files articles of formation with the Public Regulation Commission. An operating agreement among members is recommended. If an agreement doesn't exist, statutory scheme applies.

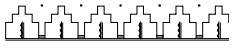
Advantages:

- Limited liability of members
- Flexibility in management - board of directors not required
- Members can be entities (unlike SCorp)
- Preferential distributors among members (unlike SCorp)

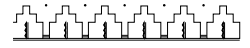
Disadvantages:

- New entity - many undecided legal and tax issues
- Uncertain whether single member LLC possible under New Mexico law. Some States do not recognize.

ARE YOUR PAPERS IN ORDER?



Business Registrations and Regulatory Issues



AFTER DECIDING to go into business and determining a name, a legal structure, and a place for your business, the next step is to get your papers in order. You will then be legitimately in business. For most businesses this is fairly simple: it is a matter of obtaining a gross receipt tax registration from the state and a license or registration from the city or county within which you will do business.

Depending on your business structure and type of undertaking, there may be additional registrations or licenses required or advised. You may wish to register a fictitious name or “DBA” (*“doing business as”*), or you may be required to obtain a permit for hazardous materials activities. There are also special state licensing requirements for selected businesses and professions.

This chapter is divided into three parts. The first deals with the general requirements to start a business in New Mexico. These vary, depending on the type of ownership or legal structure of the business.

The second part examines the forms and procedures that are necessary if your firm requires “special” regulations governing business activities, as well as Occupational Safety and Health Act (OSHA) requirements. The third part is a listing of licensed and regulated occupations and professions, and business or agricultural activities requiring special permits, licenses or fees.

Each requirement has a common reference name, form title and code, and the name, address, and telephone number to contact for more information. If you aren’t sure whether a requirement is relevant to your business, don’t hesitate to call the agency listed.

PART I

For every business, you must register in the city or cities in which you intend to locate your business. If it will be in an unincorporated or rural area, you generally must register with the county. Local business licenses usually cost between \$25.00 and \$35.00 per year. Call your local city or county government office for more information.

Secondly, you must register with the State of New Mexico’s Taxation and Revenue Department. You will receive a CRS-1 Filer’s Kit, which

contains forms and instructions for filing gross receipts and state income tax withholding payments.

TAX NUMBER APPLICATIONS

Form: RP-31 (+RP.31A for corporations),
Application for Registration
Agency: New Mexico Taxation and
Revenue Department
P. O. Box 5374
Santa Fe, NM 87502-5374
(505) 827-0951
Fee: None
Web: www.state.nm.us/tax

Additional requirements for specific forms of ownership:

SOLE PROPRIETORS

There are no other forms necessary at this stage. If you are operating under a name other than your own you can register the business name or DBA with the Secretary of State. Any business can register at local offices for licenses.

PRIVATE, FOR-PROFIT CORPORATIONS

If you are establishing a for-profit corporation, there is a series of steps to take. First, you should apply to reserve the corporate name with the Public Regulation Commission (PRC). Then, you should make application for tradename clearance with the PRC and Registration of Tradename/Trademark with the Secretary of State’s office. You must file Articles of Incorporation and an Initial Registered Agent form. Finally, if you are going to issue securities, file Form J, Notice of Claim Exemption.

APPLICATION FOR RESERVATION OF CORPORATE NAME

Form: Application for Reservation of
Corporate Name
Agency: Public Regulation Commission
P.E.R.A. Bldg., Room 413
P.O. Drawer 1269
Santa Fe, NM 87504-1269
(505) 827-4504 or (505) 827-4509
Fee: \$25.00, For-Profit; \$10.00, Non-profit
\$20.00, LLC
Web: www.nmprc.state.nm.us

ARTICLES OF INCORPORATION

Form: Articles of Incorporation
Agency: Public Regulation Commission
Fee: \$1.00 per 1,000 shares, in no case less than \$100 or more than \$1,000

INITIAL REGISTERED AGENT FORM

Form: Affidavit of Acceptance of Appointment
Agency: Public Regulation Commission
Fee: None (Fee for later changes)

PARTNERSHIPS

If you are a limited partnership, the limited partnership certificate must be filed with the Secretary of State. General partnerships may be registered.

REGISTRATION WITH SECRETARY OF STATE

Form: Application for Tradename/ Trademark
Agency: Office of the Secretary of State Operations Division
325 Don Gaspar, Suite 300
Santa Fe, NM 87501
(505) 827-3600
Fee: \$25.00 for registration
\$25.00 per class code
Web: www.state.nm.us

FORM J (If required)

Form: Notice of Claim Exemption
Agency: Regulation and Licensing Securities Division
725 St. Michael's Dr.
Santa Fe, NM 87505
(505) 827-7140
Fee: \$350.00
Web: www.rld.state.nm.us

NON-PROFIT CORPORATIONS

As with for-profits, you must file Articles of Incorporation and the Initial Registered Agent form with the Public Regulation Commission.

ARTICLES OF INCORPORATION

Form: Articles of Incorporation
Agency: Public Regulation Commission
Fee: \$25.00

INITIAL REGISTERED AGENT FORM

Form: Affidavit of Acceptance of Appointment
Agency: Public Regulation Commission
Fee: None (Fee for changes)

COOPERATIVE ASSOCIATIONS

Requirements for cooperative associations are the same as for private for-profit corporations: Application for Reservation of Corporate Name, Application for Trademark Clearance or for Registration of Tradename/Trademark, Registration of Corporate Name, and Form J.

REQUIREMENTS FOR COOPERATIVE ASSOCIATION

Form: Articles of Incorporation
Agency: Public Regulation Commission
Fee: \$50.00

PART II

The following information relates to activities which may take place on your business premises. All firms are required to display the OSHA poster. All other forms or permits listed are applicable to selected businesses or situations. Depending on your business activity, these may be mandatory. Contact the appropriate agency for more specific information.

OSHA ON-SITE CONSULTATION

Form: OSHA On-Site Application
Agency: NM Environment Dept.
Occupational Health and Safety Bureau
1190 St. Francis Drive
Santa Fe, NM 87502
(505) 827-2855

Fee: None
Compliance: Service that is available to all firms.
Web: www.nmenv.state.nm.us

OSHA POSTER REQUIREMENT

Form: OSHA Poster Requirement
Agency: NM Environment Dept.
Fee: None
Compliance: Mandatory for all firms.

STATE BUILDING PERMIT

Form: State Building Permit
Agency: Regulation and Licensing Department
Construction Industries Division
725 St. Michael's Drive
Santa Fe, NM 87505
(505) 827-1030

Fee: Varying, based on evaluation.
Compliance: Mandatory for construction.
Local: Contact local city offices.
Web: www.rld.state.nm.us

VEHICLE REGISTRATION

Form: MVD-10002 10/96, Application for Vehicle Title and Registration
 Agency: Taxation and Revenue Department
 Motor Vehicle Division
 Joseph Montoya Bldg.
 1100 St. Francis Dr.
 P.O. Box 1028
 Santa Fe, NM 87504-1028
 (505) 827-2294
 Fee: Varies according to vehicle type and weight
 Compliance: Mandatory for firms operating vehicle fleets.
 Web: www.state.nm.us/tax

VEHICLE I.D. INSPECTION

Form: MVD-10861, Affidavit of V.I.N. Inspection
 Agency: Taxation and Revenue Department
 Motor Vehicle Division
 Joseph Montoya Bldg.
 1100 St. Francis Drive
 P.O. Box 1028
 Santa Fe, NM 87504-1028
 (505) 827-2294
 Fee: None
 Compliance: Mandatory for firms operating vehicle fleets.
 Web: www.state.nm.us/tax

SIGN PERMIT

Form: Sign Permit
 Agency: Highway and Transportation Department
 Maintenance Bureau
 1120 Cerrillos Road
 P. O. Box 1149
 Santa Fe, NM 87504-1149
 (505) 827-5564
 Fee: \$100.00 + \$25.00 annually
 Compliance: Contact Maintenance Bureau to determine if form is needed.
 Local: Contact local city office.
 Web: www.nmshtd.state.nm.us

APPLICATION FOR MANUFACTURER LICENSE

Form: Application for Manufactured Housing
 Agency: Manufactured Housing Division
 725 St. Michael's Drive
 Santa Fe, NM 87505
 (505) 827-1396
 Fee: \$500.00
 Compliance: Mandatory for manufactured housing firms.
 Web: www.rld.state.nm.us

NOTICE OF INTENT TO DISCHARGE

Form: Notice of Intent
 Agency: NM Environment Dept.
 Ground Water Quality Bureau
 1190 St. Francis Drive
 Santa Fe, NM 87502
 (505) 827-2918
 Fee: None
 Compliance: Mandatory for firms discharging waste water and contaminated soil.
 Web: www.nmenv.state.nm.us

DISCHARGE PLAN

Form: Part A, Discharge Plan Application
 Agency: NM Environment Dept.
 Ground Water Quality Bureau
 1190 St. Francis Drive
 Santa Fe, NM 87502
 (505) 827-2918
 Fee: \$100.00 + additional based on type of discharge.
 Compliance: Mandatory for firms discharging waste water and contaminated soil.
 Web: www.nmenv.state.nm.us

FORM 1**(CONSOLIDATED PERMITS PROJECT)**

Form: EPA Form 3510-1, Application Form 1 — General Information
 Agency: NM Environment Dept.
 Ground Water Quality Bureau
 1190 St. Francis Drive
 Santa Fe, NM 87502
 (505) 827-2918
 Fee: None
 Compliance: NPDES Permit mandatory for firms discharging water.
 Web: www.nmenv.state.nm.us

NOTIFICATION OF HAZARDOUS WASTE

Form: EPA Form 8700-12
 Agency: NM Environment Dept.
 Hazardous Waste Bureau
 P.O. Box 26110
 Santa Fe, NM 87502
 (505) 428-2500
 Fee: None
 Compliance: Mandatory for all firms with hazardous waste activity.
 Web: www.nmenv.state.nm.us

REGISTRATION FORM

Form: Notification for Underground Storage Tanks
 Agency: NM Environment Dept.
 Petroleum Storage Tank Bureau
 2044 Galisto Street
 Santa Fe, NM 87504
 (505) 984-1741
 Fee: \$100.00 per tank, annually

Compliance: Mandatory for all firms having underground tanks. Thirty days advance notice must be given if you plan to buy or sell a tank.
Web: www.nmenv.state.nm.us

GENERAL INFORMATION (solid waste activity)

Form: Part I, General Information
Agency: NM Environment Dept.
Solid Waste Bureau
1190 St. Francis Drive
Santa Fe, NM 87502
(505) 827-2775
Fee: None
Compliance: Mandatory for all firms with solid waste activity.
Web: www.nmenv.state.nm.us

APPLICATION FOR PERMIT AND CERTIFICATE OF REGISTRATION

Form: Application for Permit and Certificate of Registration
Agency: NM Environment Dept.
Air Quality Bureau
1190 St. Francis Drive
Santa Fe, NM 87502
(505) 827-0031
Fee: \$100.00
Compliance: Mandatory for all firms discharging to air.
Web: www.nmenv.state.nm.us

PART III

Below is a listing of activities requiring business and occupational licenses, permits, special taxes, or other fees.

Agency: Taxation and Revenue Department
1190 St. Francis Drive
P.O. Box 630
Santa Fe, NM 87504-0630
(505) 827-0700
Web: www.nmenv.state.nm.us

Accountants
Acupuncturists
Air Contaminant Sources
Aircraft Dealers
Alcoholic Beverages Licenses
Architects
Athletic Promotions and Contests
(Professional)
Athletic Trainees
Attorneys
Bar Examination Fees

Bar Fees (*Annual License and Disciplinary Assessment*)
Banks
Barbers
Bingo and Raffle License Fees and Taxes
Birth and Death Certificates
Building and Loan or Savings and Loan
Building Permits (*State and local*)
Burning (*Open burning*)
Caravan Fees
Cemeteries
Child Care Facilities
Chiropractors
Christmas Tree Tag
Cigarette Dealers
Coal Surface Mining Permits
Collection Agencies
Commercial Driver Training Schools
Construction Trades:
Contractor's Licenses
Journeyman's Certificate of Competence
Miscellaneous Fees
Corporation Filing Fees
Cosmetologists
Credit Unions
Dental Hygienists
Dentists
Dental Assistants (*Radiological*)
Diagnostic and Treatment Centers
Dieticians
Discharge Plan
Driver's Licenses
Electrologists
Endowed Care Cemeteries
Engineers and Surveyors
Escrow Companies
Family Day Care Homes
Food Service Establishment
Foreign Limited Partnerships
Fraternal Benefit Societies
Funeral Homes, Funeral Director or Funeral Practitioners
Gasoline Distributors
Hazardous Material
Hazardous Waste Facility Permit
Hearing Aid Dealers and Fitters
Home Health Agencies
Horse Racing Occupational Licenses and Fines
Horse Racing Track License
Hospices (*Freestanding*)
Hospitals
Interior Designers
Junkyard License
Landscape Architects
Land Subdivision
Librarian
Liquefied Petroleum Gas License, Permit and Inspection Fees
Liquor Licenses
Logo Rental Fee

Logo Sign Permit Fee
 Maternity Homes and Shelters
 Manufactured (*Mobile*) Home:
 Manufacturers, Brokers,
 Associate Brokers, Dealers, Sales-
 persons, Repairmen, Installers
 Midwives
 Money Order Sales
 Mortgage Loan Company and Loan Broker
 Motor Boat Dealers
 Motor Carriers
 Motor Vehicle Dealers, Wreckers, Dismantlers
 Motor Vehicle Oversize and
 Overweight Permit
 Motor Vehicle Sales Finance Company
 Notary Public
 Nurses
 Nursing Home Administrator
 Nursing Homes
 (*Skilled Nursing Facility and*
 Intermediate Care Facility)
 Nutritionists
 Occupational Therapists
 Optometrist
 Osteopathic Physicians and Assistants
 Outdoor Advertising Sign Permit Fee
 Petroleum Products
 Pharmacies
 Pharmacists
 Physical Therapists and Assistants
 Physicians
 Physician's Assistants
 Pipeline License Fees
 Podiatrists
 Polygraph Examiners
 Private Investigators
 Private (*Proprietary*) Vocational Schools
 Psychologists
 Public Utilities Inspection and
 Supervision Fees
 Radiation Equipment and Radioactive Material
 Radiation Protection Continued Care
 Requirements
 Radiologic Technologists
 Raffles
 Real Estate Appraisers
 Real Estate Brokers and Salespersons
 Rehabilitation Centers
 Renal Dialysis (*End Stage*) Facilities
 Residential Facilities for Adults and
 for Children
 Respiratory Care Practitioners
 Savings and Loan or Building and Loan
 Securities and Commodities Brokers
 and Salespersons
 Small Loan Companies
 Social Workers
 Solid Waste Facilities
 Special Fuel Permit
 Speech Language Pathologists and
 Audiologists

State Police Escort
 Swimming Pools and Public Baths
 Teachers
 Thanatopractice
 Trade Mark, Trade Name and
 Label Registration
 Trading Stamps
 Underground Storage Tanks
 Uniform Commercial Code (UCC)
 Fee Schedule
 Utility and Carrier Fees
 Utility Operator Certification
 Veterinarians and Veterinarian Technicians
 Veterinary Drug Permit
 Waste Disposal System
 (*Liquid Waste, Septic Tanks, etc.*)
 Waste Disposal System (*Solid Waste*)
 Water Supply Facility Permit
 Water Well Drillers
 Weather Control or Cloud Modification
 License Fees
 Weighmaster
 Weights and Measures

Special Agricultural Taxes, Licenses, Permits and Fees

Beef Council Assessment
 Butcher or Slaughter (*Meat and Poultry*)
 Cattle Rest Stations
 Commercial Fertilizer Companies
 Cotton Gins
 Egg Dealers
 Feed, Commercial Manufacturers
 Fertilizer and Soil Conditioner
 Manufacturers
 Fresh Meats Dealers, Sellers,
 Manufacturers or Processors or
 Operators of a Rendering Plant or Cold
 Storage Locker Plant
 Fresh Meat Peddler
 Fruits and Vegetables
 Hide Inspection (*Proof of Ownership*)
 Horseowner's Transportation Permit
 Livestock Auctions and/or Sales Rings
 Livestock Brands
 Livestock Impoundment and Moving of
 Trespass Livestock
 Livestock Inspection Fees
 Livestock Special Levies
 Milk Grading
 Milk Producers and Handlers
 Peanut Processors
 Pesticides
 Plant Protection
 Seed Testing
 State Chemist

HIRED HANDS:

Employee Information and Issues



SOONER OR LATER, every owner of a growing business must deal with the issue of hiring some help. Correctly defining this relationship is important. There are many laws and regulations that will affect the employment relationship. In general, the relationship between your business and an individual worker will be either:

- Employee, or
- Independent contractor.

Understanding the distinction between the two categories may mean the difference between saving your business unnecessary payroll costs on the one hand, or facing unexpected liabilities for taxes, wages, and benefits on the other.

New Mexico, which has a long tradition of using “contract labor,” is experiencing increasing use — and abuse — of independent contractors. There are a variety of reasons for this. As they face an unpredictable economy, businesses are becoming more concerned with maintaining adaptability in personnel decisions and with containing employee benefit costs. Many workers, particularly semi-retired and those “in transition,” want to take advantage of the schedule flexibility and freedom of movement that independent contracting offers.

Even where management and worker find the independent contractor arrangement mutually agreeable, these relationships are under closer scrutiny by both federal and state agencies as to whether they are not, in fact, employer/employee relationships. As you examine this issue for your specific business, remember that determination of a worker’s status may be made by common law principles or by statute. A person may be an employee for some purposes, but not for others. Federal and state statutes may define “employee” differently; various agencies may apply other regulatory tests. There may be special rules, or exemptions, for specific occupations like professional athletes or salespeople, or for certain situations like a family business employing a family member.

Confused? This is a complex and rapidly changing area of law. But that shouldn’t dissuade you from hiring the help that you need. This section provides some general information on the subject, and explains the difference between employees and independent contractors. And it provides an explanation of some of the laws and guidelines that govern these relationships. Bear in mind though

that your specific situation may require consultation with an attorney or another competent advisor.

EMPLOYEES

The main factor defining an employer/employee relationship under common law rules is the employer’s right to control the manner and means of performing the work. The amount of discretion or freedom you may choose to give a worker is not the determining factor. Rather, it is whether or not you have the legal right to control the method and result of the work.

How the worker gets paid is another factor. If you pay the individual on a regular basis such as hourly or bi-weekly, or if you provide fringe benefits like medical insurance, that person is more likely to be considered your employee than if he or she were receiving a fixed fee for a specified service.

Whether or not a business provides materials and tools for the work can be another determining factor. A worker providing his or her own tools and supplies is less likely to be considered an employee than one who relies on those which you provide. Similarly, if the work is done at your place of business, the individual is more likely to be considered an employee than if it is done on premises controlled by the service provider or a third party.

Finally, the ability of the hiring business to discharge the worker, and under what conditions, may also be scrutinized.

No one of these factors alone will determine the existence of an employment relationship. There are additional factors that may also influence determination, such as whether the worker expects a 1099, has other clients, or pays a gross receipts tax. Each specific case must be examined in its totality. Even in the event that none of the common law rules apply, the worker may still be classified as an employee for such statutory purposes as:

- Social Security Tax (FICA)
- Workers Compensation
- Unemployment Compensation
- Fair Labor Standards
- Occupational Safety and Health
- Other statutory programs

Note: Many federal and state statutes exempt certain employers and employees from their rules.



EMPLOYEE OR INDEPENDENT CONTRACTOR:

A Twenty-Point Checklist

Determining whether a worker is an employee or an independent contractor is an important decision. It influences how the relationship is to be conducted and which laws and regulations will affect it. The following true/false checklist is based on 20 factors the IRS has developed to determine whether a worker is an independent contractor or an employee. A true answer suggests an employee relationship, a false one suggests independent contractor. This is only a guide for determination and does not account for other factors that may or may not be applied by other state or federal agencies or courts.

1. The worker is required to follow instructions as to how, when, and where work is to be done.
2. The worker needs training to perform the job.
3. The worker's tasks are integrated into the employer's normal business operations.
4. The worker's services are rendered personally — not delegated.
5. The worker hires, fires, pays, and supervises assistants in the workplace.
6. A continuing relationship exists between the worker and employer.
7. The working hours are set by the employer.
8. The worker must devote substantially full time efforts to the job.
9. The work is performed on the employer's premises.
10. The worker complies with a sequence set by the employer.
11. The worker must submit regular oral or written reports to the employer.

continued

Employee or Independent Contractor *continued*

12. The worker is paid for time on the job rather than by project.
13. The worker is reimbursed for expenses.
14. The employer furnishes the necessary tools and materials.
15. The worker has not invested in the facilities for performing the services.
16. The worker has no risk of economic loss.
17. The worker only works for one employer or firm at a time.
18. The worker does not make his/her service available to the general public.
19. The employer has the right to discharge the worker, regardless of performance.
20. The worker has the right to terminate the relationship without incurring liability.



INDEPENDENT CONTRACTORS

There are many terms for an independent contractor, including consultant, vendor, contract laborer, contractor, or subcontractor. Independent contractors may be of any class, such as blue-collar, clerical, or managerial. Typically, you would hire and pay a contractor on a project basis. It is not unusual, however, to see contractors hired on an open-ended basis and paid hourly, daily, or weekly fees.

There is a growing trend in many parts of the country to “lease” employees from a third-party firm. Some of these firms specialize in providing long-term leasing, where the worker may stand beside your worker on an assembly line performing the same tasks, using the same skills, and wearing the same uniform. More familiar in New Mexico are short-term arrangements made through temporary agencies. The availability of many well-qualified managers who have taken “early retirement” has even led to “executive leasing” for a variety of white-collar positions at all levels, including chief executive officer.

Usually, independent contractors practice a trade, business, or profession in which they offer their services to the general public. Architects, building contractors, doctors, and lawyers are good examples. Any of these, however, might also be employees. A business may hire an in-house accountant, as well as retain an outside independent accounting firm. Ask prospective hirees if they have a business card or a yellow page advertisement for their services. Check to see if they are registered to do business in your locality and whether they have a gross receipts tax registration. Independent contractors, like your business, are liable for gross receipts tax on most transactions.

Control of the manner and means of the work is again the key factor. You always have the right to control the work result, regardless of whether the worker is an employee or an independent contractor. With an independent contractor, however, you don't have the right to control the manner and means of accomplishing the result.

MISCLASSIFICATION OF EMPLOYEES

Misclassifying a worker as an independent contractor may result in unexpected problems for your business. These may take the form of unpaid taxes and penalties, back wages for overtime, fines, or compensatory damages. In addition to government action, your business may be vulnerable to such private actions as discrimination, wrongful discharge, or pension and employee benefit claims. Unfortunately, there is no clear line to determine whether the hiree is an employee or an independent contractor. If you remain confused about how your business should handle an individual worker, seek advice. If you know how a worker should be classified, do so properly and always maintain employment records.

LABOR REGULATIONS

There are various laws and regulations governing your relationship with your worker. The two agencies that you are most likely to contact regarding these issues are the state and federal departments of labor:

The NEW MEXICO DEPARTMENT OF LABOR administers the state's laws relating to labor issues.
301 W. de Vargas
Santa Fe, NM 87501
(505) 827-7434

The U.S. DEPARTMENT OF LABOR's Wage and Hour Division administers the Fair Labor Standards Act (FLSA).
Western Bank Building
505 Marquette NW, Ste. 840
Albuquerque, NM 87102
(505) 248-5115

Most labor regulations cover wages and conditions of employment. The following is a description of the most common of these regulations.

Fair Labor Standards Act (FLSA) is a federal law establishing minimum wage, overtime pay, and child labor standards for employers. It covers employees of businesses engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on goods that have been moved in or produced for interstate commerce.

MINIMUM WAGE AND OVERTIME

The minimum wage is \$4.75 per hour for establishments under the jurisdiction of the State Minimum Wage Act, i.e. if the firm is a small employer not grossing \$500,000 per year and not engaged in interstate commerce. Students are exempt from minimum wage if they work for an establishment that falls under state jurisdiction. The minimum wage is \$5.15 per hour if the establishment grosses \$500,000 a year or more, is engaged in interstate commerce or is a named industry under the Federal Fair Labor Standards Act. Some of the named industries are schools, hospitals, nursing homes, state, county or municipal governments.

WAGE PAYMENT

Every employer must designate regular paydays that are no more than 16 days apart. Payment generally must be made within 10 days of the close of the pay period. Professional, administrative, or executive employees, or outside salespeople may be paid once a month. An employee who is discharged must receive all wages due within five days unless it is based on task, piece or commission in which case 10 days is allowed. If an employee quits or resigns, then wages and deductions due must be paid on the next succeeding pay day.

MINIMUM AGE REQUIREMENTS

New Mexico law states that no child shall be employed during school hours, and that no child under the age of 14 be employed without first obtaining a certificate from the appropriate school or Department of Labor officials. Children between the ages of 14 and 16 must first obtain a certificate if they work during the term in which their school district is in session. These certificates are one-year permits issued through the school or school district, or through the director of the Labor and Industrial Division of the N.M. Department of Labor.

Children over the age of 12 are permitted to sell newspapers.

SAFETY REQUIREMENTS

The New Mexico Occupational Health and Safety Act (OSHA) provides for the establishment of regulations applicable to places of employment, the enforcement of those regulations, and education and training for employers and employees about regulations.

OSHA requires employers to furnish work and a place of work free from recognized hazards and requires that the place of work be maintained in such a way that it complies with the prescribed regulations.

The Workers' Compensation Administration has a staff of safety counselors who can visit employers' premises at no charge and advise them on how to establish their safety program.

EMPLOYMENT DISCRIMINATION

The New Mexico Human Rights Act prohibits its discrimination based on race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, or medical condition (*except that 29 U.S.C., Sect. 631(c)(1)&(2) shall apply to discrimination based on age*).

Title VII of the Civil Rights Act of 1964 is the federal law that prohibits employment discrimination based on race, color, religion, sex, or national origin. Additionally, the Age Discrimination in Employment Act, the Equal Pay Act, the Pregnancy Discrimination Act of 1973, the Rehabilitation Act of 1973, the Family Medical Leave Act of 1993 and the Americans with Disabilities Act of 1993 provide protection for employees from discrimination.

The application of these laws may vary according to the number of employees a business has.

EMPLOYEE PRIVACY

Under the New Mexico Employee Privacy Act, employers are prohibited from refusing to hire or discharge an individual because he or she is a smoker or a nonsmoker, provided he or she complies with applicable laws or policies about smoking during business hours. Nor can it be a condition of employment that the individual abstain from smoking or using tobacco products during nonworking hours.

WORKERS COMPENSATION

By law, employers are required to pay for their workers' health care costs and provide indemnity pay to substitute for lost wages if a worker is injured on the job. In case of a worker's death on the job, employers must provide compensation to the survivors. The New Mexico Workers' Compensa-

tion Act defines the requirements for employers and the remedies available to employees. It sets up a framework under which workers' compensation may be provided, primarily through private insurance companies. All businesses, firms, private persons, and corporations (*among others*) that employ three or more persons, regardless of full-time or part-time status, are required to carry workers' compensation insurance. One exception to this is that any business which is construction related and licensed for the Construction Industries Division must carry workers' compensation insurance if it has one or more employees.

All employers who are required to provide workers' compensation must post the Workers' Compensation Act poster and provide a supply of two-part Notice of Accident forms adjacent to the poster. Employers not required to be covered by workers' compensation are farm and ranch laborers, domestic servants and real estate salespersons.

This system of workers' compensation is sometimes billed as no-fault insurance for working people. Its purpose is to provide employees with a remedy that is "expeditious and independent of proof of fault." At the same time, it limits and determines the liability of the employer, provided they maintain insurance coverage. Once an employer is covered by workers' compensation insurance, the worker cannot sue him or her for additional damages beyond those set out in the Act. For this latter reason, you—as employer—may find it advantageous to obtain workers' compensation insurance, even if you are not required to do so.

Insurance policies are available to the employer based on projected annual payroll. Premiums are based on classification of the employee according to rates established by legislation. Policies are subject to audit, and premiums may be adjusted, due to actual payroll figures or changes in classification of employees.

The New Mexico Workers' Compensation Administration (WCA) regulates the system to make sure that employers have proper insurance coverage and that claims are paid fairly. The WCA has set up an Ombudsman Bureau to provide information and to clear up problems with workers' compensation. Its services are available to both workers and employers. While they may not give legal advice, the advisors who work for the bureau can explain how the system works and, in some cases, help resolve disputes. For more information about workers' compensation, contact:

Workers' Compensation Administration
P.O. Box 27198
Albuquerque, New Mexico 87125-7198
Telephone: 1-800-255-7965
In Albuquerque: 841-6000
(841-6816 for the Ombudsman Bureau)



EMPLOYMENT CHECKLIST

Once you have made the determination to hire someone, there are a series of steps you need to take. The following checklist guides you through these steps and refers you to the appropriate agencies. Forms generally come with instructions for completion and filing. Contact the individual agencies listed below or, for more detailed information, obtain the excellent packet Small Business Guide to Basic Employment Taxes by Jim Greenwood and Monica McCoy. It is available from:

Small Business Development Center

UNM-LA

P.O. Box 715
Los Alamos, NM 87544
(505) 662-0001
Cost: \$10.00

1. If necessary, determine whether the worker is an employee or independent contractor.
 - Form:** SS-8, Information for Use in Determining Whether a Worker is an Employee for Federal Employment Taxes and Income Tax Withholding
 - Agency:** Internal Revenue Service Taxpayer Assistance Unit
5338 Montgomery Blvd. NE
Albuquerque, NM 87109
1-800-829-1040.
 - File with:** IRS - 8 Determinations
P.O. Box 1231
Stop 4106 AUCSC
Austin, TX 78767
2. If you determine that the worker is an independent contractor and you pay that person \$600 or more a year for fees, commissions, or other forms of compensation, you must file FORM 1099-MISC with the IRS. Be sure to obtain the contractor's home address and social security number. You must send him or her the employee's copy by January 31 following each tax year.
 - Form:** 1099-MISC, IRS Copy 1096, Summary & Transmittal Form
 - Agency:** IRS Taxpayer Assistance Unit
 - File with:** IRS Service Center, Austin, TX 73301
 - Deadline:** 1099-MISC--January 31 following each tax year.
1096--February 28 following each tax year.

Note: No filings of 1099 copies are required by any New Mexico state agency.

3. If you have determined that the worker is an employee, you must register to pay both federal and state employment taxes.

FEDERAL:

Form: SS-4, Application for Employer Identification Number
Agency: IRS Taxpayer Assistance Unit
File with: IRS Service Center
Philadelphia, PA 19255

STATE:

Form: ACD-31015
Agency: New Mexico Taxation and Revenue Department
File with: New Mexico Taxation and Revenue Department
P.O. Box 5374
Santa Fe, NM 87502-5374
(505) 827-0951 (Santa Fe)
(505) 841-6200 (Albuquerque)

Form: ES-802
Agency: New Mexico Department of Labor
File with: New Mexico Department of Labor
P.O. Box 2281
Albuquerque, NM 87103
(505) 841-8576

continued

Employment Checklistcontinued

4. Obtain Workers' Compensation Insurance, if applicable. Coverage is obtained through insurance agents.

The workers' compensation personnel assessment is a tax which employers are required to pay if they are required by law to have workers' compensation coverage or if they voluntarily choose to have it. The amount of the assessment is \$4 per employee per quarter, as determined by the number of employees who were employed on the last working day of the quarter. \$2 may be deducted from the wages of each employee and a matching \$2 per employee is to be contributed by the employer.

The form used for paying the assessment requires the use of an Employer Account Number (EAN) assigned by the New Mexico Department of Labor. For employers not required to report to DOL, the Workers' Compensation Administration will assign a number (contact the Employer Compliance section at (505) 841-6810 or 1-800-255-7965).

Form: WC-1, Workers Compensation Personnel Assessment
Agency: Taxation and Revenue Department
P. O. Box 2527
Santa Fe, NM 87504-2527

File with: Taxation and Revenue Department
Deadline: Quarterly (end of month following end of quarter)

5. Have employee fill out forms.

Form: W-4 Withholding Allowance Certificate
Agency: IRS Taxpayer Assistance Unit

Form: I-9, Employment Eligibility Verification Proof of Residency and Legal Alien Status

Form: M-274, Handbook for Employers (with instructions for I-9)
Agency: United States Immigration and Naturalization Service
1720 Randolph Road, SE
Albuquerque, NM 87106
P.O. Box 9770
Albuquerque, NM 87103-9770
(800) 375-5283

6. Select a pay period for employees: daily, weekly, bi-weekly or semi-monthly.

7. Notify employees of eligibility for Earned Income Tax Credit.

Form: Notice 797, Eligibility for Refund Because of Earned Income Tax Credit
Form: W-5, Earned Income Tax Credit Advance Payment Certificate
Agency: IRS Taxpayer Assistance Unit

8. Determine federal taxes to be paid or withheld. Although no specific forms are required, these should be accounting entries on your (*the employer's*) books. They are subject to audit by various agencies, including the IRS. Tables are available to determine amounts to be withheld.

Federal Income Tax (FIT) —

Withheld from employee, based on W-4 information, marital status, and salary:

Form: Circular E, Tax Tables
Agency: IRS Taxpayer Assistance Unit

Social Security Taxes (FICA) —

Withheld at a fixed rate from the employee, based on earnings and matched by the employer:

Form: Circular E, Tax Tables
Agency: IRS Taxpayer Assistance Unit

Federal Unemployment Tax (FUTA) —

Paid by the employer on the first \$7,000 of wages paid in the calendar year:

Form: Form 940
Agency: IRS Taxpayer Assistance Unit

9. Determine New Mexico taxes to be paid.

State Income Tax (SIT) — withheld from employee as per FIT:

Form: New Mexico Withholding Tax Packet
Agency: New Mexico Taxation and Revenue Department

Employment Checklistcontinued

State Unemployment Tax (SUTA) —

Paid by the employer, with new employers paying at a rate of 2.7% of gross wages for a period of four years. After four completed years the rate is adjusted depending on the number of claims by former employees:

Form: ES-802, Employers Responsibility Under the Unemployment Compensation Law of New Mexico
Agency: New Mexico Department of Labor
Employment Security Division
(505) 841-8576

10. Account for employer's share of payroll taxes. Again, these are accounting entries subject to review. You must account for and pay FUTA, SUTA, and your share of the FICA.
11. Deposit withheld FIT, FICA, and FUTA. The required forms are automatically sent to you after the IRS receives your application for an employer identification number.

Form: 8109, Federal Tax Coupon Book
Agency: IRS Taxpayer Assistance Unit
12. Remit withheld New Mexico income tax.

Form: CRS-1 Report, Combined Gross Receipts Tax & SIT
Agency: NM Taxation and Revenue Dept.
13. File federal quarterly withholding return for all employees. Note that a separate form is required for agricultural workers, which is filed annually.

Form: 941, Employers Quarterly Federal Tax Return
Form: 943, Employers Annual Tax Return for Agricultural Employees
Agency: IRS Taxpayer Assistance Unit
Deadline: 941 due last day of month following end of quarter; 943 due January 31
14. File New Mexico quarterly report.

Form: ES-903A, New Mexico Employer's Quarterly Wage and Contribution Report (SUTA liability)
Agency: New Mexico Department of Labor, Employment Security Division
Deadline: By last day of month following end of quarter.
15. File FUTA return.

Form: 940, Employer's Annual FUTA Return
Agency: IRS Taxpayer Assistance Unit
Deadline: By January 31 following each tax year.
16. Provide Form W-2 to employee and others.

Form: W-2, Employee's copy
Agency: IRS Taxpayer Assistance Unit
Deadline: January 31 following each tax year.

Form: W-3, Transmittal of Income Tax Statements & W-2, Copy "A" of each W-2 form to IRS
Agency: IRS Taxpayer Assistance Unit
Deadline: February 28 following each tax year.

Form: CRS-9, Transmittal of State's Copy of W-2, Copy "1"
Agency: New Mexico Taxation and Revenue Department
Deadline: February 15 following each tax year.
17. **Form:** NM New Hire Reporting Form
Agency: NM New Hires Directory
Deadline: Upon Hire

Useful Internet Addresses:

IRS: <http://www.irs.gov>

NM Taxation and Revenue: <http://www.state.nm.us/tax>

NM Department of Labor: <http://www.dol.state.nm.us>



KNOW THY BENEFACTOR:

Financing



ONE OF THE most frustrating experiences for many people in business is obtaining financing. The process of defining one's business worth, putting forth a personal financial statement, asking for money, and risking rejection can be emotionally draining. This can affect your business relationships and carry over into your personal life.

In New Mexico, this frustration is shared by a large number of people in the business community. Small businesses raise alarms about the lack of financing available. Bankers say they have money to loan, but there is a lack of equity investment by many applicants. Potential equity investors complain about the lack of management skill. And it all goes around again. While each constituent may raise valid policy concerns on a macro level, this discourse does little for you as you carry out the day-to-day requirements of obtaining financing.

While you may not be able to influence socio-economic policy, there are several factors you can control that will enhance your ability to get financing. This section discusses those factors and introduces you to some funding sources around the state.

Regardless of the background noise about financing in New Mexico in general, specific deals are analyzed for financing based on their merits. Controlling the process by which you structure and present your request for financing can help you overcome many of the hurdles to obtaining money. Before you make a request you should take into account the funding environment, set realistic expectations, know financiers' requirements, meet or exceed these requirements, and manage the presentation approach and final request for funding.

Financing generally comes in two forms for a business: debt and equity. Equity capital is received in the form of a contribution from owners or investors, such as through the sale of stock. Rather than receive cash flow from operations, equity holders usually receive a return on investment in the form of dividends based on their prorata share of the business profits.

Debt can be incurred in three ways. You can borrow money from a lender, such as a bank or a private individual. In most instances, you will have a written agreement called a promissory note that outlines the interest rate and structures the

repayment schedule. By borrowing the money, you are committing to repay the debt through cash flow and must generate enough revenue to pay back the interest and principal, as well as the customary expenses of your enterprise.

You can also incur debt through the consent of your suppliers to use trade credit. They may offer a revolving credit line for purchasing their goods, thus assisting you in evening your cash flow.

Finally, you can incur debt by simply not paying your bills, thereby increasing your accounts payable. Many "cash management experts" tout stretching your payables as sound business practice and a good source of bootstrap financing. While there may be some truth to this, be careful not to alienate your suppliers. In a state as small as New Mexico, word travels fast, and you may soon find yourself without either suppliers or customers.

Taking all of this into account, you can see that every business operates on some mixture of debt and equity. There is no single formula for the "right mixture," although industry averages are available for most classifications. Much depends on the type of business you enter, key projects to be undertaken, your own financial resources, planned application of funds, and limitations placed on you by external funding sources.

Getting a handle on this will save unnecessary anxiety and frustration. There is no reason why you can't gain a realistic expectation of how much and in what form you will be able to finance. This is best done through the business planning process, in which you identify the nature of the business and the environment in which it is operating. Knowing the type of assets the business will own and key-debt-to-equity ratios will give you an idea of how it will be treated by the financial community.

Many retail and service businesses, for example, are very difficult to finance with borrowed money. These businesses use funds for inventory, furnishings and fixtures, and working capital. Lenders are reluctant to advance credit for these purposes. Generally, lenders need to secure the loan with collateral that has both resale value and a market demand. Similarly, trade credit is difficult to obtain for start-ups because there is no history of sales and cash flow to assure repayment. Most retail and service businesses, therefore, are financed with nearly 100 percent equity.

It is virtually impossible to finance a business with 100 percent debt. But you are more likely to borrow a larger portion of your capital requirements if your business has assets that are marketable and that have longer depreciation schedules. Buildings, heavy equipment, and land are examples of satisfactory collateral for most lenders. Even then, however, most private lenders and government loan programs require 30 percent to 50 percent equity participation.

Understanding this gives you control over the major factor: who you intend to approach for either a loan or investment. It is often the case that the closer the relationship with the source of funds, the more likely you are to obtain financing. On the other hand, it is more difficult for some people to approach friends and relatives for money than a banker or investment company.

When looking for debt financing, consider all possible resources. Include your own personal credit lines; friends and relatives; your personal banker; another bank in your neighborhood or community; savings and loans; credit corporations; federal, state, and local loan programs; small business investment companies; certified development companies; and venture capital companies.

Don't forget leasing as an option as well. You can lease almost everything your business requires: uniforms, furniture, equipment, vehicles, and, of course, real estate. The effective interest rate may be higher, but then your up-front equity needs may be negligible. In most cases, lease-purchase options can be structured.

If you are looking for equity, again look close to home. Possible sources include your personal savings, friends and relatives, other private investors, and small business and venture capital companies. Just as a bank may place requirements on your business in return for extending credit, likewise an investor may request tough provisions in return for providing equity capital. Investors may demand a preferred rate of return (*subordinated, of course, to debt payments, but ahead of your return*). They may require you to put up a certain percentage of cash, or they may demand a share of control over the business. Research ways of structuring equity participation in order to determine what will be most appropriate. Learn everything you can about who you approach to invest and understand their interests and requirements. This front-end work will save many headaches later.

As you finish determining the financing structure and who you intend to approach, bear in mind that securities laws may apply. This is particularly important if you intend to approach a

number of individuals or are involved in general solicitation of interests in your business. Equity interests, such as shares of stock or partnership interests, constitute securities, as do debt interests such as corporate bonds or debentures.

Depending on how you structure the deal and whom you approach, you will find that a number of different state and federal securities laws may apply. These laws are designed to protect the investor and carry civil and criminal penalties. Most of the laws allow exemptions, for which your deal may be eligible. Exemption under one law, however, does not mean that you necessarily qualify for exemption under another. Because of the sophistication of securities laws, you would be well advised to consult an attorney who is experienced and competent in this field.

Having reviewed the options and understood the implications of various forms of financing, you are now ready to gain control over the structure and presentation of the deal. Whoever you approach for money will require, and is entitled to, information about you and your business, as well as what you propose structurally. Whether you are putting together a loan package or a securities offering memorandum, a complete proposal should be prepared. This document will incorporate information from, but should not be confused with, your business plan. Properly prepared, this package should state your case effectively to a lender or investor without going into minutia about operational management. The funding proposal should abstract information from and make reference to your business plan. If the reader then wishes to see more detail or documentation, they may refer to the business plan.

To accomplish this, the package should contain the following type of information:

- Description of the business – history and nature
- Sources and uses of funds
- Management profiles:
 - Biographies of principals and key personnel
 - Professional advisors
 - Management structure
- Credit history
- Guaranty and collateral arrangements
- Financial condition of the business:
 - Past three years plus current year-to-date financial statements
 - Accounts payable and receivable aging analysis
 - Three years of tax returns
 - Proforma analysis (*including balance sheets, income statement, and cash flow projections*)
- Business plan abstract (*include production, operation and facility plans*)

- Marketing plan abstract
- Legal and administrative information:
 - Articles of incorporation, partnership agreements, and so on
 - Licenses, permits, registrations
 - Lease agreements, property descriptions
 - Relevant business agreements, contracts, and actions — existing or anticipated
 - Current personal financial statements for principals and guarantors

When you finish preparing the document you should condense your request into a one-page summary. This will assist you in writing cover letters and making succinct verbal presentations, and helps both you and the recipient to focus on the main points of the deal. Preparing a one-page loan request, similar to the outline below, also provides a checklist for the loan officer to work with when analyzing the proposal.

The summary proposal should address the following points:

1. Date: Benchmarks the start of the formal process.
2. Borrower: The name of the entity seeking the loan and using the funds.
3. Type of loan: Identify whether you seek a line of credit, term loan, etc.
4. Amount: State the amount you need to make the deal work. Make sure the figure is backed up by the business plan and does not short-change the business's requirements.
5. Use of proceeds: State how the funds will be used.
6. Term: Set a reasonable time frame for the credit. Don't box yourself in.
7. Closing date: Make sure the time frame is realistic.
8. Schedule draws: State if funds will be drawn at closing, at intervals, or on an as-needed basis.
9. Description of collateral: Be succinct. A complete legal description will be included in the proposal.
10. Rate: State a reasonable suggested rate. Don't lowball it or you will be laughed out of the bank. Also note that some bankers feel that, because it does not make that much difference for most small business loans, it is too early to focus on rate in the initial request.
11. Repayment schedule: Proposed schedule of repayment for monthly or quarterly intervals, interest only, principal paydowns or balloon payments.
12. Guaranties: Describe any guaranty arrangements, such as personal or third-party guaranties, that you have proposed.
13. Source of funds for repayment, such as from cash flow in excess of operational needs.

14. Contingency plans: Identify an alternate source for repayment, such as asset sales or equity placement.

Often during the process of preparing your request, you will find yourself engaged in an ongoing informal dialogue with one or more sources of money.

Upon completion of your written request, and after polishing your verbal presentation, you are ready to approach potential lenders or investors on a formal basis. You have taken control over as many variables as possible and have targeted your audience for the final sales pitch. The deal can now be analyzed by the investor or lender, based on its own merits and their specific requirements. The effort you have expended has focused you on your essential financing needs and should save you the frustration of feeling like you are floundering in the world of finance.

Identifying potential sources of financing is an ongoing endeavor. Programs come and go. Investors' needs change. The following is a directory of addresses and telephone numbers. Contact those who might fit your needs and request specific information on their criteria, minimum and maximum investment, and terms.

DIRECTORY OF FINANCIAL RESOURCES



FINANCING:

ACCION NEW MEXICO

20 First Plaza NW, Suite 417
Albuquerque, NM 87102
(505) 243-8844
www.accionnewmexico.org

Offers loans and training to self-employed individuals in specific communities with limited or no access to traditional business credit. Use a "stepped lending" model in which clients start with a relatively small first-time loan and with a strong repayment history, may apply for larger loans.

BUREAU OF INDIAN AFFAIRS (BIA)

Branch of Credit and Financing
615 1st Street NW
Albuquerque, NM 87102
(505) 346-7149
www.doi.gov/bureau-indian-affairs.html

Facilitates guaranteed loans from private lenders to finance Indian-owned commercial, industrial or business activities. Eligible businesses must be 51% Indian owned and must benefit the economy of an Indian reservation.

ENCHANTMENT LAND CERTIFIED DEVELOPMENT COMPANY (ELCDC)

625 Silver SW, Suite 210
Albuquerque, NM 87102
(505) 843-9232
www.elcdc.com

Non-profit organization licensed by Small Business Administration to administer the SBA 504 Loan Program. Offers long-term, fixed rate, fixed asset financing to existing small businesses.

ENTERPRISE LOAN FUND OF NORTHWEST NEW MEXICO (ELF)

Northwest Community Development Corporation
224 W. Coal Ave.
Gallup, NM 87301
(505) 722-6565
www.nmlocalgov.net/northwestern/index.html

Assists existing business expansion and new business start-ups in Cibola, McKinley and San Juan Counties. Provides loans in conjunction with private sector lenders to businesses that hire a majority of employees from low - and moderate-income backgrounds.

NEW MEXICO COMMUNITY DEVELOPMENT LOAN FUND

700 4th Street SW
Albuquerque, NM 87102
(505) 243-3196
www.cdlf.org

Financial intermediary, providing loans and technical assistance to businesses and organizations that have tangible benefits for low-income people. Rates and terms vary according to project.

NEW MEXICO REGULATION & LICENSING DEPARTMENT

Securities Division
725 St. Michael's Drive
Santa Fe, NM 87505
(505) 827-7140
www.rld.state.nm.us

Administers programs that provide options to small businesses that may be considering a securities offering as a means of raising capital.

The programs include:

- 27J Exemption
- 27K Exemption
- Uniform Limited Offering Exemption
- Private Offering Covered Securities
- 27U Exemption
- Accredited Investor Exemption
- Small Corporation Offering Registration

NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT

P. O. Box 5115
Santa Fe, NM 87502
(505) 827-7140
nmlocalgov.net/northcentral/smallbizloans.html

Makes loans to small business located in specific

counties in northern New Mexico. Rates, terms and loan amounts vary according to program.

The programs include:

- Economic Development Administration Revolving Loan Fund
- Tri-County Regional Revolving Loan Fund
- Santa Fe Direct Revolving Loan Fund

SMALL BUSINESS ADMINISTRATION

625 Silver SW, Suite 320
Albuquerque, NM 87102
(505) 346-7909
www.sba.gov/nm

Provides a source of financing for viable small businesses that have real potential, but cannot qualify for loans from traditional sources. SBA guaranties, provided through private lenders and nonprofit lending institutions, give small business owners access to the same kinds of reasonable priced, long-term financing available to large businesses.

The programs include:

- 7(a) Loan Guarantee Program
- Pre-Qualification Loan Program
- Low Documentation Loan
- SBAExpress
- Community-Express Pilot Loan Program
- CAP Lines
- Export Working Capital Program
- International Trade Loan
- Export Express Loan Program
- Defense Loan and Technical Assistance

USDA RURAL DEVELOPMENT

Rural Business Service (RBS)
6200 Jefferson St. NE, Rm. 255
Albuquerque, NM 87109
(505) 761-4957
www.rurdev.usda.gov

Offers programs to promote a dynamic business environment in rural America. Financial resources are leveraged with those of other public and private credit source lenders to meet business and credit needs in under-served areas.

The programs include:

- Business and Industry Guaranteed Loans
- Intermediary Relending Program
- Rural Business Enterprise Grants
- Rural Business Opportunity Grants
- Rural Economic Development Loans
- Rural Economic Development Grants

WOMEN'S ECONOMIC SELF-SUFFICIENCY TEAM (WESST Corp.)

414 Silver SW
Albuquerque, NM 87102
(505) 241-4751
www.wesst.org

Offers small loans and technical assistance to existing and start-up businesses with an emphasis on assisting low-income, unemployed women and minorities in New Mexico.

INCENTIVES:

INDUSTRIAL PLANT TRAINING PROGRAM (IN-PLANT)

NM Economic Development Department
1100 St. Francis Drive
Santa Fe, NM 87505
(505) 827-0323
www.edd.state.nm.us

Provides funding for classroom or on-the-job training to prepare New Mexico residents for employment. Expanding, relocating or new businesses that manufacture or produce a product, or export a product or service out of state may be eligible.

INVESTMENT CREDIT

*NM Taxation and Revenue Department
Tax Information & Policy Division*
1100 St. Francis Drive
Santa Fe, NM 87504
(505) 827-0908
www.state.nm.us/tax

Provides a tax credit against the value of qualified equipment imported or purchased for use in a manufacturing facility. The credit may be applied against state compensating tax. Additional employees must be hired to qualify for the credit.

RURAL JOBS TAX CREDIT

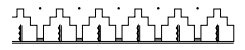
*NM Taxation and Revenue Department
Tax Information & Policy Division*
1100 St. Francis Drive
Santa Fe, NM 87504
(505) 827-0908
www.state.nm.us/tax

Provides a tax credit to eligible employers who establish new jobs in rural New Mexico. The credit may be applied against gross receipts, compensating or withholding tax, or corporate or personal income tax.

LIFELINE:



Business Assistance Resources Around The State



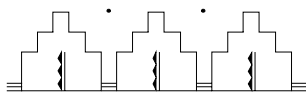
NEW MEXICO HAS a surprising amount of business resources to help you in planning, starting, expanding, or operating your business. Best of all, many of these are free.

This section provides the names and addresses of places you can go to and the type of help you will find there. Following is a directory of these organizations. The emphasis in this directory is on public or private non-profit organizations. There are numerous private for-profit business assistance providers as well.

Most of these groups offer services on a statewide basis. A number

have local or regional offices. In addition, there are numerous other resources, such as your local chamber of commerce, council of governments, and private networking groups that can help. Be sure to put these at the top of your list of contacts.

Finally, many trade associations have state or local chapters. These may be excellent sources of statistical data, technical assistance, and networking. Your local library or Small Business Development Center can help you identify names and addresses to contact.



BUSINESS RESOURCE DIRECTORY



BUREAU OF BUSINESS AND ECONOMIC RESEARCH (BBER)

University of New Mexico
1919 Las Lomas NE
Albuquerque, NM 87131
(505) 277-6626
www.unm.edu

Provides research and information services on New Mexico's economy for business and economic development; maintains socioeconomic data bank, and serves as repository for U.S. Census Bureau data.

COOPERATIVE EXTENSION SERVICE

Business and Economic Development
New Mexico State University
Box 30003
Las Cruces, NM 88003
(505) 646-4122
www.cahe.nmsu.edu

Technical assistance, educational services, and resource material provided to communities and businesses that want to improve their economic potential.

HISTORIC PRESERVATION DIVISION

*State of New Mexico
Office of Cultural Affairs*
228 E. Palace Ave., Room 320
Santa Fe, NM 87501
(505) 827-6320
www.museums.state.nm.us

Technical assistance to business and property owners who are renovating historic structures and seeking rehabilitation tax credit incentives.

U.S. DEPARTMENT OF COMMERCE

c/o NM Economic Development Department
1100 St. Francis Drive
Santa Fe, NM 87503
(505) 827-0350
www.edd.state.nm.us

Foreign trade consultation, locates overseas markets, sponsors seminars.

LOS ALAMOS NATIONAL LABORATORY

Industrial Business Development Office
2237 Trinity Drive, Bldg. 1
Los Alamos, NM 87545
(505) 665-9090
www.lanl.gov

Technology transfer to private industry, informal technical assistance, public access technical library.

NEW MEXICO COMMISSION ON THE STATUS OF WOMEN

4001 Indian School Road NE, Suite 300
Albuquerque, NM 87110
(505) 841-8920
www.womenscommission@state.nm.us

Referral, advocacy, planning, support, and training services.

NEW MEXICO DEPARTMENT OF AGRICULTURE

Marketing Development Office
New Mexico State University
MSC 5600, P. O. Box 30005
Las Cruces, NM 88003
(505) 646-4929
nmdaweb.nmsu.edu

Technical assistance to agricultural producers and processors with interstate or international exports.

NEW MEXICO DEPARTMENT OF LABOR

Field Services Bureau
401 Broadway NE
Albuquerque, NM 87102
(505) 841-8439
www.dol.state.nm.us

Responsible for the labor exchange program, unemployment insurance and job training through 20 one-stop-shop career centers.

NEW MEXICO DEPARTMENT OF LABOR

Job Training Division
1596 Pacheco Street
Santa Fe, NM 87501
(505) 827-6827
www.dol.state.nm.us

Responsible for the design, administration, management and implementation of the Workforce Investment Act.

**NEW MEXICO ECONOMIC
DEVELOPMENT DEPARTMENT**

1100 St. Francis Dr.
Santa Fe, NM 87505
(505) 827-0300
www.edd.state.nm.us

Serves as a liaison between industry, government, and communities to increase employment and enhance the quality of life for New Mexicans.

The Economic Development Division promotes job creation through recruitment and community development activities. Tools offered by the Division include the Industrial Plant Training Program, Community Development Revolving Loan Fund, MainStreet Program and Cooperative Advertising.

The Trade Division promotes and markets New Mexico products and services to international markets.

The Film Division promotes and facilitates the use of New Mexico's resources for the production of motion pictures, television, commercials and other forms of media.

The Science and Technology Division promotes a business climate conducive to the development, growth and relocation of technology-based industry in New Mexico.

The New Mexico Border Authority promotes industry and infrastructure development along the border with Mexico.

**NEW MEXICO PROCUREMENT
ASSISTANCE PROGRAM**

1100 St. Francis Dr., Room 2006
Santa Fe, NM 87503
(505) 827-0425
www.state.nm.us/spd/pap

With locations around the state, this program offers access to computerized matching and bid opportunities, workshops, and consultation on how to prepare for contract opportunities with government agencies and large corporations.

**NEW MEXICO SMALL BUSINESS
DEVELOPMENT CENTER,
LEAD CENTER**

6401 Richards Ave.
Santa Fe, NM 87505
(505) 428-1362, or 1-800-281-7232
www.nmsbdc.org

Coordinates 18 SBDC's around the state that provide individuals, businesses, and managers with counseling in all aspects of business, training programs covering a variety of business and management topics, resource materials, and referrals to additional business assistance providers. For a complete listing of SBDC's, please refer to the back cover of this booklet.

**NEW MEXICO TAXATION
AND REVENUE DEPARTMENT**

P. O. Box 630
Santa Fe, NM 87504-0630
(505) 827-0690
www.state.nm.us/clients/tax

State research agency for tax and related data.

**RIO GRANDE MINORITY
PURCHASING COUNCIL, INC.**

2533 Palomas NE
Albuquerque, NM 87110
(505) 883-0140
www.rgmpe.org

Supports minority and women-owned businesses through increased corporate and government purchasing.

**SANDIA NATIONAL
LABORATORIES**

*Regional and Small Business Partnership
Mail Station 0113*
P. O. Box 5800
Albuquerque, NM 87185-0113
(505) 284-9550
www.sandia.gov/partnerships

Transfers Sandia-developed technology to private industry; technical assistance to industrial, public sector, and community development projects.

**SCIENCE AND TECHNOLOGY
CORPORATION**

University of New Mexico
801 University SE, Suite 101
Albuquerque, NM 87106
(505) 272-7900
www.unm.edu

Provides business assistance to technology-based companies; transfers technology from publicly-funded R&D organizations to commercial markets.

**SERVICE CORPS OF
RETIRED EXECUTIVES (SCORE)**

Albuquerque SCORE
625 Silver SW, Suite 330
Albuquerque, NM 87102
(505) 346-7909
www.sba.gov/nm

Offers counseling by experienced business managers in all aspects of business.

**UNIVERSITY CENTER
TECHNICAL ASSISTANCE OFFICE**

University of New Mexico
1920 Lomas Blvd. NE
Albuquerque, NM 87131
(505) 277-3541
www.unm.edu

Provides consulting services, technical assistance, and financial resource information to economic development organizations and communities.



OUR BUSINESS AND E-COMMERCE TECHNOLOGY

Currently, a business known to be on the Internet stands out as being a sophisticated, up-to-date business. With the current growth of the Internet, it may not be too long before *not* being on the Internet will be considered a sign of a hopelessly outdated business. Internet tools and resources can open doors for both you and your business.

The following are among the many benefits of using the Internet as a business development tool:

- Search for, retrieve and read literally millions of documents stored on computers throughout the world;
- Exchange e-mail with any of tens of millions of people with e-mail accounts;
- Search for and retrieve shareware, freeware and commercial software;
- Search the databases of organizations, individuals and government sources for files on thousands of topics;
- Send and receive program data files such as spreadsheets, CAD files and desktop publishing files;
- Send and receive picture, movie and sound files;
- Browse through the resources of public and private information services;
- Communicate in real time, via the keyboard, with others anywhere in the world;
- Browse and search for goods and services, and purchase items via the Internet;

- Set up a web site with information about your business and its products;
- Conduct test marketing;
- Distribute electronic publications; and
- Sell products and services.

The Internet is constantly and rapidly changing, and so too will be the methods, resources and services available for doing business.

The following sites are good links to a large variety of web sites with information available to the small business entrepreneur:

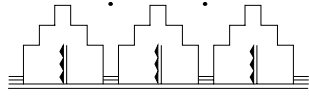
- New Mexico Info Page
www.state.nm.us/
- New Mexico Economic Development Department
www.edd.state.nm.us/
- New Mexico Small Business Development Center
www.nmsbdc.org
- University of New Mexico
Bureau of Business Economic Research
www.unm.edu/~bber
- U.S. Small Business Administration
www.sbaonline.sba.gov

Note: This is just a sample, there are a large number of quality sites available. Take the time to surf the Internet.

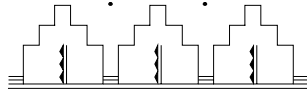
Reference

Jill H. Ellsworth and Matthew V. Ellsworth. 1996. *The New Internet Business Book*.





N • O • T • E • S



N • O • T • E • S

NEW MEXICO SMALL BUSINESS DEVELOPMENT CENTERS

NMSBDC Lead Center

6401 Richards Ave.
Santa Fe, NM 87508
(505) 428-1362
(800) 281-7232

Albuquerque T-VI

525 Buena Vista, S.E.
Albuquerque, NM 87106
(505) 224-5250
Fax: (505) 224-5201

A-TVI - South Valley SBDC

700 4th St. SW, Suite A
Albuquerque, NM 87102
(505) 248-0132
Fax: (505) 248-0127

Clovis Community College

417 Schepps Blvd.
Clovis, NM 88101
(505) 769-4136
Fax: (505) 769-4135

ENMU - Roswell

P.O. Box 6000
Roswell, NM 88202
(505) 624-7133
Fax: (505) 624-7132

Luna Community College

P.O. Box 1510
Las Vegas, NM 87701
(505) 454-2582
Fax: (505) 454-5326

Mesalands Community College

911 S. 10th
Tucumcari, NM 88401
(505) 461-4413, Ext. 140
Fax: (505) 461-4381

New Mexico Junior College

5317 Lovington Highway
Hobbs, NM 88240
(505) 392-5603
Fax: (505) 392-2594

NMSU - Alamogordo

2230 Lawrence Blvd.
Alamogordo, NM 88310
(505) 434-5272
Fax: (505) 434-1432

NMSU - Carlsbad

221 South Canyon
Carlsbad, NM 88220
(505) 885-9531
Fax: (505) 885-1515

NMSU - Doña Ana Branch

Community College
Box 30001, Dept. 3DA
Las Cruces, NM 88003-0001
(505) 527-7601
Fax: (505) 528-7432

NMSU - Grants

709 E. Roosevelt
Grants, NM 87020
(505) 287-8221
Fax: (505) 287-2125

Northern New Mexico Community College

921 Paseo de Oñate
Española, NM 87532
(505) 747-2236
Fax: (505) 747-2234

San Juan College

5101 College Blvd.
Farmington, NM 87402
(505) 566-3528
Fax: (505) 566-3698

Santa Fe Community College

6401 Richards Ave.
Santa Fe, NM 87508
(505) 428-1343
Fax: (505) 428-1469

UNM - Gallup

103 W. Highway 66
Gallup, NM 87301
(505) 722-2220
Fax: (505) 863-6006

UNM - Los Alamos

190 Central Park Square, #118
Los Alamos, NM 87544
(505) 662-0001
Fax: (505) 662-0344

UNM - Valencia

280 La Entrada
Los Lunas, NM 87031
(505) 925-8980
Fax: (505) 925-8981

Western New Mexico University

P.O. Box 2672
Silver City, NM 88062
(505) 538-6320
Fax: (505) 538-6341

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