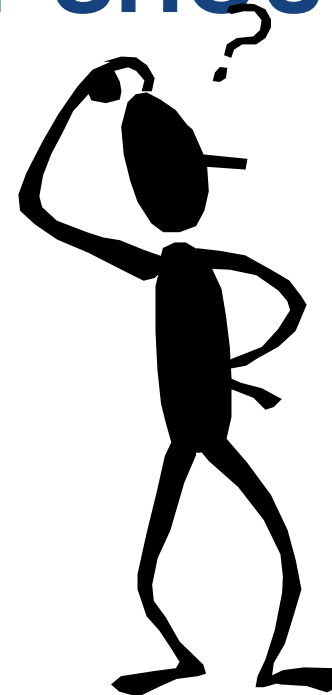


WHAT TYPE OF ENTITY SHOULD I FORM?



WHAT TYPE OF ENTITY SHOULD I FORM?

- DO YOU REALLY, TRULY BELIEVE THAT FUNDING FROM A VENTURE CAPITAL FUND WILL OCCUR WITHIN 6 MONTHS OF FORMATION?
- IF YES, THEN FORM A CORPORATION (ALWAYS IN DELAWARE).
 - **Positives:** Limited Liability, Ease of Formation, VC Friendly
 - **Negatives:** Double Taxation
- IF NO, THEN GO TO THE NEXT SLIDE

FORM A LIMITED LIABILITY COMPANY (ALWAYS IN DELAWARE)

- **Positives:** Limited Liability, Flexibility in Profit Allocations and Cash Distributions, No Tax at Entity Level
 - ❖ No taxes is a huge benefit—often outweighs any of the negatives below.
 - ❖ To illustrate: If your LLC earns \$1,000,000 in a year, you have that full \$1,000,000 to distribute or keep in the LLC for growth (you're taxed on it no matter what, though). If your corporation earns \$1,000,000, at least 40% goes to taxes. Then, if you distribute the remaining \$600,000, you are generally taxed again on that amount again.
- **Negatives:** Greater complexity in formation and administration, Less VC friendly (will likely end up converting to corporation prior to funding), in NYS, there is a (sometimes costly) publication requirement

WHY DELAWARE?

- GENERALLY, INVESTORS WILL ONLY INVEST IN ENTITIES FORMED UNDER DELAWARE LAW
 - Familiarity
 - Protection of Directors and Officers
 - Well developed body of law

More questions?

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