

# CHAPTER 17

## Legal and Tax Matters

### LEARNING OBJECTIVES

*After reading and studying this chapter, you should be able to:*

- Describe the various forms of business ownership.
- Discuss the advantages and disadvantages of each form of business.
- Recognize the legal aspects of doing business.
- Discuss various types of government regulations.





The decisions made regarding

legal and tax matters are crucial to the restaurant and its owners. It is advisable to hire the best lawyer and accountant you can afford—ones with experience in dealing with restaurants and ones who come well recommended by several sources.

Deciding on the concept, location, menu, and decor of a restaurant is a lot more fun than doing the paperwork.

A new restaurant operation has a choice of legal entities under which to operate. These are *sole proprietorships* (individual ownerships) or *partnerships* (with one or several co-owners, but with only a general partner or partners making decisions and legally responsible if things go wrong). There is also the corporation, a legal entity unto itself. An S corporation is a type of corporation that has advantages of both a corporation and sole proprietorship.<sup>1</sup>

A lawyer and an accountant should aid in setting up a business to prevent future problems. Laws—state, federal, and local—must be considered. If you need a liquor license, get it before opening your restaurant. Health and fire department approval and permits must be obtained. Your lawyer or accountant can advise you concerning tax matters. What follows is general information; details and possible changes in laws should be checked with an experienced accountant and lawyer.

## What Business Entity Is Best?

How should a restaurant be operated—directly by the owner, as a partnership with other owners, or as a corporation?

Under the law, all businesses are operated as proprietorships, partnerships, or corporations. Business ventures have a choice of these entities, each with different tax consequences, advantages, and disadvantages. At one point, one business entity provides more advantages; at another time, a different form may be better.

Always consider that one of four things will happen to the restaurant: It will be sold, it will be merged with another company, it will fail, or it will pass to heirs. Also consider that members of a family-operated restaurant will almost certainly disagree at times and that spouses may divorce. Almost inevitably, one person must make final decisions, and some of these will be wrong. Divided responsibility and authority can be dangerous, although input by others can result in a better decision.

The choice of entity affects:

- Federal income taxes
- Liability to creditors and other persons
- The legal and/or personal relationships among the owners (if more than one exists)
- The legal life and/or transfer of the business entity

In addition to the choice of a form of business entity, certain other tax choices and elections are made prior to filing the new entity's first federal income tax return. We will examine these in this chapter.



Ingrid Croce, who began as a sole proprietor, outside one of her restaurants. Croce was a pioneer in the development of San Diego's Gaslamp district

## SOLE PROPRIETORSHIP

A sole proprietorship is both the simplest and the most prevalent form of business organization.<sup>2</sup> In the case of the sole proprietor, an attorney or accountant is not needed, though both should usually be consulted. In most states, the new proprietor is required to register the business name (if different from his or her own). From an income tax standpoint, only a Schedule C as part of Form 1040 need be filed as part of the federal income tax returns.

As sole proprietor, the restaurant operator does not draw a salary for federal income tax purposes. He or she reports as income the profit for the year or deducts as an expense any loss for the year. For tax purposes, the proprietor is not an employee; however, his or her income is subject to self-employment tax. The rate is slightly higher than the rate for Social Security taxes, with the same limitation on earnings subject to tax as is the case for an employee. This tax is paid along with the federal income tax. If both husband and wife work in a sole proprietorship, each pays the self-employment tax, up to the total income or the tax limitations, whichever is less.

An individual taxpayer normally reports on a calendar-year basis for federal income tax purposes. Consequently, each year, all of the earnings of the restaurant are taxed in addition to investment income and income earned by a spouse.

**Advantages of the Sole Proprietorship** Advantages to being a sole proprietor, as opposed to doing business in corporate form, include these:

- It is simple. You are required, for tax purposes, to keep a formal set of books. (This is highly recommended for financial purposes even when it is not required for tax purposes.) The tax laws and regulations require you to keep those records that will enable you to accurately report your income.
- Because all the earnings are yours, there is no problem about setting a reasonable salary that could be questioned when doing business in the corporate form.
- Funds can be withdrawn from the business, subject to their availability, without tax consequences.
- The business can be discontinued or sold with minimal tax consequences, compared with those arising in connection with the corporate form.

**Disadvantages of the Sole Proprietorship** Tax disadvantages in doing business as a sole proprietor include these:

- You cannot be a participant in your company's qualified pension or profit-sharing plans. A sole proprietor can set up a Keogh retirement plan for self and employees; however, law limits the amount.



David and Leslie Cohn at one of their restaurants in San Diego's Gaslamp district  
*Courtesy of David Cohn*

- The owner's liability for all of the restaurant's debts and any tort liability to third parties is unlimited. Theoretically, owners limit their liability by incorporating; however, in many cases—in fact, most—the owners are called upon to endorse or guarantee the corporation's liabilities.
- The sole proprietorship has no legal existence apart from the owner. The death or incapacity of the owner has severe legal implications and results in the termination of the business, unless it has been willed to another person or persons. Often, the willed property must pass through probate, which can be time-consuming and costly in terms of legal fees.

## PARTNERSHIP

A partnership is legally defined under the Uniform Partnership Act as any venture where two or more persons endeavor to make a profit.<sup>3</sup> There are two kinds of partnerships: general and limited. General partnerships have complete liability but full management rights. *Limited partnerships*, however, share limited liability with no services performed.

When two or more individuals plan to enter the restaurant business together, they may wish to employ the partnership form of doing business. The tax consequences of doing business as a partnership are basically the same as those for a sole proprietorship. The partnership, however, does file an annual tax return on Form 1065. This is an information return only, as the partnership pays no federal income tax. The partnership return requires a beginning and ending balance sheet, together with a reconciliation of each partner's capital account for the year. Consequently, formal bookkeeping must be done. Also, each partner receives a Schedule K-1 of the partnership tax return form and reports his or her respective income or loss from the Schedule K-1 on the individual tax return.

Partners do not draw deductible salaries from partnerships for tax purposes. Therefore, if a partner receives a salary from the partnership, no payroll taxes are deducted. At the end of the year, each partner reports his or her salary and share of the profits (or losses) on personal tax return Form 1040. The partnership entity is quite flexible for tax purposes and lends itself to situations whereby one partner supplies the capital and another supplies only services or services plus a lesser amount of capital. It is possible to structure almost any type of business arrangement within a partnership as long as the tax consequences are consistent with the business realities.

The partnership, as an entity, has the same problems of legal liability as the sole proprietorship. In addition, each partner can create debts for the partnership. All partners must understand the dangers of this arrangement. Each partnership interest is an asset that can, under certain circumstances, be subject to the legal claims of an individual partner's creditors or other claimants.

Partnerships can be expected to dissolve someday. Death, disagreement, ill health, and other contingencies can make the perfect partnership into a perfect nightmare. Spouses setting up in the restaurant business as partners can see the business fall apart as they quarrel or divorce. In states with community property

laws, each divorced spouse is entitled to half the assets, which may mean a forced sale of the restaurant. Partnerships usually work well when things go well. With losses, partners quickly see each other at fault.

Partnerships can be set up in a number of ways. The terms of the partnership may limit partners' liability for debts. Limited partners have no voice in the restaurant operation; managing partners are given this responsibility. There may be dozens of limited partners, with only one or two managing partners.

## RESTAURANT AS A CORPORATION

A corporation is a legal entity similar to a person in that it can borrow, buy, and conduct business, and must pay state and federal taxes on profits. Corporations provide limited liability for the owner. Corporation owners cannot be sued for the debts of the corporation unless they personally guarantee them.<sup>4</sup> Working through a corporation offers advantages and disadvantages.

Deciding whether to incorporate often depends on the amount of insurance coverage available. If insurance coverage is available, a restaurant may decide not to incorporate because the insurance will cover and limit the sole proprietor's liability, which might otherwise cause financial ruin in the event of a mishap or lawsuit. In certain circumstances, however, insurance protection may not be available or affordable. In these cases incorporation might be worthwhile because it will provide limited liability.

When incorporating, the first step always should be to consult an attorney. It may cost a bit more than doing it yourself, but in the long run securing legal advice should ensure that all necessary requirements have been met.

The second step should be to select a state in which to incorporate. The state is important because regulations, incorporation costs, and other fees, taxes, and ownership rights will vary.

The big disadvantage of corporate ownership of a restaurant is that it opens the way for double taxation. Profits of the corporation are taxed and then passed on to the owners, where the profits are again subject to taxation as individual income. To avoid double taxation, an S corporation (explained below) can be used.

In setting up a corporation, the entrepreneur must keep in mind that to maintain control, he or she must own 51 percent of the stock. Anything less could mean absolute lack of control and even expulsion from management. Stock in a corporation can be sold to the general public or to individuals.

A corporation is a separate entity and is incorporated under the laws of the state in which it has its principal place of business. The rules for incorporation vary from state to state. The owners of a corporation are called shareholders or stockholders. They elect a board of directors, which has the final responsibility of operating the restaurant. Theoretically, the directors elect corporate officers. The directors can, under certain circumstances, have legal liability to third parties for their actions. The corporation has a legal existence apart from its owners, the shareholders. The latter are not responsible for the corporation's debts, provided

they have fully paid for their investment in the company's capital stock and have not guaranteed its debts.

Before deciding to incorporate, the investors must make certain business and tax decisions that will have a vital effect on the future of the business. How much of the investment will be paid into the corporation? A portion may be paid in as capital stock and the balance may be loaned, to be repaid when the company has sufficient funds. From a tax standpoint, placing funds in the corporation as a loan is more advantageous than is stock. The repayment of a loan is tax free, whereas the repayment of stock is taxed as a dividend to the extent of the company's after-tax profits. Interest paid on a loan is tax deductible to the corporation, whereas dividends paid are treated as distribution of profits and are not deductible.

Enough must be paid in as stock to satisfy creditors. If the stock amount is too small in relationship to the amount of shareholder loans, the Internal Revenue Service (IRS) may claim that all of the money paid in is capital and that all repayments are taxable dividends to the extent of corporate after-tax profits. A "thin corporation" has the minimum allowable as capital, the maximum as debt.

Because the corporation is a separate legal entity, the restaurant operator is an employee of the corporation. His or her salary is subject to all payroll taxes, just as that of any other employee is. The operator may also be covered for group insurance; the corporation may provide the person with up to \$50,000 of group term coverage in addition to health insurance without its value being taxed. Other corporate *fringe benefits* can be arranged, such as medical expense reimbursement, sick pay, and pension and profit-sharing plans. What is a reasonable salary for shareholder employees? Shareholder employees naturally want to avoid double taxation, and the profits paid as salary to the management/stockholder must be "reasonable." If not, the "unreasonable" portion is treated as a dividend and is not deductible by the corporation. The corporate form of business entity should not be used without legal and accounting advice.

**S Corporation** An S corporation provides for a remarkable use of the corporation: It permits the business entity to operate as a corporation but allows it to avoid paying corporation taxes. It also avoids a double tax upon liquidation due to built-in gains from appreciation of assets.

If the corporation owners do not want to accumulate after-tax income in the corporation or if its shareholders are in low tax brackets or have personal tax losses, an S corporation is ideal. In addition to passing income to their shareholders, such corporations can pass through operating losses that can be reported pro rata by the owners and deducted up to the cost or adjusted basis of their stock and loans. This is an excellent arrangement for the first years of the company's existence, if it experiences losses. Once the company begins to operate at a profit, the S corporation election can be ended and the corporation can be taxed at regular corporate rates. The S corporation election is extremely useful in a family restaurant. If there are dependent children or parents, an S corporation offers a tax advantage. Gifts of the restaurant's stock can be made to these dependents who, when they receive the dividends, are taxed according to their income bracket.

Corporation taxes are avoided and profits from the restaurant are taxed at the low rates experienced by the dependents.

The IRS requires that corporate officers draw a fair salary so that the company's earnings are not overstated; thereafter, the net income is allocated in proportion to the stock ownership. One disadvantage of an S corporation is that shareholders of the corporation may not deduct benefits, such as medical disability and life insurance premiums, of more than 2 percent of their annual salary. A comparison of the various forms of corporate structures is given in Figure 17.1.

## **Buy–Sell Agreement with Partners**

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In the sale of a business, a buy-sell agreement preserves continuity of ownership in the business. It also ensures that the buyer as well as the seller is treated fairly. A buy–sell agreement is made up of several legal clauses in a business that can control these business decisions:

- Who can buy a departing partner's or shareholder's share of the business
- What events will trigger a buyout
- What price will be paid for a partner's share

In closely held corporations and with partnerships, it is wise to arrange a buy–sell agreement with the co-stockholders or partners. Such agreements specify a price or a way of arriving at a price if a sale becomes necessary. This situation arises when owners die or, for some reason, want out. The buy–sell deal sets the tax value that the IRS will accept, even though the fair market value of the stock at the valuation date is actually higher. A buy–sell agreement can be funded by life insurance on the partners or stockholders. This means that the business carries the cost of the life insurance and collects the proceeds if the owner dies.

Setting an agreed-on price or an agreed-on way of pricing removes much of the potential for conflict among the owners when the time comes that one or more of the owners wants to sell or when an estate owning part of the restaurant must be settled.

## **Legal Aspects of Doing Business**

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Many legal requirements must be addressed when setting up a restaurant business. In California, for example, these are the required steps:

- I. Form a business entity.
  - A. Sole proprietorship
  - B. General partnership
  - C. Limited partnership
  - D. Subchapter S Corporation
  - E. Corporation

| Corporate Structure           | Ownership Rules                                                                                                 | Tax Treatment                                                                                                 | Liability                                                                             | Pros and Cons                                                                                                                                                                |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sole Proprietorship           | One Owner                                                                                                       | Pass-through federal tax entity <sup>a</sup>                                                                  | Unlimited personal liability for business debts                                       | Is easy to set up but leaves your personal finances at risk. Plus, you miss out on all kinds of business deductions                                                          |
| S Corporation                 | Up to 75 shareholders; only one basic class stock; slight flexibility on voting rights                          | Pass-through federal tax entity <sup>a</sup>                                                                  | Limited                                                                               | Is easy to set up but limits your financing options later on                                                                                                                 |
| Corporation                   | Unlimited number of shareholders; no limits on stock classes or voting arrangements                             | Dividend income gets taxed at corporate and shareholder levels; losses and deductions stay at corporate level | Limited                                                                               | Can be costly from a tax perspective but is investor friendly                                                                                                                |
| Limited Liability Company     | Unlimited number of members; flexible membership arrangements, with voting rights and income divided as desired | Pass-through federal tax entity <sup>a</sup>                                                                  | Limited                                                                               | Has lots of advantages but makes investors leery, which could make financing the deal dicey; cost of switching forms from S or C corporation status is generally prohibitive |
| Partnership                   | Two or more owners                                                                                              | Pass-through federal tax entity <sup>a</sup> ; flexibility about profit-and-loss allocations among partners   | Personal assets of any operating partner at risk from business creditors <sup>b</sup> | Allows lots of room to play with tax benefits, but in a general partnership, that personal liability can be scary                                                            |
| Limited Liability Partnership | Two or more owners                                                                                              | Pass-through federal tax entity <sup>a</sup> ; some flexibility about ownership arrangements                  | Limited                                                                               | Has many advantages as an alternative to traditional partnerships; is easy to switch to but is a new form and hasn't gained acceptance in all states                         |

<sup>a</sup>In a pass-through tax entity, income and losses "pass through" to owners and are taxed by the IRS at the personal level.

<sup>b</sup>In a limited partnership variation, limited partners' liability can be restricted to the amount of the original investment.

**FIGURE 17.1:** Comparison of corporate forms

- II. Identify necessary permits and licenses.
  - A. Local requirements
    - 1. Business licenses: county clerk's office
    - 2. Tax registration (county or city)
    - 3. Police, health, and fire department permits
  - B. State requirements: check with your state. (For example, in California, the Department of Economic and Business Development has a book entitled "California License Handbook," available from 1120 N Street, Sacramento, CA 95814.)
    - 1. Liquor license
    - 2. Any other state requirements
  - C. Federal requirements
- III. Identify local restrictions on proposed business licenses.
  - A. Zoning requirements (City Planning Commission)
  - B. Building inspections
- IV. Obtain environmental or similar permit (new for coastal areas, shorelines, floodways, and wildlife habitats) as needed.
- V. Obtain state sales tax permit. Obtain from Board of Equalization Publication BT-741-1 ("Your Privileges and Obligations as a Seller") and related regulations, including 1698–1700.
- VI. Determine applicability of employer registrations.
  - A. Obtain federal employer identification number (complete Form SS-4 at Social Security or IRS office).
  - B. Register with the State Employment Development Department (relates to unemployment insurance).
- VII. Get insurance.
  - A. Obtain mandatory workers' compensation insurance.
  - B. Join employers' reciprocal exchange plans. Buy insurance policy from broker or state comprehensive insurance fund.
  - C. If self-insured, you need consent. Write to Director of Industrial Relations, Self-Insurance Plans, Room 5043, 107 S. Broadway, Los Angeles, CA 90012.
  - D. Dram shop insurance
  - E. Real property insurance
  - F. Auto insurance
- VIII. Comply with relevant statutes and regulations with respect to employees' wages.
  - A. Comply with State Industrial Welfare Commission orders with respect to employee wages, hours, and working conditions (post required posters).
- IX. Fulfill occupational and health requirements.
  - A. Federal OSHA replaced some state regulations with comprehensive bottom line regulations.
- X. Assess applicability of other antidiscrimination laws.
  - A. Title VII if 15 or more employees comply (no discrimination in employment)

- B. Executive Order 11246: If you will have government contracts, then they must comply; affirmative action program required.
- C. Federal Equal Pay Act
- D. Federal Age Discrimination Act
- E. State Fair Employment Practices Act
- XI.** Check for eligibility for government assistance.
  - A. Small Business Administration—special loans
  - B. Minority Business Development Agency—assistance with obtaining loans
  - C. Others: Purchase *A Survey of Small Business Programs* from U.S. Government Printing Office.
  - D. State programs: Purchase *A Guide to Starting a Business* in a local bookstore.
- XII.** File fictitious business name.
  - A. File with county clerk in your county within 40 days of purchase of business.
  - B. Publish in paper on county.
  - C. Sign Affidavit of Publishing.
- XIII.** Meet posting requirements.
  - A. Sales tax permit—conspicuous place
  - B. Employment Development Department—re: unemployment (from EDD office)
  - C. Payday and right to vote
  - D. State OSHA notice—from Department of Industrial Affairs
  - E. Wage and Hour poster—from Department of Industrial Relations, Division of Labor Standard Enforcement
  - F. State Fair Employment Law poster—from Department of Fair Employment and Housing
  - G. U.S. Equal Opportunity Commission and Age Disclosure Law posters from Public Information Assistance, Equal Employment Opportunity Commission (EEOC) as required by your state
- XIV.** Obtain and arrange tax return filings.
  - A. Sales and use taxes
    - 1. Collect or obtain exemption or resale certificate with each sale.
    - 2. File quarterly returns.
    - 3. Keep required records—see Regulation 1698.
  - B. Federal and state employment taxes (Read Circular E.)
    - 1. Federal income tax, FICA, and FUTA (Federal Unemployment Tax Act) withhold, file records
    - 2. Federal self-employment tax, if appropriate
    - 3. State employment tax and contribution includes income tax, SDI, and unemployment insurance tax

- C. Corporate income tax
  - D. Local property taxes
  - E. Excise, license, or privilege taxes probably not applicable
- XV.** Learn reporting and notice procedure in event of employee injury or exposure to toxic substances. (Read “Recordkeeping and Reporting Requirements under [your state] OSHA” from Department of Industrial Relations, Division of Labor Statistics and Research.)

It is essential to obtain these licenses and permits before opening a restaurant. Without them, costly delays in opening will occur. Protect yourself by making your lease contingent on these licenses and permits being granted. This is particularly important when taking over an existing restaurant, because although the previous owner may have had the necessary licenses and permits, the authorities seize the opportunity of change of ownership to enforce codes. This can be costly. We suggest you consult with the requisite authorities in your area.

**State Registration** Plans to open a new business should be discussed with the Secretary of State’s office—each state has its own regulations. This office can explain the state’s legal requirements and give information about possible further local and county offices for additional registration. There is a fee of about \$100 for registering a new business. This normally includes an investigation to ensure that your business name is not currently in use. In addition, it may be necessary to file and publish a fictitious name statement in a general circulation newspaper. Periodic updates are necessary to legally protect the name.

Most states have income tax on wages; therefore, all necessary information should be obtained, such as tax guides and tables. The State Department of Employee Compensation must also be contacted for information on regulations and filing procedures. Cities generally require a permit to operate a business. These permits must be obtained from the city’s business department.

**Sales Tax** Congratulations, you get to be a tax collector. You need to register the new business with the state revenue or taxation agency and find out the collection procedures for your state—of course, they are all different. Most states require an advance deposit or bond posted against future taxes to be collected. Sales tax is collected on the retail price paid by the guest. Fortunately, you don’t have to pay tax when purchasing raw food products from wholesalers. However, you must give your tax permit number when ordering and sign a tax release card for the wholesaler’s records.

## **Depreciation and Cash Flow**

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As a business generates income and pays its immediate expenses, including taxes, the money left over is not all profit. In a restaurant, the building, kitchen, and dining room equipment and furnishings depreciate year after year until finally

they have no value or only a salvage value. Theoretically, at least, money is set aside for replacing these items—a *depreciation* allowance. Actually, this money is seldom set aside and very often the building, instead of depreciating in value, appreciates. Even so, for tax purposes, the depreciation allowance is a deductible item and can be used by the owner/operator. The money taken in before considering the depreciation allowance is called cash flow. The restaurateur is much concerned with keeping cash flow adequate to meet current obligations.

The owner of a restaurant gets a depreciation allowance. The owner of the equipment gets a depreciation allowance. The owner of the land on which the restaurant sits gets none; land is a nondepreciable item, whereas other tangible assets that have a life span are depreciable. The matter of depreciation can be quite important in the success of a restaurant and is especially important to whoever owns the building. Restaurants are often owned by a corporation, which in turn owns a corporation that owns the land and still another that owns the building and equipment. The idea is to maximize depreciation so as to pay the least amount of taxes possible, especially during the first several years of operation. For a more authoritative reference for restaurants, refer to the latest edition of *The Uniform System of Accounts for Restaurants*, published by the National Restaurant Association. In addition, the IRS has several bulletins on the subject.

### **ACCELERATED OR STRAIGHT-LINE DEPRECIATION**

Depreciation for tax purposes may bear little relationship to the actual decrease in the value of items being depreciated. A restaurant building, for example, may, for tax reasons, be completely depreciated over 31 years, yet the building may have appreciated during the period and may be sold at much more than construction cost. Market value and book value after depreciation usually are quite different.

Restaurant equipment, furnishings, and the building itself can be depreciated for tax purposes over their expected life. Everything that can be depreciated should be depreciated.

Most new restaurant operators want and need the cash that can be retained by choosing the accelerated method of depreciation. Accelerated depreciation methods allow greater depreciation during the early life of a building or equipment, less depreciation later. A start-up business usually needs all the depreciation dollars it can get. Rapid depreciation results in lower taxes during the early years of the restaurant, with greater after-tax income. Federal income tax guides provide instruction in depreciation methods, but tax advice by an expert is usually needed to make the best use of the depreciation provisions. In simple terms, the straight-line depreciation method assumes a fixed life for an item—seven years for an oven, three years for carpet, and so on. The cost of the item is then divided by the expected life to arrive at the depreciation allowance. If an oven cost \$2,100 and is expected to last seven years, \$300 depreciation can be deducted each year for seven years.

## Retirement Tax Shelters

Details of retirement tax shelter plans do change over time, but the tax advantages remain substantial. Two popular federal government retirement plans are available: the *individual retirement annuity (IRA)* and the Keogh plans. The Keogh plan makes it possible for a self-employed person or someone who has income from self-employment (in addition to whatever else is earned) to put up to \$30,000 per year or 25 percent of the annual income from the self-employment into a tax-sheltered retirement plan. The earnings from money generated in a retirement plan are deferred from taxes.

Keogh and IRA plans can save a considerable amount of money for the individual. The total amount generated can be surprisingly large because the interest generated is also tax deferred and accumulates tax free while the plans are in effect. The participant eventually pays taxes, but at a lower rate because he or she usually is in a lower tax bracket upon retirement and because gains accumulated are taxed at capital gains rates rather than at straight-income rates. Many investment counselors believe these plans are the safest and probably best savings plans available.

For either plan, the money can be managed through a custodian as directed by the person having the account. The custodian of the account, usually a bank, charges fees.

Spouses can establish separate IRA plans if each works and has earned income. A restaurant owner can have either a Keogh plan, in which case employees must also be covered, or an IRA plan (no employees need be covered). There are also various types of Self-Employment Retirement Plans (SEPs). Depending on the one selected, annual deductible contributions range from 13 to 20 percent of the self-employed income.

### RULE OF 72

A big advantage in government-approved pension plans is that the yearly contributions to the plan are deductible—that is, not taxable to the participants. Moreover, interest, dividends, and gains from investments made from the contributions (while the plan is being funded) are compounded tax free. The difference to the participant can be astounding.

It is surprising how fast an investment like a Keogh plan doubles itself if no taxes are paid. A simple method of calculating this doubling is to follow the *rule of 72*. Divide the rate of return into 72 and you get the number of years required to double your money at that rate of interest.

Suppose you invest \$10,000 in a deferred annuity and receive 10 percent interest on it. In how many years will you have \$20,000? The answer is 7.2 years (72/10). Here are other examples:

$$8 \text{ percent } (72/8) = 9 \text{ years}$$

$$9 \text{ percent } (72/9) = 8 \text{ years}$$



Until October 1999, the IRS held

restaurant operators responsible for trying to get their employees to accurately report their tip income, a practice the industry opposed, saying they did not want to act as police for the IRS. The IRS used its power to audit restaurant operators. The shift in IRS policy was welcomed by the industry.

10 percent  $(72/10) = 7.2$  years

11 percent  $(72/11) = 6.5$  years

12 percent  $(72/12) = 6$  years

### **REASONABLE RETURN ON INVESTMENT**

Businesspeople are concerned with their return on investment (ROI). If \$100,000 is invested in a restaurant, what profit can reasonably be expected? The answer depends partly on the yield that can be expected from similar investments with a similar amount of risk. If money market funds yield 4 to 8 percent with little or no risk, a restaurant investment should yield at least 15 to 20 percent. If municipal bonds yield 5 to 8 percent with almost no risk and are tax free, a restaurant investment should yield considerably more.

## **Business Expenses and Taxes**

Anything that is a cost of doing business is tax deductible (if the IRS agrees). Many things taken as deductions are in the gray area, and some are highly debatable. For example, a restaurant operator attends the National Restaurant Show held in Chicago. All expenses are tax deductible. How about the expenses of the spouse? It depends. Is he or she active in the business? If the spouse was treasurer of the restaurant, there would be little question that his or her attendance at the show could be a benefit to the business.

What if the operator wishes to attend a similar show held in London? The cost would be deductible. (But no more than two such trips per year outside the United States or its possessions are deductible. Puerto Rico, the Virgin Islands, and the Pacific Trust Territories are not considered foreign for this purpose.) The deductions for such trips are limited in amount and require attendance at meetings and substantiation of expenses. (The requirements for a tax deduction change frequently and should be investigated.)

A company-owned car is deductible. Life insurance on key executives is also deductible, as is medical and dental insurance for the executive and his or her family.

The list of fringe benefits that are legitimate for tax purposes is extensive and imaginative. Here are a few benefits corporate officers often receive:

- Membership in country club, athletic club, tennis club, and so on
- Comprehensive medical plan, including annual medical checkup
- Vacation allowance in excess of company policy
- Supplemental retirement benefits over and above regular pension, profit sharing, and so on
- Low-cost loans
- Additional life insurance

- Financial planning by professionals on tax planning, investments, preparation of personal income taxes

Remember, depending on the individual's tax bracket, every dollar of benefits can be worth \$1.50 or more of straight income.

## Reminders

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Taxes, we can be sure, will be with us always. Because laws and their interpretations change each year, the restaurant owner necessarily relies on the accountant or legal advisor to suggest the most advantageous way of conducting business and of avoiding taxes. As everyone should know, out-and-out falsification of tax returns or failure to report income is tax evasion. Avoiding taxes by legal means is something else. The difference between tax evasion and tax avoidance is often good tax advice.

Believe it or not, the IRS has a number of helpful publications. One, Publication 583, titled "Starting a Business and Keeping Records," offers helpful information, as does the IRS Web site at [www.irs.gov](http://www.irs.gov).

After deciding which form of business entity your restaurant will be, you need to obtain a taxpayer identification number so that the IRS can process your returns.

All businesses are controlled, some say beset, by a multiplicity of laws and regulations. The best way to keep up to date is to become a member of the National Restaurant Association (NRA) and your state restaurant association. One of the association's responsibilities is to keep members informed of local, state, and federal requirements.

New restaurant operators must obtain a permit to operate and a building permit, if they are building or remodeling an existing structure. Applications for a building permit should be accompanied by blueprints and cost estimates from a designer or contractor.

A city or county health department issues health department permits, required for all owners. Usually these permits must be posted where they can be readily seen.

Many locales require a fire clearance. The local fire department officials issue a permit after an inspection. All restaurants must have fire exits, and owners should develop emergency evacuation plans. Officials are concerned about the hazards in range flues and grease hoods, where many restaurant fires originate.

Some states require a seller's permit. States imposing a sales tax are concerned about having the restaurant operator collect and forward that tax. Operators should never dip into or borrow from the sales tax or other taxes for other uses. Infractions, when caught, are prosecuted vigorously.

Even assuming that the restaurant owner did not know he or she was violating the law, ignorance of the law is no excuse. Avoiding serious violations adds one more facet to being in business—keeping abreast of law and regulations.

Relations with the government begin some time before a restaurant is opened. Local zoning laws must be observed, and any construction undertaken must be approved before construction begins. Most communities require that all businesses have a business permit obtained at a town, county, or city hall (depending on jurisdiction). States, too, may require registration.

## **Local, State, and Federal Taxes**

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One of the most onerous of the operator's tasks is keeping records and submitting tax reports. The operator not only pays taxes as required on restaurant sales but also is responsible for collecting and paying taxes to the city, state, and federal governments. California, for example, levies an unemployment tax (SUTA), an employment training tax, a disability tax, and an income tax.

Workers' compensation insurance is federally mandated but administered by the states. It protects both the employer and the employee in case of injury. The employer is protected against being sued by the employee. If injured, the employee receives medical care and may receive rehabilitation and retraining, if needed.

The federal government also requires the operator to withhold from employees' pay federal income tax, as administered by the Internal Revenue Service, and Social Security taxes.

Every business with at least one employee in addition to the owner must register with the IRS, acquire an employer identification number, and withhold federal payroll taxes from employees' pay. The taxes withheld are submitted to the IRS at least quarterly. Amounts withheld depend on deductions claimed by the employee. The employer provides each employee with a W-2 form stating the amount of income taxes withheld and also the amount of the employee's contribution to FICA (Federal Insurance Contribution Act, commonly called Social Security), also withheld by the employer. Law prescribes the business deductions. The percentage paid by the employee is 7.65 percent of up to \$53,400. Any wages over this limit are not taxed for FICA purposes.

The Federal Unemployment Tax Act (FUTA) requires the employer to contribute another percentage of the employee's gross wages or salary (up to a specified amount).

If the restaurant business entity is in the form of a corporation, a federal corporate income tax return is filed. These filings are in addition to personal income taxes. Don't forget that most states have other tax filings and so do some municipalities.

Once in business, the operator must also instantaneously become a bookkeeper, or hire one. Small operators generally employ an independent accountant to do the bookwork and advise on tax matters. Large restaurants usually employ their own accountant for bookkeeping and pay for expert advice on tax matters.

Local health departments are active in promulgating and enforcing food protection regulations. State employment offices are charged with enforcing employment regulations, and other state agencies may be involved. In some states, more

than one agency is involved in defining compliance with a particular regulation or law.

As discussed in Chapter 11, the Americans with Disabilities Act (ADA) prohibits discrimination against persons who are disabled and stipulates that “readily achievable” modifications be made in work practices and working conditions, including physical access.

Local and state agencies vary in their enforcement policies. A regulation that was on the books for many years but ignored may all of a sudden become of major importance to a new administration, with the result that heavy fines are assessed against operators for things that have been common practice. This happened with the truth-in-menu enforcement policies. To keep abreast of changes, operators usually rely on associations serving the industry.

Because the regulations change so frequently, there is little point in spelling out the details of legislation here. By the time this book is published, the regulations may have been reinterpreted or changed. It is helpful to be familiar with the major legislative acts that affect the restaurant operator.

## **Federal Laws Governing Employment**

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### **FEDERAL WAGE AND HOUR LAW (FAIR LABOR STANDARDS ACT)**

Passed in 1933, the Fair Labor Standards Act (FLSA) was designed to increase wages and increase employment by reducing the hours of the average workweek. The act covers employees of a restaurant having an annual dollar volume of sales of at least \$500,000 (exclusive of excise taxes at the retail level that are separately stated). Operators with sales less than this amount are not subject to the federal wage and hour laws. They are, however, still subject to pertinent state laws. Operators in many states can and are paying less than the federal minimum wage. Operators who are covered by the act must display a poster, obtained free from an officer of the Wage and Hour Division and outlining the act’s basic requirements, where employees can see it readily. Currently restaurants covered by the federal minimum wage are required to pay hourly employees at least \$5.15 per hour and tipped employees a cash wage of at least \$2.13 per hour to increase. However, this is due to increase in cases where an employee is subject to both the state and the federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.

**Managers and the Minimum Wage** Persons who are in bona fide managerial positions are not subject to the federal minimum wage law. The question is whether the trainee or manager must be paid time and a half for hours worked beyond 40 a week. Restaurant corporations often hire management trainees and managers and require them to work 50, 60, or more hours per week at a straight salary, which may work out to a low hourly wage. The NRA explains that employees who are considered managers must meet these conditions:

- The employee’s first and primary duty is managing a company or customarily recognized department or subdivision of a company.

- The employee regularly directs the work of at least two other employees.
- The employee has authority to hire or fire or to recommend on hiring and firing, transfer, and promotion.
- The employee regularly exercises discretionary powers.
- The employee's nonmanagerial duties take up no more than 40 percent of the work time.<sup>5</sup>

The Department of Labor (DOL) has set forth six conditions that must be met before an employee qualifies for exemption to the minimum wage law. The first five conditions are the same as those the NRA uses to define supervisors; the sixth is that the manager is compensated for services on a salary basis of not less than a certain dollar amount per week—check with your state restaurant association for the accurate amount—exclusive of board, lodging, or other facilities.

The condition that is most difficult to meet is the one relating to nonmanagerial duties. Historically, managers in restaurants are called on to do many kinds of nonmanagerial jobs, such as operating the cash register, cooking food, setting up tables—anything to keep the operation running smoothly and efficiently.

The DOL has disqualified chefs and shift managers in a sandwich shop. If disqualified, the employee must be paid time and a half for hours worked beyond 40 per week. In some cases, the disqualified employee's overtime wage greatly exceeds what was intended.<sup>6</sup>

There are some legal nightmares out there. Just be sure to operate your restaurant within all the laws—otherwise, it may cost you big time! Remember that managers are exempt employees, so they can work longer than 40 hours a week and not receive overtime. Well, yes and no. The no is that they must be doing what managers do and not what hourly employees do. But, as we shall see, some companies experiencing labor shortages allowed managers to spend more time doing the work of hourly employees. As already stated, under the Fair Labor Standards Act, the employees have a right to be paid. Krystal and Shoney's settled cases for \$13 million and \$18 million, respectively, plus Shoney's defense attorney's fees totaled \$8 million. Most recently, Starbucks doled out \$18 million and Brinker International \$7.3 million.

**Hours Worked** Bona fide meal periods, ordinarily 30 minutes, are not counted as hours worked—time that must be paid for by the employer. Coffee breaks and time for snacks are considered part of the employee's work time, and the employee must be paid for those times. If, during a meal period, the employee is frequently interrupted by calls to duty, the meal period must be counted as hours worked and compensation paid.

**Overtime Pay** Covered employees are paid at least one and a half times their regular rate of pay for hours worked over 40 in a week. In California, overtime must be paid if employees work more than eight hours in one day.

**Child Care Leave** If other employees are allowed to take leave without pay or accrued annual leave for travel or education not related to their job, the same

type of leave must be granted to those wishing to remain on leave for purposes of taking care of an infant. Also, any health, disability, or sick leave plan made available to employees must treat pregnancy the same as other medical conditions, regardless of who pays the premium.

**And Yet More Regulations** Overtime pay at time and a half for all hours worked beyond statutory standards was set. From this act have come a number of minimum-wage laws and reduced-hours regulations. The law spells out tip credit that may be taken by the employees, overtime rates beyond the 40-hour week, deductions for meals provided to employees, and equal pay provisions for the sexes. State laws must conform minimally to federal legislation but may be more exacting; where they are more stringent than the federal regulations, the state laws apply. For example, there is no tip credit allowed in California and, in the past, the minimum wage was higher than federal law requires.

## EMPLOYEE INFORMATION

As required by the federal government, operators must keep records covering employees that include this information:

1. Name of employee in full
2. Home address, including ZIP code
3. Date of birth, if under age 19
4. Sex and occupation
5. Emergency contact
6. Time of day and day of week on which the employee's workweek begins
7. Regular hourly rate of pay in any workweek in which overtime premium is due; basis of wage payment (such as \$6/hour, \$48/day, \$240/week plus commission)
8. Daily and weekly straight-time earnings
9. Total daily or weekly straight-time earnings
10. Total overtime excess compensation for the workweek, where applicable
11. Total additions to or deductions from wages paid each day
12. Total wages paid each period
13. Date of payment and the pay period covered by payment

## FEDERAL EQUAL PAY ACT OF 1963 AND FEDERAL CHILD LABOR LAWS

The *Federal Equal Pay Act of 1963*, an amendment to the Fair Labor Standards Act, prohibits employers from discriminating on the basis of sex by paying employees of one sex a lower rate than the opposite sex.

Under federal law, the minimum permissible work age is 14. Laws prohibit people of a young age from operating dangerous equipment, such as food slicers and grinders, food choppers and cutters, and bakery-type mixers. Minors under 18 cannot operate elevators, power-driven hoists, or bakery machinery.

A number of regulations apply to persons under 18 working in restaurants, and the restaurant operator must be careful to abide by these regulations. State agency representatives have placed heavy fines on restaurants for failing to have workers under 16 get required work permission from their school authorities. In general, child labor laws allow 14- and 15-year-olds to work only between 7:00 A.M. and 7:00 P.M. and three hours or less on a school day, eight hours or less on a nonschool day, 18 hours or less in a school week, and 40 hours or less in a nonschool week. The DOL has the authority to check time sheets without a warrant if it suspects wage and child labor law violations. Each violation of the child labor law can result in fines up to \$1,000.

### **WAGE GARNISHMENT ACT**

To protect employees from having excessive amounts of wages collected by a lender (wage garnishment), the Federal Wage Garnishment Act (Title III of the Consumer Credit Protection Act) was enacted. State garnishment laws may provide greater restrictions on garnishment.

### **AGE DISCRIMINATION IN EMPLOYMENT ACT**

Most individuals over 40 years of age are protected from age discrimination in matters of hiring, discharge compensation, or other terms, conditions, or privileges of employment. Under the purview of the Equal Employment Opportunity Commission (EEOC), the Age Discrimination in Employment Act prohibits arbitrary discrimination based on the ages mentioned by private employers of 20 or more persons. Regional offices of EEOC attempt to settle complaints by conciliation before going to court.

### **EMPLOYMENT RETIREMENT INCOME SECURITY ACT**

The *Employment Retirement Income Security Act (ERISA)*, passed by Congress in 1974, established a broad range of standards with respect to vesting, funding, and planned participation in pension plans. The regulations are so strict that many employers have opted to avoid the plans altogether. According to some observers, ERISA tries so hard to nail the bad guys (those who fail in their fiduciary responsibilities) that it also nails a number of good guys by overwhelming them with paperwork.

### **CIVIL RIGHTS ACT OF 1964**

Title VII of the *Civil Rights Act of 1964* bans discrimination based on race, religion, color, sex, and national origin. Court cases have established precedents regarding sexual relationships between an employee and an employer. An employer cannot engage in any of the following:

- Make sexual advances or demands as a condition of employment or advancement.

- Abolish an employee's job because the employee refuses sexual advances by the employer or supervisory personnel.
- Refuse to investigate complaints from an employee that supervisory personnel have engaged in sexual harassment.<sup>7</sup>

Violations of Title VII of the Civil Rights Act of 1964 can take a number of forms. A federal district court judge ruled that an employee required to wear what would be considered a revealing and provocative uniform has the right to pursue a case.<sup>8</sup> According to the judge, employers do not have the unfettered discretion to choose employees' uniforms.

The direction of the law has alerted the EEOC to complaints from employees about sexual harassment. The cost of sexual harassment can be high. In one case, a waitress who was sexually harassed was awarded a total of \$275,000 in damages by the court.<sup>9</sup>

Harassment can take a number of forms, including fondling of a nonsupervisory female by a supervisory male, put-down jokes with sexual overtones, pinching, and slapping. Touching in a sexual way without the person's permission is an act of assault and battery.

Sexual harassment can be perpetrated by either sex. For example, a woman restaurant manager might extort sexual favors from a nonsupervisory male worker in order that he might retain his job as captain.

Sexual harassment claims have climbed considerably in restaurants. A visit to the EEOC Web site at [www.eeoc.gov](http://www.eeoc.gov) will reveal numerous examples of restaurant companies paying huge amounts in settlements. The informality of restaurants may actually encourage or at least tolerate sexual banter. The line between work and social interaction in a restaurant setting can easily be blurred, and that makes monitoring harassment more difficult. Food servers being harassed by managers, owners, or even patrons might be the most obvious example of sexual impropriety, but it is by no means the only one. In order to prevent sexual harassment in the workplace, employers must adopt and enforce a sexual harassment policy.

Employers are liable for harassment conducted by their employees, supervisory and nonsupervisory. If complaints are made, the complainants must be told their rights and management must investigate the incidents. If the investigation warrants, prompt and effective steps must be taken to remedy the situation. Lukewarm responses are not sufficient. The victims must be told of the action taken and of the steps taken to prevent retaliation by the harassers.

The responsibilities of managers to stop sexual harassment may extend to controlling the behavior of guests, persons who are not employees, depending on the degree of control that the employer has over the nonemployee. In one instance, a waitress was sexually harassed by several male customers who happened to be friends with the owner of the restaurant. The waitress informed the restaurant owner about the harassment and said that she had consulted an attorney about her legal rights. In turn her employer fired her. Even though the owner told the waitress he did not condone such sexual harassment, the waitress sued the owner for sexual harassment. The EEOC ruled that the employer had the

ability to remedy the situation but failed to do so. The employer's failure to take any corrective action made him liable for the waitress's sex discrimination charge.<sup>10</sup>

## **Legal Aspects of Contract Services**

Restaurant operators often contract out services such as air-conditioning repairs and maintenance, janitorial services, and pest control. Independent contractors have proved popular because, presumably, they are skilled in their field and because the restaurant operator avoids the liabilities for unemployment insurance, workers' compensation, wrongful discharge, injuries to third parties by a worker's conduct, and other claims.

To ensure that tax authorities also view independent contractors as indeed independent and not employees, the operator should have a written agreement with the contractor that specifies the nature and duration of the work to be done. The operator should be sure that the contractor has an employer account with the state and carries workers' compensation insurance. The state may well question employment of musicians as independent contractors. Laws regarding musicians leave few cases in which they can be considered independent contractors.

## **Complications in Discharging Employees**

In the absence of a contract, managers used to have the power to fire employees at will for good cause, bad cause, or no cause. Today, firing decisions are restricted by a maze of often overlapping statutes and executive orders. The National Labor Relations Act (NLRA) prevents companies from arbitrarily dismissing employees engaged in union activity. The Equal Employment Opportunity Act, state statutes, and executive orders protect employees against decisions based on race, age, sex, religion, or complaints to the Occupational Safety and Health Agency (OSHA) that working conditions are unsafe or unhealthy. An employer who wins in one forum can lose in the next, because each forum establishes its own enforcement machinery. Managers, however, may still be fired at will.

## **Reporting Tips to the Internal Revenue Service**

A running controversy has existed for a number of years between restaurant operators and the IRS over tip reporting. The IRS requires tipped employees to maintain accurate records of tip income and report such income at least once a month to their employers. The problem is that it is suspected that most employees underreport their tips.

## **Selling Liquor to Minors**

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The Alcoholic Beverage Commission (ABC) regulates the sale of alcohol. Selling alcohol is regarded as a privilege, not a right; as a result, a license may be withdrawn if a restaurant owner fails to comply with regulations. The ABC regulates the hours of the sale of alcoholic beverages, entertainment, and the food-bar ratio of sales.

State laws vary regarding the age at which liquor can be legally bought, but they all agree on the seller's responsibility to sell only to those persons legally entitled to buy. In California, for example, the California Business and Professions Code provides that:

1. Any person who sells or gives any alcoholic beverage to a person under 21 years of age is guilty of a misdemeanor.
2. Any person who gives or sells any alcohol beverage to an obviously intoxicated person is guilty of a misdemeanor.
3. Any employee of a retail licensee who permits any alcoholic beverage to be consumed by any person after 2:00 A.M. is guilty of a misdemeanor.

Bartenders, waiters, and waitresses are subject to the code and can be prosecuted. In court cases involving the sale of alcoholic beverages to minors, 8 out of 10 bartenders, waiters, and waitresses who were arrested failed to request proof of age from minors.

## **Time Off to Vote**

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Some 30 states have laws governing time off for elections; such laws vary from state to state. The amount of time off required is typically two to four hours. In some states, the employee must make specific application for time off to vote to be eligible for the right. The local state restaurant association is probably the best source of current information on such laws.

## **Wage and Hour Audits**

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The DOL or state labor department officials may demand that a restaurant operator produce wage and hour records within 72 hours. Investigators, after inspecting the records, may want to interview employees, and the operator should make current employees available for such interviews. Interviews are conducted to verify the accuracy of employment records and what is stated as the employee's duties. If the investigator finds a violation, the operator may wish to employ an attorney to represent the restaurant. The attorney may accompany the operator to the interview with the investigator.

## Interpretation and Clarification of Government Regulations

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There is no way that the operator can keep up to date on constant changes in regulations and their interpretation without help. It would be far too expensive to employ legally trained persons to keep the independent owner current on such matters as minimum wage and working conditions, unemployment disability insurance, and safety on the job regulations. State restaurant associations keep members informed on a host of rules and regulations affecting the food and alcoholic beverage service industries in the state. These are some of the areas of coverage:

- Minimum wage and working conditions regulations (complete state and federal labor law information)
- Alcoholic Beverage Control Act and related regulations
- Health and sanitation
- Unemployment insurance, including methods to prevent illegal and unwarranted claims
- State unemployment disability insurance
- Workers' compensation insurance
- IRS taxes and regulations (Social Security, FUTA, etc.)
- Sales tax (cities and states)
- Business regulations affecting new construction or alterations
- Fair Employment Practice and Equal Employment Opportunity laws and regulations

The matter of insurance is also complicated, and some state restaurant associations provide insurance keyed to the industry's needs. Insurance coverage includes group workers' compensation insurance, group life insurance programs for owners and key personnel, and comprehensive group medical insurance.

## Falls

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Workers' compensation is an insurance benefit that employers in most states are required to carry with a state-approved private insurance company. Workers' compensation provides income and medical benefits to accident victims or their dependents regardless of fault, provided the accident happened on the job.

Employers pay an insurance premium based on the number of employees and the kind of work performed. As with most insurance, if a claim is made, the premium will increase; therefore, it is in the best interest of employers to minimize the number of claims. Providing a safe working environment is critical, but you can also screen out accident-prone employees and reduce accident-causing circumstances. Training and checklists will help, as will rubber matting and non-slip shoes.

The most common litigation for restaurants involves slips and falls. This happens when a guest or employee slips on a wet floor or something on the floor, falls, and is injured.

Restaurant owners and operators are required to provide a safe environment for guests and employees. When guests slip and fall, a lawsuit is likely; such suits usually are settled out of court for a substantial amount. Needless to say, insurance premiums are a good investment.

## Summary

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Careful evaluation of the advantages and disadvantages of the various forms of legal entities under which a restaurant may operate will help the operator select the best one. The time and effort invested will be rewarded by fewer problems as the business matures. Depreciation, tax issues, and benefits are also important considerations for the restaurateur. Setting up a business entails considerable time and effort and involves meeting a number of legal requirements with which the average person will require help. This fact reinforces the value of experience in the restaurant business before operating as an owner.

Taxes—local, state, and federal—are assessed against businesses. Understanding and paying taxes on time is an unhappy chore and responsibility. There is no way the individual restaurant operator can keep abreast of all legal requirements on his or her own. Most operators depend heavily on their state restaurant associations to keep them informed of changes in legal requirements and to answer questions about current requirements.

## Key Terms and Concepts

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|                                                   |                                     |
|---------------------------------------------------|-------------------------------------|
| Age Discrimination in Employment Act              | Federal Equal Pay Act               |
| Americans with Disabilities Act (ADA)             | Federal Wage and Hour Law           |
| Civil Rights Act of 1964                          | Fringe benefits                     |
| Depreciation                                      | Individual retirement annuity (IRA) |
| Employment Retirement Income Security Act (ERISA) | Limited partnerships                |
|                                                   | Partnership                         |
|                                                   | Sole proprietorship                 |

## Review Questions

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1. In setting up a restaurant business, you have a choice of operating as a corporation, partnership, or sole proprietorship. Which will you choose, and why?
2. What are some dangers of operating a restaurant as a partnership?
3. If you wanted to operate your restaurant as a corporation but be taxed as an individual, how could you arrange this?

4. What is the advantage of setting up a buy–sell agreement with partners?
5. As a restaurant corporation owner, how would you decide how much salary to pay yourself?
6. As a restaurant owner/operator, what is the big advantage to you of taking part in a Keogh plan?
7. Name at least five benefits that restaurant owners can give themselves without income tax consequences.
8. Why would you want to take accelerated depreciation during the first years of a new restaurant?
9. As a limited partner in a restaurant, what part do you have in making management and financial decisions?

## Internet Exercise

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Search the IRS Web site for information on starting a business—Publication 583, titled “Starting a Business and Keeping Records,” offers helpful information. The IRS Web site is [www.irs.gov](http://www.irs.gov).

## Endnotes

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