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Food Co-ops as Limited Liability Companies

Food co-ops, that provide natural and organic food products to consumers at the retail level, have some characteristics that diverge from more traditional business models. Cooperatives (co-ops) are best understood as member-owned, member-governed businesses that operate for the benefit of their members. Members pool resources to bring about economic results that are unobtainable by one person alone.¹ The most common form of co-ops, consumer co-ops, are organized by individuals who seek to purchase goods and services, and are the largest kind of cooperative. With this model, individual members have relatively little direct influence on the co-op, other than participating in elections for the board and occasionally voting on major policy changes. The board usually appoints a manager, who hires and supervises staff to run operations. Co-ops often distribute patronage refunds, in which profits are returned to members based upon how much they used the co-ops.² Grocery co-ops, typically providers of natural and organic food products, are one type of cooperative businesses that are currently operating in Vermont.³

A cooperative business model can fall under several categories when deciding how to structure the organization. One possibility can be registering with the state as a limited liability company (LLC), if a partnership or traditional corporation does not suit the cooperative's needs.⁴

Limited liability companies are companies whose structure has elements of both a partnership

¹ Elizabeth Archerd. "What are Co-ops." National Cooperative Grocers Association (NCGA). <http://www.ncga.coop/about/coops> (accessed January 31, 2011).

² National Cooperative Business Association (NCBA). "Consumer Cooperatives." <http://www.ncba.coop/ncba/about-co-ops/co-op-types/consumer-cooperatives> (accessed January 31, 2011).

³ "Food Retail." National Cooperative Grocers Association (NCGA). <http://www.go.coop/kinds-co-ops/food-retail>. (accessed February 3, 2011).

⁴ Andrew McLeod. "Types of Cooperatives." Northwest Cooperative Development Center. <http://www.nwcdc.coop/Resources/CSS/CSS01Types.pdf> (accessed February 4, 2011).

and corporation. Registering with the state as an LLC can offer its members and managers "limited liability" for the obligations of the company.⁵

An LLC is treated as a corporation for purposes of limited liability and as a partnership, if properly structured, for purposes of taxation. LLC members can fully participate in management decisions, while remaining protected from personal liability. An LLC can be run by a manager or directly by its members. These qualities make LLCs more attractive to some business people as compared to partnerships or the various forms of corporations available in the state.⁶

In 1996, an LLC law took effect in Vermont which allowed the formation of limited liability companies in the state (11 V.S.A. § 3001.). All other states permit the formation of LLCs, and in Vermont an LLC may be formed for any purpose, with the exception of a bank, savings and loan association, credit union, insurance company, or railroad company.⁷

Currently, no co-ops in Vermont are registered as an LLC. Other states, such as Wyoming, Tennessee, Iowa, Minnesota, Wisconsin, and Nebraska, have enacted legislation to better handle cooperatives in their respective states. These states have proposed an alternative business model with regards to cooperatives. This alternative to the LLC for cooperatives is being termed a Limited Cooperative Association (LCA). Structured like a hybrid model between an LLC and the cooperative structure, an LCA allows the distribution of net earnings on the basis of investments as well as patronage. The new statutes allow an LCA to either be taxed as a partnership or as a corporation.⁸ Essentially a cooperative's incentive to gain LCA status would be to attract equity from investors who do not patronize the cooperative, therefore providing an additional source of equity capital to the business.⁹

Food Co-ops in Vermont

- Adamant Co-op, Adamant.
- Brattleboro Food Co-op, Brattleboro. First certified organic retailer in Vermont.
- Buffalo Mountain Co-op, Hardwick.
- Onion River Co-op, Burlington: City Market. Onion River Co-op is structured as a democratic cooperative, with an open membership. Currently the co-op has over 5,000

⁵ Vermont Secretary of State. "LLCs." <http://www.sec.state.vt.us/corps/dobiz/llc.htm> (accessed January 31, 2011).

⁶ Vermont Secretary of State. "Types of Corporation." <http://www.sec.state.vt.us/corps/dobiz/types.htm> (accessed February 3, 2011).

⁷ Vermont Secretary of State. "Starting a Limited Liability Company." http://www.sec.state.vt.us/corps/dobiz/llc/llc_start.htm (accessed January 31, 2011).

⁸ Pitman, Lynn. "Limited Cooperative Association Statutes: An Update." *University of Wisconsin Center for Cooperatives* 7, (2008): 1-18 www.uwcc.wisc.edu/info/uwcc_pubs/staff/staff08.pdf (accessed January 31, 2011).

⁹ Kennedy, Tracey L. and Donald A. Frederick. "Use of LLC-Cooperative Statutes: Statutes of New Business Formation in Wyoming, Minnesota, Tennessee, and Iowa Organized Through 2005." www.cooperatives.ucdavis.edu/news/Frederick%20LLC-Coops.pdf (accessed January 31, 2011).

member/owners. A member elected Board of Directors represents the member/owners.¹⁰

- Hunger Mountain Co-op, Montpelier.¹¹
- Kingdom County Market, St. Johnsbury.
- Middlebury Natural Foods Co-op, Middlebury.
- Plainfield Co-op, Plainfield.
- Rutland Area Food Co-op, Rutland.
- South Royalton Market, South Royalton.
- Springfield Food Co-op, Springfield.
- St. J Food Co-op, St. Johnsbury.¹²
- Upper Valley Food Co-op, White River Jct., Vermont.
- East Warren Community Market, Warren, Vermont.¹³

Co-ops Across the Country

New Hampshire

The Hanover Consumer Cooperative Society, Inc. is one of the oldest cooperative corporation's in the country. They first established the highly successful co-op in Hanover, New Hampshire and over the years opened more stores in Lebanon and White River Junction, Vermont due to their massive growth. This particular co-op corporation is not a limited liability company.

- Co-op Community Food Market, Hanover, New Hampshire
- Hanover Coop, Lebanon, New Hampshire
- Upper Valley Food Co-op, White River Junction, Vermont¹⁴

Massachusetts

Massachusetts has various small food co-ops spotted around the state including ones operated by students. One of the more successful co-ops is the Berkshire Co-op Market located in North Hampton. This particular co-op grew out of a community's want for buying clubs that provided

¹⁰ "Co-op History," City Market, accessed January 31, 2011, <http://www.citymarket.coop/about/co-op-history>.

¹¹ "Membership," Hunger Mountain Co-op, accessed January 31, 2011, <http://www.hungermountain.com/membership.cfm>.

¹² St. J Food Co-op, accessed January 31, 2011, <http://www.stjfoodcoop.com>.

¹³ Cooperative Grocers Association of New England, "Food Co-op Directory," accessed January 31, 2011, <http://www.cooperativegrocer.coop/coops?keys=&state=VT>.

¹⁴ The Hanover Consumer Cooperative Society, Inc., "Celebrating 75 Years of Service," 2010, accessed February 2, 2011 <http://www.coopfoodstore.coop/about/history>.

food for cheaper prices. It is still a volunteer and member based cooperative and it currently run by the Berkshire Cooperative Association.¹⁵

Rhode Island

Rhode Island seems to have a limited selection of food co-ops but one such cooperative is the Alternative Food Co-op that grew out of a grassroots organization in 1970 (Alternative Food Co-op, Wakefield, Rhode Island).¹⁶

Minnesota

Minnesota has one of the first co-ops to reincorporate their cooperative to become a limited cooperative association. St. Peter Food Co-op decided to take advantage of the new state statutes in order to help their expansion plans.¹⁷

Conclusion

- Retailers of organic and natural food products are overwhelmingly organized as cooperatives.
- A cooperative may structure their business under an LLC if a more traditional business model such as a partnership or corporation does not suit their needs.
- There are currently no food co-ops in Vermont that are organized as an LLC.
- The use of LLCs for food co-ops is not evident in New England states, or other parts of the country.
- Some states have enacted legislation to better classify cooperatives, creating new categories for such businesses, i.e. an LCA.

Prepared in response to a request by Representative Kupersmith of South Burlington by Patrick Doyle, Camille Fordy, and Aaron Haight, under the supervision of graduate student Kate Fournier and Professor Anthony Gierzynski on February 2, 2011.

Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.

¹⁵ Berkshire Co-op Market. "About Us, 2010." <http://www.berkshire.coop/about.html> (accessed February 2, 2011).

¹⁶ Jim N. and Art S. "Co-op History, 2010." <http://www.alternativefoodcoop.com/about/history.htm> (accessed February 2, 2010).

¹⁷ Reid, Stuart. "St. Peter Food Co-op Chooses Flexibility in Reincorporation, 2010." www.cooperativegrocer.coop/sites/default/files/article_files/stpeter.pdf (accessed February 2, 2011).