



## **Incorporating Your Business in Delaware or Nevada** by Stuart Adams

Making the choice of the state in which you will initially form your corporation should often be based upon a combination of legal, tax, marketing, distribution, and other factors. For that reason, we recommend you seek advice from your team of advisors, including your attorney, accountant, marketing, and other professionals. In some states, for example, you might experience a higher cost of doing business because of such things as inventory taxes, which might not apply in another state.

If, on the other hand, it is the ability of your management team to build and retain personal wealth, the issue of state income tax may be more important to you. Incentives given by states for starting, acquiring or expanding a business, may exceed benefits of low income or inventory tax. Locating in the center of your market area, or near a major transportation hub, might likewise give a competitive advantage to your business, which will allow you to grow the company much more effectively and profitably than if you had located elsewhere just because of tax issues. All of these factors, and many others, should be considered before deciding where to incorporate.

Clients will periodically ask me if there is any advantage to initially registering their corporation in Delaware or Nevada, as opposed to in their home state, or the state in which they will transact most of their business. When I was in law school, over thirty years ago, Delaware had gained a long history of being considered a more favorable home for corporations, than most other states. This was primarily because the laws in Delaware had been drafted to be more protective of the privacy of corporate information, and generally more liberal, in terms of what rights and powers corporations had, as opposed to those of shareholders, creditors, etc. Nevada has also gained a reputation as a favorable state for incorporation. This, like Delaware, is primarily based upon privacy of corporate information and liberal tax treatment. Over time, however, other states realized they were losing business and dealt with this "competitor" state by making changes in their respective laws, with an intent to rival those of Delaware.

Each state also has more or less paperwork, varying fees, etc. In Kentucky, for instance, corporate filing fees are a minimum of \$50.00 at the state level, plus approximately \$9.00 at the county clerk level. In Indiana, the filing fee is \$90.00 at the state level, but there is no requirement to file with the county clerk.

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Most states require “foreign corporations” (i.e. a corporation not originally organized under the laws of that state) to register as a foreign corporation, if they are transacting any business in the new state. This process typically involves the additional time and expense of obtaining documents from your home state of incorporation, showing your company to be in “good standing,” filling out a registration document in the new state, and paying a fee in the new state. This fee is often substantially more than it would be if you had organized in the new state originally. The result is registration fees and paperwork in two states, rather than just in one, plus annual or other periodic paperwork and fees. For this reason alone, it is wise to pick your state of incorporation wisely.

In addition to the duplication of fees and paperwork referenced above, most states require a corporation to maintain an “agent for service of process” in that state. This is true of both your “home” state and any “foreign” state where you have also registered your corporation. This can result in a substantial additional expense. Unless you actually maintain a company office or facility in the “foreign” state, you may have to pay for the services of a corporate process agent. This service is provided by a multitude of companies, for a fee. Typically, there is an initial fee to the agent company, plus an annual fee.

For information on what Delaware and Nevada say about why you might want to form your company there, read on. The following excerpts are taken from the respective secretary of state’s Web sites. The language is theirs, not ours.

## **Delaware**

Delaware Secretary of State Web site home: <http://www.state.de.us/sos/default.shtml>

Delaware Secretary of State, Division of Corporations’ page: *Why Choose Delaware as Your Corporate Home?*

<http://www.state.de.us/corp/default.shtml>

More than half a million business entities have their legal home in Delaware including more than 50% of all U.S. publicly-traded companies and 58% of the Fortune 500. Businesses choose Delaware because we provide a complete package of incorporation services including modern and flexible corporate laws, our highly-respected Court of Chancery, a business-friendly State Government, and the customer service oriented Staff of the Delaware Division of Corporations.

## **Nevada**

Nevada Secretary of State Web site home: <http://sos.state.nv.us/>

Nevada Secretary of State’s page: *Why Incorporate in Nevada?*

[http://secretaryofstate.biz/comm\\_rec/whyinc.htm](http://secretaryofstate.biz/comm_rec/whyinc.htm)

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No Corporate Income Tax

No Taxes on Corporate Shares

No Franchise Tax

No Personal Income Tax

No I.R.S. Information Sharing Agreement

Nominal Annual Fees

Minimal Reporting and Disclosure Requirements

Stockholders are not Public Record

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#### Additional Advantages

Stockholders, directors and officers need not live or hold meetings in Nevada, or even be U.S. Citizens.

Directors need not be Stockholders.

Officers and directors of a Nevada corporation can be protected from personal liability for lawful acts of the corporation.

Nevada corporations may purchase, hold, sell or transfer shares of its own stock.

Nevada corporations may issue stock for capital, services, personal property, or real estate, including leases and options. The directors may determine the value of any of these transactions, and their decision is final.

#### Other States

To see what other states say about their requirements, processes and fees, visit the *National Association of Secretaries of State* links page, which provides an alphabetical listing of all state secretary of state sites, using the respective state's flags as the link: <http://www.nass.org/sos/sosflags.html>

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