

# THE FINE PRINT – Does it pay to incorporate in a different state?



Corporations and other limited liability entities are creatures of state statute. That means that each state has its own rules for chartering them, and its own requirements regarding fees, taxes, reporting, and disclosure. This would appear to provide a corporation 50 different options to choose from. But when you consider all of the variables involved, legally and financially, it often makes sense to incorporate in your home state.

Each state requires that a corporation be registered in its state in order to do business in its jurisdiction. If you are incorporated in the state where you are domiciled, this happens automatically through the incorporation process. If you incorporate in a state other than where you are domiciled, you will be required to register as a “foreign corporation” in your home state. This is in addition to any obligation you have as a “domestic” corporation, in the state where you are incorporated.

If you are domiciled and incorporated in Wisconsin, your only fee is a \$25 annual report fee. Annual reports disclose information regarding corporate structure, ownership information, officers, location of principal office, and registered agent name and address. A registered agent is someone that is authorized to accept legal service on behalf of the corporation. This is dirt cheap compared to the costs of incorporating in many, if not most, other states.

Many states, including Delaware, charge hundreds or thousands

of dollars a year in franchise tax – a tax based on the value of a corporation rather than on income. California's franchise tax is at least \$800. This tax is due on top of any annual reporting fees. In addition, if you are operating as a foreign corporation in another state and have no physical presence there, you will be required to hire a registered agent. This will add an additional \$50 to \$300 a year in fees.

All of these costs have to be evaluated based on their perceived benefit. Delaware has the oldest and most sophisticated corporate law in the country. Additionally, its courts have a reputation for favoring corporate management – a factor in the choice of many businesses to incorporate there. This may help if you're a very large or publicly traded company, but most companies can barely afford to go to court in their home state, let alone hire a Delaware law firm to act on their behalf and to travel back and forth to Delaware to make any appearance. Similarly, states like Nevada are touted as tax-free havens with minimal disclosure requirements. That may be so for domestic corporations, but foreign corporations will still be subject to taxation and disclosure requirements of the state they are domiciled in.

Incorporating in a state other than where you are domiciled adds hundreds, if not thousands, of dollars in operating costs. It also adds an additional level of complexity with regard to reporting requirements, all of which makes it easier to make mistakes and fall out of compliance. The benefits are either illusory or unrealizable for small to medium-sized companies.

*[Jan Pierce, S.C.](#) is a law firm In Milwaukee that was founded with the belief that people can make a positive difference in the world and make a profit. The firm's emphasis is on assisting small businesses and social entrepreneurs in all aspects of launching and managing their ventures. Disclaimer: Advice in this column is general legal information and does not constitute, nor is it intended to be, legal advice. Send*

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