



Where should you incorporate your LLC?

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(Editor's note: Curtis Smolar is a partner at Ropers Majeski Kohn & Bentley. He submitted this column to VentureBeat.)

A reader asks: What is the best state to incorporate an LLC? I have a plan for a website in which the only source of revenue will be from ads, so the revenue stream won't be coming from a particular state. I've heard Nevada, based on their tax laws, is the best state in terms of starting a small business, but what do you think?

Answer: Although Nevada does not levy personal, business or corporate income taxes, that doesn't automatically make it the right choice. When deciding which state to incorporate in, there are a number of things you should look at. Included among those are:

State laws regarding corporate governance – An LLC is a corporate entity that generally has the tax flow-through benefits of a partnership while maintaining the legal protections of a corporation. Like a corporation, an LLC is a legal fiction, which means that it is a person that exists purely by creation by state statute.

To determine the rights and responsibilities of the corporate members, therefore, you must look to the specific state in which you are incorporated. Many states treat LLCs as creations of contract and state laws often act as "gap fillers." In short, this means if the members of the LLC fail to contemplate certain actions, the statute decides the matter for them. For example, if an LLC doesn't

contemplate the rights of its members in case of dissolution of the LLC, state statutes would guide the course.

This could be good or bad, depending on your needs. Nevada, among other states, allows corporate meetings to be held anywhere, while other states may require the meeting to be held in the state of the company's incorporation. Some states, including Nevada and Wyoming, require the company to indemnify managing members or employees. Meanwhile, California, among other states, requires a designated registered/statutory agent with a physical address (not a P.O. Box) within that jurisdiction where a person would be available to accept legal service of process and communication directed to the company.

Carefully consider the cost of complying with the corporate governance requirements of the state where you wish to incorporate.

Corporate costs of doing business - Each state has its own internal corporate costs. There will always be an initial filing fee in each state. Some of the costs are lower than others, but this can also be outweighed by the cost of doing business as a foreign corporation.

Cost of doing business as a foreign company - Even though you are incorporated in one state, your company will have to register in every other state you do business in as a 'foreign' company – and the registration fees for that vary state-by-state. This adds a layer of complexity.

While the governance of the LLC may be subject only to the laws of its incorporation, externally the LLC is subject to the laws of each of the state it conducts its business. For example, a Nevada LLC doing business in California will be required to register with the Secretary of State and comply with California laws like maintaining a registered agent with a California address and be subject to California tax laws.

Creditors rights laws - Creditor's rights are also determined by state law. Certain locations, like Florida, are considered by some to have very pro-

debtor laws while others, such as Delaware, are seen as more pro-creditor. Determining which states law applies will depend on the company's relationship with the debtor and the state of residence of the debtor, among other factors.

True relationship between your company and the state - While you can incorporate in some states without being located in that state (Nevada and Delaware, for example) it may not be wise to do so. For example, if you incorporate in one state simply because they have more favorable bankruptcy and debtor-rights laws, but your company's business is conducted entirely in other states, then creditors may try to use this as indicia of fraud.

Tax issues – This isn't my area of expertise, so I'm going to steer clear of offering any specific advice or guidance. There are, however, profound tax issues that you'll need to make yourself aware of as you make this decision.

Startup owners: Got a legal question about your business? Submit it in the comments below or email Curtis directly. It could end up in an upcoming "Ask the Attorney" column.

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