



TAX & ESTATES DEPARTMENT

ALERT

NEVADA IMPLEMENTS NEW BUSINESS LICENSING FEE STRUCTURE AND PROCEDURES FOR ALL NEVADA REGISTERED ENTITIES

By S. Craig Stone II and Jeff Quijano

Effective October 1, 2009, the Nevada Legislature dramatically expanded the scope of what constitutes “doing business” in Nevada for state business licensing purposes. Furthermore, Nevada now requires that all parties “doing business” in Nevada must annually pay a \$200 business license fee (increased from \$100) to the Nevada Secretary of State. Nevada has transferred administration of the state business licenses from the Nevada Department of Taxation to the Nevada Secretary of State and has provided funds for it to create the “state business portal” to streamline the business license application and renewal process.

ARE YOU “DOING BUSINESS” IN NEVADA?

For Nevada state business licensing purposes, parties do not need to be performing services or actively participating in a trade or business to be deemed to be “doing business” in Nevada. Specifically, Nevada expanded the definition of “doing business” to include the following:

- (i) **Any** persons, except natural persons, who perform a service or engage in a trade for profit;
- (ii) Natural persons who perform services or engage in a trade for profit **and** who are required to file a Form 1040 Schedule C, E or F; **or**
- (iii) **Any entity** formed under Title 7 of the Nevada Revised Statutes,¹ which includes, but is not limited to, corporations, limited liability companies and partnerships, ***whether or not***

the entity performs a service or engages in a business for profit.

Item (iii) means that ***all business entities*** formed under the laws of Nevada and all foreign entities registered to do business in Nevada ***must*** now obtain a Nevada state business license, even if the entity is 100 percent passive, i.e., a real estate holding company.

As the foregoing indicates, there is no requirement that a business actually have operations in Nevada to be subject to the state business licensing requirements. The business licensing statute more specifically provides that a person ***must*** file a business license application if the business:

- 1) Is a domestic or a registered foreign corporation, limited liability company, limited partnership, limited liability partnership, limited liability limited partnership or a business trust;
- 2) Has an office of base of operations in this state;
- 3) Has a registered agent in Nevada; ***or***
- 4) Pays wages or other remuneration to natural persons for any duties/services performed in this state.

WHO IS EXEMPT FROM THE NEVADA BUSINESS LICENSE REQUIREMENTS?

There are several very narrow exceptions to the state business licensing requirements. The following

¹ A Title 7 entity is an entity organized in Nevada that files its formation documents with the secretary of state. Title 7 entities are required to file an annual list of officers or its equivalent, and include domestic and foreign registered corporations, limited liability companies, limited partnerships, limited liability partnerships, limited liability limited partnerships and business trusts.

parties are exempt from the Nevada business license requirements:

- 1) Government entities;
- 2) Nonprofit entities exempt from federal taxation under Internal Revenue Code Section 501(c);
- 3) A Nevada nonprofit corporation or corporation sole²;
- 4) A business whose primary purpose is to create or produce motion pictures;
- 5) A *natural* person whose sole business is the rental of four or fewer dwelling units to others; or
- 6) A person who operates a business from home and whose *net* earnings from the home business are not more than 66-2/3 percent of the average annual wage.³

However, the foregoing parties, except nonprofit corporations or corporations sole, if required to file documents with the secretary of state, must initially submit their form, without fees, stating the specific exemption from the business license requirement.

Parties that are not required to file an initial list or annual list must obtain a state business license before conducting business in the state.⁴

WHAT THIS MEANS FOR YOU

Failure To File: The state business license application and the initial list/annual list of officers must be filed together, and failure to comply with the business license filing requirements will subject entities to a \$100 penalty for failure to timely file the business license application. Furthermore, should the failure to file result in the late filing of an initial list or annual list, the entity will also be subject to any applicable penalties for failure to timely file the initial list or annual list, including all applicable fines, or potentially default, or revocation of the entity's charter or right to transact business in Nevada. If the person is not an entity required to file with the secretary of state, the person will be required to pay the \$100 penalty for failure to timely file the business license application.

Natural Persons Engaged in Multiple

Business Activities: A natural person is only required to obtain one state business license even if engaging in the various business activities that would require reporting on multiple schedules of the natural person's Form 1040.

Dissolution: An entity must file a certificate of dissolution or other form evidencing the dissolution before the last day of the month in which the anniversary date of the issuance of the business license occurs. A person not required to file an annual list with the state must complete a cancellation form online at www.nvsos.gov under the state business license link not less than 10 days prior to the expiration of the state business license.⁵ Failure to properly inform the secretary of state of dissolution will require that the entity or person pay the \$200 business license fee and the penalty for late filing.

PLANNING OPPORTUNITIES

Because virtually all business entities registered in Nevada must now obtain a business license, those persons owning multiple businesses and/or business entities, whether actively engaging in business activities or merely holding passive investment assets for limited liability purposes, should consult an attorney to discuss opportunities to reduce the administrative burdens and fees associated with operating multiple entities.

Those persons holding real estate or other assets in various holding companies may now be required to pay thousands of dollars in additional fees to the secretary of state. The Nevada Series LLC is a potential solution that business owners may consider to alleviate the administrative burdens and increased costs of owning multiple holding companies under Nevada's new state business licensing regime, while maintaining the limited liability protections for the assets and members.

Owners of business entities who are not engaging in active business operations and who are not currently holding assets should consider filing the

² A corporation sole is a corporation formed for acquiring, holding or disposing of church or religious society property, for the benefit of religion, for works of charity and for public worship.

³ The "average annual wage" for the purposes of the business license statute is computed pursuant to Chapter 612 of the Nevada Revised Statutes. The average annual wage for 2009 is \$26,600, but this amount generally fluctuates from year to year.

⁴ Parties that are not required to file an initial list or annual list with the secretary of state are referred to as non-Title 7 businesses, typically sole proprietorships or partnerships doing business in Nevada but not required to file organizational documents with the secretary of state to exist.

⁵ Non-Title 7 entities are no longer permitted to inform the secretary of state of the close of business in writing. The non-Title 7 business now must utilize the secretary of state's web site to inform the secretary of state of the termination of business activities.

appropriate dissolution documents to avoid paying unnecessary renewal and state business license fees to the secretary of state.

However, no single course of action is appropriate for everyone. Businesses should consult an attorney and/or tax advisor as changes in corporate structures undertaken as a result of business license planning may also have tax consequences and should not be implemented without consultation with advisors.

MISCELLANEOUS CONSIDERATIONS

- **Grace Period:** There is a penalty grace period through January 31, 2010, to accommodate any confusion resulting from the transition of the administration of the state business license to the secretary of state from the Department of Taxation. This means that for those businesses whose state business license expires, or for those that have an initial list or annual list due date between October 1, 2009, and January 31, 2010, but that fail to pay the business license fee by its due date, shall have until January 31, 2010, to comply with the business license statute, without the assessment of a penalty. However, all state business license delinquencies existing on January 31, 2010, will be assessed the \$100 penalty.
- **Local Business Licensing:** The Nevada state business licensing requirements do not exempt parties from obtaining business licenses at the local level. However, approval of local business license applications generally requires verification of possession of a state business license. The requirement that a person obtain a state business license does not necessarily mean that the business must obtain a local business license.

- **“Gap Entities:”** For those Title 7 entities whose state business license expires *before* the time for filing the entity’s annual list, the entity will be required to pay the full \$200 business license application fee and then will be required to pay a prorated amount when the entity subsequently files its annual list. The prorated fee is calculated based on the number of full unexpired months remaining on the current state business license.⁶ An entity whose business license expires *after* the time for filing the entity’s annual list should receive a credit for the unused portion of its existing state business license fee when it files its next annual list.
- **Online Filing:** The Nevada Legislature mandates that the secretary of state create a “state business portal” for the administration of the state business licensing. Additionally, copies of your state business license will only be available online, and copies will be free of charge.
- **Real Estate Agents:** Real estate agents are not considered to be working from their personal residence and are thus required to obtain a state business license.

You are encouraged to speak with an attorney if you have any specific questions regarding the application of the new Nevada state business license structure to your business.

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⁶ For example, if the entity’s business license expires on December 1, 2009, and the annual list filing date is March 1, 2010, the entity will be required to pay the \$200 licensing fee to the secretary of state no later than November 30, 2009. Then, when the entity subsequently files its annual list, it must pay a \$50 fee, in addition to the annual list filing fee, to cover the “gap period” for the business license fee from December 2009 through February 2010. The business license fee and annual list filing fee will be filed simultaneously in subsequent years.



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