

Moving the Domicile of your Corporation or Limited Liability Company (LLC) from one state to another

Where should my business be Incorporated, or my Limited Liability Company (LLC) be formed?

As a practical matter, an entrepreneur has his/her business entity in the state where they live, and operate their business. If you live in Las Vegas, Nevada and your entire business gross receipts are earned within the state of Nevada, you most likely need to have a Nevada entity. However, every business owner needs to think about the possibilities of where their business should be incorporated or organized. If you have revenue from more than one state, and perhaps multiple business locations, it is possible to incorporate in a more tax and business friendly state, and provide the entire enterprise with many corporate internal services that switch the net profits to the most business friendly states.

This may require some analysis as to how your business (and you personally to a lesser extent) spends its dollars. The question begins with how do different states fund the revenues of the state. There are seven states currently which do not have a state income tax: Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming. Other states will be following in time. Residents of New Hampshire and Tennessee only pay on dividends and income from investments. Oil and mineral rich states, such as Alaska, Texas, Wyoming, and South Dakota, receive lots of tax revenue from the oil and gas companies, and mining companies in those states. Nevada casinos and mining companies are a main revenue for the state of Nevada. States with lots of tourists derive most of their revenue from high sales taxes, gasoline taxes, and room taxes on hotels and motels in the state. (Nevada 6.85%, California 8.25%, Florida 6.00% - 8.00%). Five states do not have state-wide sales taxes: Alaska, Delaware, Montana, New Hampshire, and Oregon.

The two most popular forms of business entities are the Corporation and the Limited Liability Company (LLC). See in this website our discussion on the different entities, and the differences between them, and why one would use one over the other. (See - Entities). Once the entity is formed, the next issue is what are the maintenance costs associated with each entity in the state where your entity is domiciled.

Corporation Annual Maintenance Costs for four States

	<u>Wyoming</u>	<u>Nevada</u>	<u>Delaware</u>	<u>California</u>
Annual Secretary of State Filing fees for Annual Report	\$ 62.50	\$ 150.00	\$ 125.00	\$70.00
State Corporate Income Taxes	0	0	(See 1 below)	8.4% Min. \$800 0
State Business License Fee	0	\$500.00	0	
State Franchise Tax	0	0	(See 2 below)	0
Registered Agent Annual Fee	\$ 150.00	\$ 150.00	<u>\$ 150.00</u>	<u>\$ 150.00</u>
Total Annual Costs	\$ 212.50	\$ 800.00	\$ N/A Min \$1,020.00	

1. Corporate tax rate is 8.7%. The income tax is allocated and apportioned to Delaware base upon an equally weighted three-factor method of apportionment. The factors are property, wages, and sales in Delaware as a ratio of property, wages and sales everywhere. Taxes are not based on worldwide income.
2. The vast majority of Delaware corporations pay between \$225 and \$450 for their Franchise Taxes each year. There are different methods to calculate this fee. It depends on the size of the corporation, the number of shares, and the par value of the shares. The total amount due is somewhere between \$225. and \$200,000.

It is possible to migrate your business Entity from one state to another, and keep the same date of incorporation or formation.

More than half of all states have provisions to move an entities domicile from one state to another. The entity keeps its same date of incorporation, or formation, and its same Federal Tax Identification (EIN) number, and the same structure.

Looking at the spreadsheet nearby, you may have one, or more, Nevada corporations. (Using a Corporation entity as an exam ple). In your particular case you can o perate your b usiness from somewhere other than Nevada. You may be a California resident with a N evada corporation. It is time to file the Annual Officer and Director filing (\$150.00), obtain a N eva da b usiness l icense (\$500.00), and pay for a Res ident Agent (\$150.00). You say, "Is there a better, cheaper way of doing this?" There is! Move your Nevada entity to Wyoming. N orma lly, (the re is always some exce ption!) th is can be done for \$875.00 including paying all the new Wyoming Secretary of State charges, a new Resident Agent paid in advance for one year, and new Bylaws, Amended and Restated Articles of

Incorporation, Minutes for the Nevada corporation and the Wyoming corporation, and enough Business Consulting time to make you understand the migration process. (There may be one or two notary fees where you live on documents which require a signature notarized. Also, for us this is an organized multi-step process that we have to do in a timely and organized manner. It could take as long as six-eight weeks to get it done . . . so we need some lead time). Also, to do this the corporation must be current in its present domicile. If it's not, it has to be brought current with all past due fees paid. As a part of our filing package we need a Certificate of Good standing. The corporation keeps the same Federal Tax Identification number (EIN) as the Nevada corporation and the same incorporation date as was had in Nevada. An aged corporation has much more value than a new corporation, and you will have a newly migrated Wyoming corporation, moved from Nevada, at the end of the process. This process has great added value to your enterprise!

Here are the economics of this process. Let's say your Annual filings are due in two months, say September 1st. In two months you will owe \$800.00 (see the breakdown above) to the Nevada Secretary of State and your Resident Agent. Then, in 12 months another \$800.00; then, in another 12 months thereafter, another \$800.00 . . . and so forth. Instead, you pay Southwest Business Consultants, Inc. \$875.00, and we will obtain a certified copy of your original Articles of Incorporation, a Certificate of Good Standing, migrate your entity to Wyoming, pay all the Wyoming Secretary of State filing fees, arrange and set up a Resident Agent for you in Wyoming, and pre-pay the Resident Agent fee for one year, do the Minutes required for your Nevada corporation, do whatever Minutes required for your migrated Wyoming corporation, do a new set of Wyoming Bylaws, prepare and file an Amended and Restated Articles of Incorporation in Wyoming, and we will pay all our office overhead, postage and delivery charges, and at the end, prepare and file a Dissolution document in Nevada for your Nevada entity (which has been migrated to Wyoming). The next money you will owe will be in about September of the next year (about 11 months after we file the Article of Continuation in Wyoming). The amount owing will be about \$62.50 to file an Officers and Directors statement in Wyoming and about \$150.00 to your new Resident Agent in Wyoming. The next year approximately the same \$212.50, the next year the same ____ Looking at this business proposition over a 14 month period, you will pay \$875.00 plus \$212.50, and be current to (in this illustration) September of (2 years out). This is \$1,087.50 versus \$800.00 now, \$800.00 in 12 months, and \$800.00 12 months thereafter. The economics of this are a "no-brainer!"

In order to save money, preserve the date of formation on your entity, or to change the entity from one type to another, an entrepreneur may want to consider one of the following ideas, or strategies.

A Word about the Age of the Entity

It is important to you to preserve the original date of formation of your entity. Many potential customers check out a business to see how long it has been in business. If you are

going to put a new roof on your house you don't want to give the job to a roofing company that has been in business for two months. The longer the better! That's why many companies, in their advertising and their web pages tout how many years they have been in business . . . "serving the community for 12 years" . . . "celebrating being in business for 18 years!" If an entrepreneur goes to any bank for a loan, with no history, forget about borrowing money. You will be lucky if they don't ask you to leave the bank. If you are a contractor in the trades, and need to bond a job, most bonding companies won't even talk to you unless you have been in business for at least three years. Same is true with insurance companies for liability insurance, and with other possible vendors, such as commercial landlords. The Age of your entity is important and the older the entity is, the better! Aged entities have added value !!

Converting from a Corporation to a Limited Liability Company (LLC), OR converting a Limited Liability Company (LLC) to a Corporation.

Many entrepreneurs have never been introduced to the idea they can move an entity's domicile from one state to another, or to change an entity from one type of entity to another. For the correct strategy, this can be done. Like all strategies, this depends on where you are, and where you want to be. Not everyone is going in the same direction, and success means different things to different people.

Converting from a Corporation to a Limited Liability Company (LLC)

One strategy may be that an entrepreneur is good at running a small business, but maybe is not-so-good at doing corporate minutes, and all the requirements of operating a corporation. Operating a business with one owner, one investor, is totally different than operating a business with one outside investor. As quickly as an entrepreneur takes the capital from one (or more) investor(s), the entire business operation must immediately change. Once that first investor is in the company, the company owes a fiduciary duty to keep good records of every penny coming in the door, and an accounting of what happens to every penny going out. Many entrepreneurs cannot get to that next step! Some entrepreneurs have no interest in raising outside capital from friends, relatives, business associates, or the general public, so the entrepreneur does not need to pay the costs, and do the extra paperwork in maintaining a corporation. However, he does want to stay in business and he doesn't want to disturb his customers, the banks, and outside vendors with a new enterprise. In this case, perhaps a strategy would be to convert the corporation to a Limited Liability Company (LLC). The paperwork maintenance is less burdensome, and the annual costs and fees are less. The enterprise could keep the same name ("LLC" instead of "Inc"), same Federal Tax Identification number (EIN), and the same entity formation date. For example, looking at the spreadsheet nearby for the difference of maintaining a Nevada corporation, versus a Nevada Limited Liability Company (LLC), we see the costs can be reduced by at least \$300 per year in Nevada Secretary of State fees. A Limited Liability Company (LLC) is a "flow-through" tax entity, so it compares with an S corporation. This

strategy may have other implications, other than tax strategies, so it would take some conversations to decide if this works for any particular individual entrepreneur in his particular circumstances. However, the point here is that this is a possible strategy. This is not a blind recommendation for anyone reading this to do this particular strategy. The point is made many times in this website that not every solution is the right one for every entrepreneur. There is no one cookie-cutter solution for every strategy. The cost of executing this strategy, depending upon the complexities, and the over-all strategies employed, and the time involved, would most likely be accomplished for less than one thousand dollars. If this solution works for your enterprise, and you can get it done for \$1,000, and save \$300 per year for the life of your business enterprise, that is a good return on capital.

Converting from a Limited Liability Company (LLC) to a Corporation.

The opposite of the above situation would be an enterprise is going well, and the entrepreneur is looking to expand, and needs more operating capital. A Limited Liability Company (LLC) may work for a small business with less than 35 shareholders, and a limited amount of capital, but to run a larger organization, more capital is required, and a more sophisticated corporate structure is required. A corporation operates under a set of Bylaws, and a Limited Liability Company (LLC) operates with an Operating Agreement. The larger the organization, with more owners, the more formal the enterprise must become.

With all the Federal and State rules and regulations it is very difficult for a smaller corporation, even if well financed and organized, to raise capital in the United States. It is virtually impossible for a Limited Liability Company (LLC) to raise operating capital unless it is a specialty investment opportunity such as a group of investors (maximum of 35) putting their capital together to buy an apartment building for a longer term (non-liquid) investment. The major securities brokerage firms in the United States claim they need at least a \$50 million money raise for them to make any money.

To have any degree of success in raising capital for an enterprise, the entity has to be a corporation. We at Southwest Business Consultants, Inc. can convert your Limited Liability Company (LLC) into a Corporation, do all the "clean-up" work to get your company ready to raise some capital. In most cases you will be able to keep your same business name, (a "Inc." instead of "LLC"), keep the same date of the original filing of your Limited Liability Company (LLC) filing, and the same Federal Tax Identification number (EIN). We will prepare all of the Minutes required for both your Limited Liability Company (LLC), and the Corporation, prepare the new Bylaws for the Corporation, all of the conversion documents such as a Plan of Conversion, the Articles of Incorporation, and a general Business Plan that gives the broad scope of what the Corporation will be doing.

If the corporation is not already a publicly traded company, an investor's first question upon being asked to invest in the enterprise is, "How do I get my money back?" After that

question is adequately answered, the potential investor will check out the offering materials to see if the possible investment makes sense to him. To develop a trading market the Corporation must have a minimum of 300 investors and file further documents with the United States Securities and Exchange Commission (SEC), and FINRA.

We can do whatever is required to assist you in developing your entity, to take your business as far as you desire. We have our own staff as well as other professionals we work with to make this happen!

We have an inventory of Aged Developmental Shelf Corporations and Limited Liability Companies from about five years old to over 25 years old.