

Where should I incorporate my small business or form my LLC?

Generally, the best state to form an LLC or corporation is where you intend to conduct most of your business, where you have an office or business presence, or where you live. This is commonly referred to as your home state.

If you set up an LLC or corporation in a different state than your home state, you will likely be required to file an application as a foreign LLC or foreign corporation (meaning created in another state) in each state where you conduct substantial business or have substantial business contacts. Filing an application as a foreign corporation in Illinois costs \$175, and may take four to five weeks to be accepted. Filing an application as a foreign LLC in Illinois costs \$500. In addition, the registration as a foreign corporation or LLC requires a registered agent with a registered office within the state of Illinois. This may lead to the additional expense for hiring an Illinois registered agent. For example, if you form an LLC in Delaware but your business office is in Illinois and you do most of your business in Illinois, you must file and pay fees in Illinois as a foreign LLC doing business in Illinois in addition to filing and paying fees in Delaware. This is an added expense that potentially provides little or no added benefits. A dual filing may also result in substantially more record keeping in addition to processing time and associated fees. A chart outlining the fees is attached.

Who should think about incorporating or forming an LLC in Delaware?

In some cases, there may be special tax advantages or more favorable legal treatment in one state which are helpful to your special type of business so it makes sense to set up the business in that state and conduct the business in another. This requires some advanced research into the tax and liability laws of the state you want to use. If you think your business may be eligible for these advantages, contact your accountant or tax advisor.

Many people believe that Delaware is the best place to set up a new LLC or corporation. This is not necessarily the case. Delaware may present some advantages for large publicly held companies but the costs and foreign state filings likely outweigh the advantages for smaller businesses. Delaware has been historically favored because its corporate laws and statutes (i) give added protection to its officers and directors in legal disputes, and (ii) it has a special court that hears corporate disputes with no right to a jury. Therefore, the case is decided by a single judge or tribunal and the assumption is that this favors the officers and directors of a corporation. However, Illinois corporate laws and statutes are modeled after Delaware corporate law. Therefore, many of the same benefits provided by Delaware are also provided by Illinois.

If your business provides its product or services everywhere or in many places, such as an internet based business, then you most certainly have more choices. However, even with an

internet business, if you do substantial business in Illinois, you may still be required to register in that state as a foreign corporation or LLC.

Recommendation

The bottom line is that for most smaller businesses forming an LLC or corporation in your home state or in the state where you do most of your business is the best practice. Starting your business in your home state will likely save you time and money.

Contact the Community Law Project of the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. or your attorney if you have questions. The Community Law Project matches eligible small businesses and not-for-profits with pro bono legal counsel. For additional information about issues involving small businesses and not-for-profits, please contact us at clp@clccrul.org or (312)939-3638, or visit us online at www.clccrul.org/community-law-project.

This communication is provided by the Community Law Project as a public service solely for informational purposes, without any representation that it constitutes legal advice by the Community Law Project. This neither creates an attorney-client relationship between the recipient and any other person, nor constitutes an offer to create such a relationship. Consult an attorney if you have questions regarding the contents of this communication.

ORGANIZATIONAL FEES IN ILLINOIS AND DELAWARE

Cost Description	Illinois		Delaware	
	Corporation	LLC	Corporation	LLC
State Filing fee	\$150.00	\$500.00 - standard \$750.00 - series of units authorized	\$89.00	\$90.00
Service company fee	Ranges from \$100 to \$400 per filing depending on level of expediting requested and provider used.	Ranges from \$100 to \$400 per filing depending on level of expediting requested and provider used.	Ranges from \$100 to \$400 per filing depending on level of expediting requested and provider used.	Ranges from \$100 to \$400 per filing depending on level of expediting requested and provider used.
Annual registered agent's fee	Averages around \$350 per state per year depending on which provider is used.	Averages around \$350 per state per year depending on which provider is used.	Averages around \$350 per state per year depending on which provider is used.	Averages around \$350 per state per year depending on which provider is used.
Organizational Tax	N/A	N/A	Based on the number of authorized shares X par value. Minimum tax \$15.00.	N/A