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If you are serious about your business...incorporate

## SPECIAL REPORT

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## INCORPORATING... *Frequently Asked Questions*

### **Why should I incorporate?**

Many benefits derive from incorporating, including tax and privacy advantages. Probably the single most important reason to incorporate is the liability protection a corporation affords you. By the simple act of incorporating you are able to insulate your personal assets from those of the corporation and shield them from litigation should your company be sued.

### **What is the difference between a "C" and an "S" corporation?**

All corporations start life as "C" corporations. As a benefit to small businesses which meet certain criteria, the Internal Revenue Service allows them to apply (via form 2553) for "S" status. This means that the corporation will be taxed similarly to a partnership, with each shareholder reporting the profit or loss of the corporation on his personal tax return, in proportion to the percentage of shares he holds. This means that if there is a loss the shareholder can use it to offset his other tax obligations. If there is a profit it is taxed once, at the individual's tax rate, rather than twice (a "C" corporation will pay a tax on profits and individual shareholders will be taxed again when those profits are distributed as dividends.)

### **Are there any drawbacks to being an "S" corporation?**

The main negatives are the restrictions. There can be no more than 65 shareholders; non-resident non-US citizens may not be shareholders; and the tax year is somewhat inflexible (it usually must end on December 31.) Additionally, an "S" corporation cannot be owned by another corporation.

### **What is the difference between an “S” corporation and a Limited Liability Company?**

In terms of reporting income, they are quite similar. The LLC is somewhat less restrictive than the “S” corporation. There can be any number of members and there are few restrictions on who those members may be. On the less positive side, unlike the laws pertaining to corporations which are pretty uniform from state to state, LLC laws may vary greatly by state. They are also a relatively new entity, so there is not as great a definitive body of tax rulings on them as there is with corporations.

### **In what state should I incorporate?**

As a general rule of thumb, if you are doing an active business, incorporate where that business is located. If you are using a corporation to hold a passive asset like a safe deposit box, you may want to consider a state like Delaware, noted for its protection of anonymity.

### **What is the advantage of a Delaware corporation?**

Delaware corporations offer total privacy. Unlike most other states the names of the officers, directors and shareholders are never a matter of public record. Delaware also offers ease and speed of formation, and a very well developed body of legislation as it relates to corporate matters. Additionally, Delaware is a “corporate friendly” state with minimal compliance requirements which means that maintaining your Delaware corporation on an annual basis is easy and inexpensive.

### **What if I want to incorporate in Delaware but do business in another state?**

If you feel that the advantages of incorporating in Delaware make sense, you can file for a certificate of authority to do business as a foreign corporation in the state where you conduct business. This allows you to take advantage of Delaware law while maintaining the corporation legally in another state.

### **Do I need a corporate kit?**

If you have a filed certificate of incorporation you have a legal corporation. A corporate kit, which consists of a personalized binder, minutes, by-laws, resolutions, share certificates and a corporate seal, is not necessary to be legal. It is, however, very useful in terms of both organizing your paperwork and helping structure your corporation optimally. Additionally, record keeping is a critical part of maintaining your corporation’s goodstanding. A corporate kit will help you with every step of this process.

### **Can I start a corporation with just one person?**

Yes, in every state except Arizona.

### **If I am a one person corporation do I still need to have an annual meeting?**

Yes. You need to do everything that any corporation must do to maintain its goodstanding. It can be simply done and simply recorded, but it is crucial to do so.

### **If I incorporate my company, is the name protected nationally?**

The only way to protect your name nationally is to trademark it. This is a lengthy (typically at least a year) and fairly expensive process. When you incorporate your company, it means that no other entity with that name (or a similar name, depending on the state) can be incorporated in that state. The degree of protection varies from state to state. In some states a filing will be rejected if the name is too close. In other states, if it is different by even a letter the corporation will be accepted.

### **What is an EIN?**

Every corporation must have an Employer Identification Number. It is like a social security number for your business. To receive one you need to apply to the Internal Revenue Service, using form SS-4.

### **Do I need an EIN if I have no employees?**

Every corporation, regardless of whether or not it employs people, must have an EIN.

### **Can I use my existing EIN for my new corporation?**

Just as every individual must have his own social security number, every entity in law, which is what your corporation is, must have a unique EIN.

### **What taxes do I have to pay with my corporation?**

On a federal level, your corporation must file a tax return showing profit or loss. Depending on the state in which you incorporate, your tax situation may vary. Basically, there are two types of taxes you may expect to confront:

- **Income tax.** This is just what the name implies, a tax on the income of the corporation, the amount of which will vary with its income level. In some states, like Delaware and Nevada, there is either no income tax at all, or no tax on income earned outside the state.
- **Franchise tax (or excise tax).** This is a tax owed by the corporation regardless of its profitability, or even if it is active at all. It may range from quite substantial to nominal.

### **What is a Registered Agent?**

The registered agent is a statutory office required by law in all states and it serves as the point of contact between the secretary of state and the corporation. If the corporation has any legal business with a private or government entity, the registered agent receives service of process. Failure to maintain a registered agent nullifies a corporation's good standing.

### **What is a Director?**

The board of directors is responsible for the supervision and control of the corporation. The board elects the officers of the corporation, oversees the management of the corporation, and conducts general corporate business in the annual meeting.

### **What do the Corporate Officers do?**

The officers of the corporation, usually a president, vice president, secretary and treasurer execute the day to day operations of the corporation under the direction of the board of directors. In some states (such as Delaware) it is legal for one person to hold all corporate offices and also serve as the sole director.

### **What is a Certificate of Good Standing?**

A certificate of good standing, which is also called a certificate of existence, is a document issued by the Secretary of State which certifies that your corporation does exist legally and that it is in good standing with the State.

### **For what is a Certificate of Good Standing used?**

There can be several uses for this document, but one of the most common is in securing authorization to do business as a foreign corporation. That is to say, if you incorporate in one state and decide to do business in another, you may need to register as a foreign corporation in the second state. This process, which is called authorization, often requires obtaining a certificate of good standing as a first step.

### **How can you obtain a Certificate of Good Standing?**

The simplest way is through your incorporating firm. Alternatively, you can make an application to the Secretary of State of your corporation's domiciling state.

### **What records must the Corporation maintain?**

The answer to that depends on the state of incorporation. Compliance may be very complex or it may be very simple (as it is in Delaware.) In general, the minimum requirement would be to have an annual meeting and to submit an annual report of some sort to the Secretary of State. A corporate kit can be extremely helpful in the critical task of record organization.

### **Incorporating sounds complicated. Is there a way to simplify it?**

The benefits of incorporation far outweigh whatever extra steps you must take to maintain your corporation. However, compliance is important. For that reason it is good to have a relationship with an incorporating firm or registered agent that will provide support in maintaining your corporation. At Inc. Plan (USA) we make every effort to not only complete the initial corporate filing in a timely and cost efficient way but to also provide comprehensive after service via our toll free 800 number, our newsletter and our web site. As a member of Inc. Plan (USA) you have our years of corporate expertise and our willingness to provide ongoing service behind you.

**Inc. Plan (USA)**  
**800-462-4633**

### **Serving the needs of America's entrepreneurs**

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