

Legal and Tax Aspects

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1. How long will it take me to set up a subsidiary in Pennsylvania? And how much will it cost me?

Assuming you have the necessary information at the ready, you can create a subsidiary in as little as a day. "Necessary information" includes information such as the company name, address, contact persons, intended capitalization, and similar items. Once the company is formed, you will likely be required to draft organizational resolutions and other "housekeeping" items may be required - such as establishing a bank account, adopting bylaws, and arranging financing.

Legal fees associated with incorporating or otherwise establishing a subsidiary typically range from \$750.00 (U.S.) to \$1,500.00 (U.S.), depending on the nature and complexity of the subsidiary relationship. Pennsylvania charges a fee of \$125 to file the documents needed to register your company.

2. Is it better to set up a Corporation or an LLC?

The decision to organize an enterprise as either a corporation or as an LLC is made on a case-by-case basis according to each enterprise's unique requirements. While both structures provide a degree of "limited liability" (which generally prevents creditors from using the personal assets of the businesses' owners or directors to satisfy the liabilities or debts owed by the company) we recommend that firms seek appropriate legal advice before determining whether to do business as a corporation or an LLC to determine which structure best suits your needs.

3. Why it's just as easy to incorporate in Pennsylvania as it is in Delaware.

Until recently, Delaware was known for having certain unique laws that protect corporate directors from liability for decisions that they make on behalf of their corporation, as well as for having a number of legal decisions that provide helpful guidance as to how corporate matters will be decided in the future—thus promoting legal certainty and planning. In 1988, however, Pennsylvania revised its Business Corporation Law so that it now provides substantially the same protection to directors as Delaware does, thus closing the gap between the two legal systems.

4. How do I protect my U.S. subsidiary, as well as its parent, from litigation by business partners or clients?

While there is no way to completely shield an enterprise from litigation or liability, firms can significantly reduce these risks by following certain well-established business practices, such as ensuring that the terms of contracts are clear, and by anticipating problems before they emerge. Forming good working relationships with suppliers and customers, and retaining counsel to review contracts and other legal documents are usually effective ways to avoid these problems.

5. Do I have to pay taxes in Pennsylvania, even if I do not make any profit the first year or the first few years in which I do business in the state?

As a general rule, firms are not required to pay income taxes (and are not assessed any by the state) in years in which they do not generate any profits.

Pennsylvania does, however, have a "Capital Stock Tax" that is assessed against the ownership interests of both Corporations and LLC's. The amount of Capital Stock Tax that is charged is determined by examining value of the enterprise based on a fixed formula, which primarily examines an enterprise's net income and net worth. As a result, the amount of the Capital Stock Tax that is ultimately assessed against your firm could be very low, if there is no profit. In recent years, Pennsylvania has been steadily lowering the rate of the Capital Stock Tax, which will be entirely phased out by the year 2011.

6. Pennsylvania's corporate net income tax rate is higher than in many other states. Does this mean my company will be better off locating somewhere else?

No, because the current Administration is working hard to reduce the CNI. The corporate net income tax ("CNI") is only assessed against corporations -- not an LLC, for example. Secondly, and perhaps more importantly, this tax is only one consideration in determining where to do business. Other factors include the availability of suitable facilities qualified workers, efficient logistics and transportation services, and location relative to major markets. Pennsylvania exceeds in all of these categories. Other considerations include the level of support that the government and other entities will provide for new businesses, and the desirable living opportunities that Pennsylvania offers.

It is important to remember that firms are generally required to pay CNI tax in each state in which they conduct business, according to the proportion of the business activities that they perform in each state. In addition, firms located in Pennsylvania can often reduce (or offset) the amount of CNI

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tax that they would otherwise be required to pay in Pennsylvania based on the amount of CNI taxes they pay to other states. This means that if a corporation from another state does business in Pennsylvania, it will be required to pay Pennsylvania corporate net income tax based on the amount of business it does in Pennsylvania. Conversely, Pennsylvania corporations that do business in other states should get a credit against their Pennsylvania CNI tax for any corporate net income that they are assessed in those other states.

Firms may avoid having to pay the CNI tax entirely by doing business as an LLC or Limited Partnership.

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