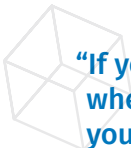


DOING BUSINESS IN ANOTHER STATE: COMPLIANCE REQUIREMENTS AND CONSIDERATIONS



“If you don’t qualify when you need to, your business will be subject to penalties, fines, and restrictions on the ability to conduct business.”

Are you planning to do business in a new state? You may be expanding your sales or distribution territory, merging with another company or acquiring subsidiaries. As you take on expansion, do you have a handle on all of the legal, regulatory and compliance requirements to consider?

Depending on your business and what you will be doing in the new state, your requirements will differ significantly. This article, first in a series, highlights key considerations for the mandatory compliance actions you’ll face.

FIRST: TO QUALIFY OR NOT TO QUALIFY?

This question is much more complex than it would seem. To answer it, you must know what business activities you will be conducting in the new (aka “foreign”) state.

Whether or not you must qualify with the Secretary of State (SoS) depends on the amount and type of business activities in which you are engaging. For example, will you be transporting goods? Will you own property and for what use? Will you operate a warehouse? Are you engaging in e-commerce? Will you conduct interstate transport? Are you bidding on a construction project? Will you have employees located in the foreign state, or will you use contractors? Each state defines the activities that “constitute doing business” within its jurisdiction differently.

Some state statutes also define certain activities that do not constitute intrastate business and therefore do not require qualification. These include having board or other meetings in the state, selling through contractors on a limited basis and securing or collecting debt. However, the exceptions are so limited and variable that relying on the state statutes is generally not helpful. Most determinations of whether qualification is required have been made by the courts.

Specialized industries are special cases

An example is transportation companies. Transportation companies engage in multiple activities that require a review of state qualification requirements.

Businesses that transport passengers or freight are not required to qualify in a state where their activities are exclusively interstate. This rule applies even though the business has offices and solicits orders in that state. The business would be required to qualify if it engaged in intrastate activity such as county-wide bus services or delivering freight between locations within that state.

For example, in the state of Nevada, an airline registered to do business in California contracted with a local resort in Nevada to fly customers between two locations in California.

This information is not intended to provide legal advice or serve as a substitute for legal research to address specific situations. (Note: This is not intended to be an exhaustive review, but is rather an overview to assist you in taking pause and conducting adequate research. You will also need to work with your legal counsel and tax team to address your specific situation.).

The court held that the airline was not required to qualify in Nevada. The court reasoned that the contract between the resort and the carrier was in furtherance of interstate commerce.

Other specialized industries have similarly complex nuances to research.

The risks of not qualifying

If you don't qualify when you need to, your business will be subject to penalties, fines, and restrictions on the ability to conduct business.

First, if you are doing business in a particular state and you have not qualified, you may not have access to the court system to protect your own interests. For example, if you sue a contractor for failure to perform, the contractor's attorney will try to have the case dismissed for lack of qualification. In most cases, an entity can qualify after a suit is filed. However, this is an expense and delay of time that you do not need.

Second, most states have monetary penalties for failure to qualify or delayed qualification. Some states will hold the entity responsible for the fees while others may also impose fines on individuals who are deemed to be acting for the non-complying corporation. Consider the following penalties levied by various states: Alaska imposes a fine of up to \$10,000 per year; California charges \$20 per day and the entity can be charged with a misdemeanor crime with an additional fine; and Illinois charges the greater of \$200 plus \$5 per month or 10% of the missed filing, licensing fees and other taxes. Clearly failure to qualify can be risky and costly.

NEXT: WHAT REGULATORY AGENCIES DO YOU NEED TO REGISTER WITH?

Many industries are regulated by a dedicated agency at the state level, and these businesses are required to register with the agency in the new state. Examples include insurance, pharmaceutical, finance companies, CPA firms, appraisal management companies and utility companies. However, this question becomes complex in the context of qualifying to do business in a foreign state because there is no consistency across states.

Determining the right compliance action requires careful review of each state's requirements. Depending on the type of business, you may be required to qualify your entity at the respective filing office (ex. Secretary of State in Georgia or State Corporation Commission in Virginia). In others you may only need to file an application with a governing state

authority such as the board of pharmacy. In other states you must do both.

For example, some states require that insurance companies qualify to do business with both the Secretary of State and to obtain a certificate of authority from the Department of Insurance. Additionally, some states require you to appoint a registered agent to receive service of process, while other states require that you appoint the state Insurance Commissioner as registered agent, and then also appoint a service provider as a process agent to handle the service of process sent on by the Commissioner.



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Another example is if your business transports goods or is considered a motor carrier, broker or freight forwarder. You may also need to comply with the Federal Motor Carrier Act. Regulations have been amended to update the rules regarding which types of carriers are now required to register and appoint agents for service of process, and where. It's important to stay abreast of these regulatory changes to determine your registration and registered agent requirements.

CONCLUSION

The other essential compliance requirements that you need to be prepared to address are:

- Business licenses
- Managing your business names and assumed names
- Tax registrations
- Ongoing compliance maintenance, up to and including dissolutions and withdrawals

We'll address these in future updates on doing business in new states.

LEARN MORE

Learn more on how to determine if your business is required to qualify to do business. Contact a representative at 844-206-9032 (toll-free USA).

Join the conversation. Follow us on [Twitter](#), [LinkedIn](#), [Google+](#) and [Facebook](#).

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