

## Forming a Business Entity: New Jersey, New York, Pennsylvania or Delaware?

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Clients often ask whether they should form their business entity in Delaware. Delaware is an ideal jurisdiction for public companies and private companies with venture capital and private equity investors. However, Delaware may not be ideal for a local business operating in New Jersey, New York or Pennsylvania. For example, if a business is formed in Delaware, but will be operated in another state, the business will have to file papers and pay initial and annual fees in two states. For many clients, forming a business in New Jersey, New York or Pennsylvania is perfectly acceptable. This paper describes some of the advantages and disadvantages of forming a business entity in Delaware, and then outlines the initial and annual costs involved in forming a corporation or limited liability company in New Jersey, New York, Pennsylvania and Delaware.

There are some advantages of being a Delaware company, but they are probably not important to most small businesses operating in New Jersey, New York or Pennsylvania. The advantages are:

- Delaware business entity statutes are frequently amended to keep them current.
- There is a large body of Delaware case law.
- The Delaware courts have a reputation for handling complex issues.
- Many people have knowledge of, and are comfortable with, Delaware law.
- The names and addresses of a corporation's initial board of directors are not required to be included in the certificate of incorporation filed with the State of Delaware.

There are some disadvantages of being a Delaware company operating a business in New Jersey, New York or Pennsylvania. The disadvantages are:

- The company must pay initial and annual fees to two states—Delaware and the other state where the company actually operates its business.
- The company must pay an annual fee to a third party to serve as the registered agent in Delaware.

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**Initial and Annual Costs  
of Forming a Business Entity in New Jersey, New York, Pennsylvania and Delaware**

	<b>New Jersey</b>	<b>New York</b>	<b>Pennsylvania</b>	<b>Delaware</b>
Initial cost (not including legal fees)	<p>Corporation – \$125.</p> <p>LLC – \$125.</p> <p>Out-of-state entity seeking authorization to do business in NJ: Corporation – \$125.</p> <p>LLC – \$125.</p>	<p>Corporation – \$125, plus organization tax based on number of shares and par value (\$10 tax for 200 shares with no par value).</p> <p>LLC – \$200, plus \$50 for filing certificate of publication. Plus the cost of published notice in the newspaper, which can be \$1,000 to \$2,000.</p> <p>Out-of-state entity seeking authorization to do business in NY: Corporation – \$225, plus \$50 for certificate of good standing from state of incorporation.</p> <p>LLC – \$250, plus \$50 for filing certificate of publication and \$50 for certificate of good standing from state of formation. Plus the cost of published notice in the newspaper, which can be \$1,000 to \$2,000.</p>	<p>Corporation – \$125. Plus cost of published notice, which can be \$200 to \$400.</p> <p>LLC – \$125.</p> <p>Out-of-state entity seeking authorization to do business in PA: Corporation – \$250. Plus cost of published notice, which can be \$200 to \$400.</p> <p>LLC – \$250.</p>	<p>Corporation – \$89 (for first page) and \$9 for each additional page, plus an additional fee based on number of shares and par value, with a minimum of \$15 (1,500 shares with no par value).</p> <p>LLC – \$90.</p>
Annual costs	<p>Annual report fee for a corporation is \$50.</p> <p>Annual report fee for an LLC is \$50.</p> <p>LLCs with NJ source income and 3 or more members must pay an annual tax of \$150 for each member.</p>	<p>Biennial statement every two years for corporation or LLC is \$9.</p> <p>Annual franchise tax for corporation based on NY source income is \$25 to \$5,000 (for S corporation \$25 to \$4,500).</p> <p>Annual fee for multi-member LLC is based on NY source income, ranging from \$25-\$4,500.</p> <p>Annual fee for multi-member LLC with no NY source income, and for single-member LLC, is \$25.</p>	<p>The only entity required to file an annual report is a restricted professional LLC (both domestic and foreign), and the annual fee is \$380 for each licensed member residing in PA.</p>	<p>Annual report fee for a corporation is \$50, plus annual franchise taxes based on authorized shares, starting at a minimum of \$75.</p> <p>Annual fee for LLC is \$250.</p> <p>Annual fee to registered agent of corporation or LLC is \$299 (estimated).</p>

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