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## ESTABLISHING A NEVADA NEXUS

Many people are interested in becoming a Nevada resident, because of the state's beauty and for tax advantages. Residents of Nevada do not pay state income tax on income earned in Nevada. It is critical to understand, not only how to become a Nevada resident, but also how to fail the residency requirements of your former state. Every state's requirements for residency vary. Most states would like to continue taxing your income if your ties to that state continue to meet their own residency rules. Therefore, it is equally important to make sure you fail other states' residency rules.

Additionally, you may want your company to qualify as a Nevada business. Income to a Nevada business is generally not taxable in other states. Be aware, however, that your personal income earned from a Nevada company may still be subject to another state's individual income tax if you are considered a resident of that state. Thus, both your business status and your own residency may be important considerations.

Commercial domicile, or nexus, is the establishment of a corporate presence in Nevada. At the same time, as many ties as possible with the parent company's state of domicile should be severed thus avoiding the existence of nexus in the parent company's state of domicile.

In doing so, your company will be the recipient of the tax benefits which Nevada offers, and the subsidiary will be insulated from any claim of taxation from the parent company's state of domicile.

It should also be understood that steps should be taken to avoid establishing commercial domicile in the taxing state as well. Activity outside of Nevada may subject the company to the jurisdiction of the taxing state, thereby reducing the amount of state tax savings. If activities must be transacted outside of Nevada, it may be wise to consider using outside contractors.

If your company has no present connection in Nevada, steps can be taken to help you establish sufficient nexus. Although no guarantees can be made, the following should be given consideration:

1. **Bank accounts** for routine transactions should be maintained in Nevada.
2. **Title for investments** and all other assets should be transferred to the Nevada company.
3. **Income should be received in Nevada** and distributed from the Nevada company's bank accounts.
4. Officers and/or employees should **discharge all their duties** in Nevada if only on a part-time basis.

5. **Investment decisions** should be made and carried out in the domiciliary state or through a third-party investment manager.
6. Evidence of passive income producing assets such as trademark or patent royalty agreements should be **physically** held in Nevada.
7. **A formal custody agreement and/or an investment management agreement** should be entered into and executed by officers of the company, if applicable.
8. The company should maintain a permanent **office in Nevada**. The address should be used for all correspondence and tax returns.
9. A **telephone number** should be established in Nevada.
10. Consider hiring **Nevada resident employees** to carry out the Nevada company's activities and file payroll returns in Nevada.
11. The Nevada company should authorize all employees to **make contracts**.
12. If the Nevada company owns any **tangible property**, such as typewriters, furniture or PCS, it should be located in Nevada.
13. **Original accounting records and bookkeeping** functions should be confined to Nevada, although a duplicate set of records may be maintained at the parent's headquarters.
14. Maintain the company's **minute book, stock certificates and register in Nevada**.
15. The company should **pay any taxes** which may apply to Nevada such as: withholding taxes, unemployment taxes, business licenses, etc.
16. The company should register with the State of Nevada by filing a business registration form. You should also register with the applicable county or city as a business.
17. **Board of Directors meetings** should be held in Nevada.
18. Stationery, business cards, financial statements, legal documents, contracts, etc., should reflect the Nevada address.
19. **Contracts should be in writing** with all terms stated on an arm's length basis. Interest rates or royalty payments should be indexed to established objective standards such as the prime rate, Fed Funds, Moody's or Standard & Poor's Index, or independent third-party analysis.
20. In some cases, representation by Nevada **resident legal counsel or accounting firm** may be desirable.
21. **Avoid** using "investment, holding or Nevada" in the subsidiary's name.
22. **Develop a job description** authorizing as many Nevada management decisions as possible.
23. **Authorize the Nevada employee to pay invoices** (i.e., checking account signing authority) up to a certain amount, \$5,000 for example.
24. Have the Nevada company **reimburse directors for travel expenses** incurred while attending Nevada board meetings.
25. **Organizational expenses** (e.g., legal, travel, consulting or appraisal) **as well as on-going operating expenses should be paid by the company**.
26. Nevada law permits **attendance at board meetings via conference call** as long as all parties can hear each other. We do not recommend this take the place of regularly scheduled Nevada board meetings.
27. **Name "Evans & Associates" as resident agent** to ensure coordinated and timely processing of documents.
28. **Consider limiting the company's board to three directors**, in which case a quorum of two would only require one parent director's attendance at the Nevada board meeting assuming a Nevada resident director is also named.
29. If using inter-company debt to repatriate funds, consider using a **revolving or open-ended note** to effect this transaction.
30. In naming a Nevada resident company officer, the position of **Secretary or Assistant Secretary** offers the most flexibility should execution of various legal documents (e.g. stock

powers, corporate resolutions, change of registered agent certificate) be necessary.

31. If applicable, declaration of a dividend and/or inter-company debt are used most frequently for repatriation purposes; however, a **federal tax sharing agreement** (i.e., Nevada company is invoiced for its share of the consolidated group's federal tax liability) may be considered as a partial method of returning funds to the parent.

### **Summary**

We cannot overemphasize the need to establish Nevada commercial domicile. By following the recommendations previously discussed, you clearly will reduce the possibility of losing your company's exempt status if challenged by the taxing state.

There is a fine line between "losing control" of your company's intangible assets and establishing a level of Nevada commercial domicile sufficient to withstand an audit challenge. There are no "absolutes" to answer your questions of how much commercial domicile is enough. Recognize that there is no "HowTo" book to consult, that states are becoming more aggressive in challenging Nevada companies and that the tax environment is subject to change.