

*Understanding When an Entity
Must Register and Obtain a
“Certificate of Authority”*

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Introduction

Every entity (Corporation, Limited Liability Company, Limited Liability Partnership, Limited Partnership) that is conducting business in states other than where it was formed must know when it is required to register and obtain a “Certificate of Authority” with those state(s).

Background

An entity is considered to be domestic only in the state where it was formed. In all other states, it is regarded as foreign.

In the United States, when an entity is formed, the state that it is formed in will issue a certificate of authority but only for that state, an entity must apply for a certificate with all other states if required.

Each state has adopted its own statute which regulates the formation and governing of Corporations, Limited Liability Companies (LCs or LLCs), Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs). It's generally called the Business Corporation Act (BCA) or Business Corporation Law (BCL.) These acts are generally based on (and are very similar to) the Revised Model Business Corporation Act (RMBCA).

RMBCA Section 15.01(a) states RMBCA states “A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.”

RMBCA Section 15.01(b) states (b) “the following activities, among others, **do not** constitute transacting business within the meaning of subsection (a):

- (1) maintaining, defending, or settling any proceeding;
- (2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the corporation’s own securities or maintaining trustees or depositaries with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

- (8) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) owning, without more, real or personal property;
- (10) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;
- (11) transacting business in interstate commerce.

RMBCA Section 15.01(c) states “the list of activities in subsection (b) is not exhaustive.

In addition, this section lists the consequences of transacting business without authority, how to apply for a certificate of authority, when a foreign corporation must obtain an amended certificate of authority, the effect of a certificate of authority, corporate name, the requirement that the foreign corporation have a registered office and agent, changing the registered office or agent, resignation of a registered agent, service on a foreign corporation, withdrawal of foreign corporation, transfer of authority and revocation of a certificate of authority.

When an Entity is Required to Register and Obtain a “Certificate of Authority”

A foreign entity is required to obtain a certificate of authority if it has “**nexus**” or is “**doing business**” in another state. These terms are technical and a decision to apply for a certificate of authority must be based on the activities in each state and its statute and applicable court decisions. See articles titled “The Complexities of Multi-State Taxation” and “Direct Selling Multi Level Marketing and Network Marketing And Sales Taxes” for additional information.

The states of Missouri, New Jersey and Utah require that direct selling, multi-level marketing and network marketing companies obtain a certificate of authority prior to entering into a formal sales and use tax collection agreement with the state. No other states currently have this requirement.

The states of Michigan, Missouri, Pennsylvania and Texas have taken the position that companies in this industry have nexus in their state if the company has independent sellers in their state.

If a company’s activities in the states of Pennsylvania and Texas are limited to only having independent sellers in the state, it is not required to register and obtain a certificate of authority.

Based on this information, a company must register and obtain a certificate of authority in the states of Michigan, Missouri, New Jersey and Utah and any states where it has “nexus” or is “doing business”.

Presently eight states and the District of Columbia have taken the position that if an entity obtains a certificate of authority it is deemed to have nexus and is subject to their business activities taxes. Therefore, it is important that an entity only obtain a certificate of authority with the states where it is required to do so.

Summary

Most companies in this industry will only be required to file an “Application for Authority” in a limited number of states, generally those noted above and any other state(s) where it has “nexus” or is “doing business”. It is not necessary to file an application and have a registered agent in every state.

Selected Judicial Decisions

- Bayonne Block Co., Inc. V. Porco, 171 Misc. 2d 684, --- 654 N.Y.S.2d 961, 963 (1996)
- Berkshire Engineering Corporation v. Scott-Paine, 29 Misc. 2d 1010, 1012, 217 N.Y.S. 2d 919, 921 (1961)
- Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)
- Corporate Air Fleet, Inc. v. Ellis, 324 So.2d 719, 720 (Fla. 2d DCA 1975)
- Dahnke-Warner Milling Co. v. Bondurant, 257 U.S. 282, 290 (1921)
- Hanson v. Denkcla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958)
- International Textbook Company v. Tone, 220 N.Y. 313, 115 N.E. 914 (1917)
- Marchant v. National Reserve Co. of America, 137 P.2d 331, 337 (Utah 1943)
- Material Research Corporation v. Metron, Inc., 64 N.J. 74, 79, 312 A.2d 147, 150 (N.J. 1973)
- Paul v. Virginia, 75 U.S. (8 Wall) 168 (1868)
- White v. Caterpillar Tractor Company, 235 Md. 368, 372, 201 A2d 856, 858 (Md. 1964)
- William L. Bonnell Co. v. Katz, 23 Misc.2d 1028, 1031, 196 N.Y.S.2d 763, 768 (Sup. Ct. 1960)
- World-Wide Volkswagen v. Woodson, 444 U.S. 286, 1000 S.Ct. 559, 62 L.Ed.2d 490 (1980)

State Statutes

Alabama - Title 10, Chapter 2B, Article 15, Foreign Corporations, Ala. Code Ann. §§ 10-2B-15.01 through 15.45

Alaska - Title 10, Chapter 6, Article 10, Foreign Corporations, Alaska Stat. §§ 10.06.705 through 10.06.788

Arizona – Title 10, Chapter 15, Foreign Corporations, Ariz. Rev. Stat. Ann §§ 10-1501 through 10-1531

Arkansas – Title 4, Subtitle 3, Chapter 27, Subpart 15, Foreign Corporations, Ark Code Ann. §§ 4-27-1501 through 4-27-1532, 4-31-201

California – Title 1, Division 1, General Corporation Law, Cal Corp Code §§ 191, 2101 through 2117.1, 2203-2259

Colorado – Title 7, Article 90, Part 8, Foreign Entities, Colo. Rev. Stat. §§ 7-90-801 through 7-90-813

Connecticut – Title 33, Chapter 601, Part XVI, Foreign Corporations, Conn. Gen. Stat. §§ 33-920 through 33-937

Delaware – Title 8, Chapter 1, Subchapter XV, Foreign Corporations, Del. Code Ann. tit. 8, §§ 371 through 384

Florida – Title 36, Chapter 607, Corporations, Fla. Stat. §§ 607.1501 through 607-1532

Georgia – Title 14, Chapter 2, Article 1, Part 2, Filing Documents, Ga. Code. Ann. §§ 14-2-122, 14-2-1501 through 14-2-1540

Hawaii – Title 23, Chapter 414, Part XVI, Foreign Corporations, Haw. Rev. Stat. §§ 414-431 through 414-463

Idaho – Title 30, Chapter 1, Part 15, Foreign Corporations, Idaho Code Ann. §§ 30-1-1501 through 30-1-1532

Illinois – Chapter 805, Article 13, Foreign Corporations, 805 Ill. Comp. Stat. 5/13.05 through 5/13.75

Indiana – Title 23, Article 1, Chapter 49, Foreign Corporations, Ind. Code §§ 23-1-49-1 through 23-1-49-10, 23-1-50-1 through 23-1-50-3, 23-1-51-1 through 23-1-51-3

Iowa – Title XII, Subchapter 2, Chapter 490, Division XV, Foreign Corporations, IOWA CODE §§ 490.1501 through 490.1510, 490.1520, 490.1530, 490-1531

Kansas – Chapter 17, Article 73, Foreign Corporations, Kan. Stat. Ann. §§ 7-7301 through 17-7308

Kentucky – Title XXIII, Chapter 271B, Subtitle 15, Foreign Corporations, KY. Rev. Stat. Ann. §§ 271B.15-010 through 271B.15-320

Louisiana – Title 12, Chapter 3, Foreign Corporation Law, La. Rev. Stat. Ann. §§ 12:301 through 12:321

Maine – Chapter 13-C, Chapter 15, Foreign Corporations, ME. Rev. Stat. Ann. tit. 13-C, §§ 1501 through 1533

Maryland – Title 7, Foreign Corporations, MD. Code Ann., Corps & Ass'ns §§ 7-101 through 7-305

Massachusetts – Title XXII, Chapter 156D, Business Corporations, MASS. Gen. Laws ch.156D, §§ 15.01 through 15.32

Michigan – Chapter 450, Corporations, Business Corporation Act, Chapter 10, Mich. Comp. Laws §§ 450.2012 through 450.2062

Minnesota – Chapter 303, Foreign Corporations, Minn. Stat. §§ 303.01 through 303.25

Mississippi – Title 79, Chapter 4, Mississippi Business Corporation Act, Article 15, Foreign Corporations, Miss. Code. Ann. §§ 79-4-15.01 through 79-4-15.33

Missouri – Title 23, Chapter 351, General and Business Corporations, Mo. Rev. Stat. §§ 351.572 through 351.608

Montana – Title 35, Chapter 1, Business Corporations, Part 10, Foreign Corporations, Mont. Code Ann. §§ 35-1-1026 through 35-1-1040

Nebraska – Chapter 21, Article 20, Business Corporation Act, (n) Foreign Corporations, Neb. Rev. Stat. §§ 21-20,168 through 21-20,181.03

Nevada – Title 7, Chapter 80, Foreign Corporations, Nev. Rev. Stat. §§ 80.001 through 80.280

New Hampshire – Title XXVII, Chapter 293-A, New Hampshire Business Corporation Act, N.H. Rev. Stat. Ann. §§ 293-A:15.01 through 293-A:15.32

New Jersey – Title 14-A, Chapter 13, Foreign Corporations, N.J. Stat. Ann. §§ 14A:13-1 through 14A:13-16

New Mexico – Chapter 53, Corporations, N.M. Stat. Ann. §§ 53-17-1 through 53-17-20

New York – Business Corporation Law, Article 13, Foreign Corporations, N.Y. Bus. Corp. Law §§ 1301 through 1320

North Carolina – Chapter 55, Article 15, Foreign Corporations, N.C. Gen. Stat. §§ 55-15-01 through 55-15-33

North Dakota – Title 10, Chapter 10-19.1, North Dakota Business Corporation Act. N.D. Cent. Code §§ 10-19.1-132 through 10-19.1-147

Ohio – Title 17, Chapter 1703, Foreign Corporations, Ohio Rev. Code Ann. §§ 1703.01 through 1703.99

Oklahoma – Title 18, Chapter 22, Oklahoma General Corporation Act, Foreign Corporations, Okla. Stat. tit. 18, §§ 1130 through 1138

Oregon – Title 7, Chapter 60, Foreign Corporations, OR. Rev. Stat. §§ 60-701 through 60.747

Pennsylvania – Title 15, Part II, Subpart B, Article D, Chapter 41, Foreign Business Corporations, PA. Cons. Stat. §§ 4101 through 4162

Rhode Island – Title 7, Chapter 1.2, Rhode Island Business Corporation Act, Part 14, Foreign Corporations, R.I. Gen Laws §§ 7-1.2-1401 through 7-1.2-1418

South Carolina – Title 33, Chapter 15, Foreign Corporations, S.C. Code Ann. §§ 33-15-101 through 33-15-330

South Dakota – Title 47, Chapter 47-1A, South Dakota Business Corporation Act, S.D. Codified Laws §§ 47-1A-1501 through 47-1A-1532

Tennessee – Title 48, Chapter 25, Foreign Corporations, Tenn. Code Ann. §§ 48-25-101 through 48-25-305

Texas – Business Organizations Code, Title 1, Chapter 9, Foreign Entities,
Tex. Bus. Orgs Code Ann. §§ 9.001 through 9.301

Utah – Title 16, Chapter 10a, Revised Business Corporation Act, Part 15,
Utah Code Ann. §§ 16-10a-1501 through 16-10a-1533

Vermont – Title Eleven A., Chapter 15, Foreign Corporations, Vt. Stat Ann. tit. 11A, §§
15.01 through 15.33

Virginia – Title 13.1, Chapter 9, Article 17, Foreign Corporations, Va. Code Ann. §§
13.1-757 through 13.1-769.1

Washington – Title 23B, Chapter 23B.15. Foreign Corporations, Wash Rev. Code §§
23B.15.010 through 23B.15.310

West Virginia – Chapter 31D, Article 15, Foreign Corporations, W. VA. Code §§ 31D-
15-1501 through 31D-15-1532

Wisconsin – Partnerships and Corporations; Transportation; Utilities; Banks; Savings
Associations, Chapter 180, Business Corporations, Foreign Corporations, Wis. Stat. §§
180.1501 through 180.1532

Wyoming – Title 17, Chapter 16, Article 15, Foreign Corporations, Wyo. Stat. Ann. §§
17-16-1501 through 17-16-1534

District of Columbia – Title 29, Chapter 1, Business Corporations, D.C. Code §§ 29-
101.99 through 29-101.119