

Forming a Limited Liability Company (LLC)

A Limited Liability Company (LLC) is formed in Pennsylvania by filing a Certificate of Organization with the Corporation Bureau of the Pennsylvania Department of State. The form can be obtained from the Corporation Bureau website, www.dos.state.pa.us/corps, which can also be accessed from the website www.paopen4business.state.pa.us, and is also available as another reference document on this site. The Certificate of Organization form must be accompanied by another form, the Docketing Statement, which is nothing more than a cover sheet. The filing fee is \$125.00, which must accompany the two forms.

Once the filing has been accepted by the Corporation Bureau, the formation of the LLC should be advertised in two newspapers of general circulation in the county where the company's principal office is located, one of which must be the county's official legal publication. In Westmoreland County that is the Westmoreland Law Journal, 129 North Pennsylvania Avenue, Greensburg (724) 834-7260.

The LLC should apply for a taxpayer ID number, called the Employer's ID Number (EIN) by filing IRS form SS-4. This application form can be obtained from the IRS website, www.irs.gov, or as another reference document on this site. A LLC with more than one member (owner) will be taxed by the IRS as a partnership. A single-member LLC is taxed as a sole proprietorship, using Schedule C to the Form 1040 personal income tax return, unless it elects to be taxed as a corporation. There is a confusing explanation of this in the Instructions for the SS-4 form.

If the company's sales will be subject to state sales tax, the LLC must file PA form 100, Enterprise Registration with the PA Department of Revenue. This form is complex. It can be obtained and filed online at the website www.paopen4business.state.pa.us. Most companies should complete sections 1 through 9 and 18. The other sections do not pertain to most businesses. To ascertain whether the company's sales are subject to state sales tax, and for assistance in filling out form 100, phone the PA Department of Revenue at (724) 832-5283.

The importance of having a written Operating Agreement in a LLC having more than one member is explained on a separate information fact sheet on this site, along with a checklist for preparing such an Operating Agreement.

State of Incorporation

There is a popular belief that there is some benefit to incorporating in certain favorable states, notably Delaware and Nevada, instead of the state where the business is located. Any benefit to incorporating in one of these states is illusory. Furthermore there are considerable, unnecessary additional costs involved, because a company formed in any state other than the one where its principal office is located, is considered a "foreign" company, and must register as such in its home state where it does business. This requirement to re-register as a foreign company involves substantial filing fees (many hundreds of dollars typically) on top of the cost of incorporation in the foreign state. There is no benefit to foreign incorporation to offset this added expense. Additional expense without any compensating benefit seems pointless.

Unless there is some particular reason for doing otherwise, any company should be organized in the same state where its principal office is located.