



## Why Incorporate in Delaware?

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Working with as many entrepreneurs, and even many established businesses, I get this question every month. At this moment I am working on converting one client from a Texas LLC to a Delaware C corporation, and another client to establish a DE C from the start. I thought I'd post my ideas on the subject, but as I investigated my previous research, I found that someone else had already done a very good - and simple job. Therefore, I am simply re-posting something written by **Joe Wallin**. His writing on related start-up questions is very well done, concise and to the point, and most importantly to me - he gives correct information.

So, without further ado... *By the way, please note the area that I have bolded. Every year, at tax time, I get at least a couple of calls from panicked founders, exactly like this. And Joe's answer is exactly what I tell them.* Enjoy.

### THE STARTUP LAW BLOG

The Blog of the Startup Lawyers at Carney Badley Spellman (Joe Wallin)

#### Where Should I Incorporate My Startup?

You have an idea for a new startup. One of your first google searches will probably be about how/where to incorporate your business. There's some good advice out there and some bad advice out there. In the interest of cutting through the noise, here's the advice we typically give our clients.

#### Welcome to Delaware

If you're a high-growth startup and plan on taking investment from angel investors and VCs, Delaware is the safe choice.

Here's why Delaware is great:

- No one will ever ask, and you will not have to begrudgingly answer, "Why didn't you incorporate in Delaware?"
- A lot of the standard form documents that are available on the web and are widely accepted in startup circles (see, e.g., the Series Seed documents and the NVCA document suite), are prepared for Delaware corporations.
- If you're already in Delaware, you can't be forced to reincorporate in Delaware by some pushy investor. This is what we in the biz call a 4-dimensional chess move.
- If you move your company, Delaware is pretty portable. Every state's major commerce center has lawyers who know and can work with Delaware corporate law, so you'll never have to worry about finding a new lawyer.
- There are certain provisions of Delaware law that are more favorable to company management than many other state laws.
- Delaware has a separate court system dedicated to corporate disputes, and Delaware corporate law is updated more often than the corporate laws of other states.

Here's the shortlist of cons for Delaware:

- It's generally more expensive in terms of fees and taxes.
- **You'll invariably get a franchise tax bill for some absurd amount of money payable to Delaware in your first year. While heart-attack-inducing, this usually isn't a big deal, and there's an alternate calculation method (on the back of the notice that you just threw across the room) that you can use to get the tax way down to a couple hundred/thousand bucks.**

## Other States

Here's where some of the bad online advice comes in. A number of people will float states like Montana, Nevada, or Wyoming. There are some benefits to incorporating in states like this depending on where you ultimately go, like not seeing who the owners of a corporation are, lower taxes, wide-open spaces, etc. That said, there's a litany of issues with these states (see "why not Delaware" and "what do you mean there's no attorneys that know how to interface with Wyoming corporations in San Francisco?"). Incorporating in states like these should only be done if you have some sort of special requirement, and after talking with a lawyer and an accountant that agree that there's some benefit with going to a more "exotic" state.

There are other states out there, like New York, that are "review states." This means that every time you need to do a charter filing or other state filing, you have to barter with some attorney on staff at the state (whereas in Delaware, there is no process like this – you file, and your filing is accepted immediately). Because of this, incorporating in review states typically results in hair loss and melancholy, especially if you're trying to close a transaction or financing which requires a charter amendment.

## Conclusion

I just want to say that I'm not trying to bag on the corporate jurisprudence of other states. If you're planning on creating a bootstrapped company that's going to throw off cash on day one and will never leave your state of incorporation, you can probably do whatever you want. If for whatever reason, you grow out of a state, most of the time, it's not too painful to convert elsewhere (unless you incorporate in a review state... ick, or someplace without a conversion statute).

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