Some qualifications necessary to conduct business in multiple states

When is a corporation, limited liability company or other registered legal entity "transacting business" in another jurisdiction?

A legal entity required to be registered under the laws of one state must be cognizant of whether its structure or company activities constitute "transacting business" in another state. For example, a corporation formed under the laws of Oklahoma might provide services or buy and sell real estate in Texas. If Texas law defines this activity as "transacting business," then the corporation should take the required steps to qualify to do business in Texas – as the failure to do so may result in unforeseeable fines or other consequences. Each state establishes its own variations on what activities by a foreign (out-of-state) business constitute doing business in that state. As a practical matter, a business that has a strong presence or engages in successive transactions in another state is likely "transacting business" and will need to take the appropriate steps to qualify in that state.

What are the consequences of failing to qualify to do business in another state?

Similar to the issue of what activities constitute "transacting business" in another state, the ramifications for failing to qualify to do business are a creature of state statute and vary by jurisdiction. However, the most common legal consequences for failing to qualify are fines and the inability to utilize that state's court system to bring a lawsuit. For example, assume the previously mentioned corporation formed under the laws of Oklahoma fails to qualify to do business in Texas even though it meets Texas' criteria for "transacting business." If the Oklahoma corporation files a breach of contract action in Texas, then its case may be dismissed because it failed to qualify to do business in Texas. This pitfall is especially problematic if the corporation is jurisdictionally restrained from bringing the lawsuit in Oklahoma because of other procedural issues.

How does a company qualify to do business in a state other than its state of formation?

As mentioned above, a company should be cognizant of whether its operations in other states require it to qualify to do business in those states. Generally, an enterprise qualifies by filing a certificate with information about the enterprise and its good standing and paying the respective filing fee with the state's secretary of state (or other designated office). Additionally, a company should ensure that it complies with the other government's applicable tax requirements for foreign businesses. In Oklahoma, for example, a foreign corporation's failure to pay annual franchise taxes may subject it to unnecessary penalties.

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