

Where to incorporate your business: California or Delaware?

If you are a startup based in California, you may be thinking about incorporating where you are physically located. It is true that, in the short term, incorporating in California will save a few dollars. Founders of investor-funded emerging companies should know that the investors prefer Delaware by a long shot. This is largely due to Delaware's well-developed body of corporate law, sophisticated judiciary and business-friendly environment. Is this a case of one size fits all, or might one state be a better alternative for incorporating your business?

This article explores two considerations you may find helpful as you make your choice:

- Costs of incorporation in California and Delaware
- The principal differences between their corporate laws

Costs

Filing fees

When a company files its incorporation documents, each state imposes filing fees and subjects the company to ongoing requirements and fees. The filing fees in Delaware are lower than the filing fees in California: \$98 in Delaware compared to \$145 in California.

Franchise taxes

Each state also subjects a company to its taxation requirements. California imposes a relatively high annual franchise tax – the minimum is \$800. The franchise tax in Delaware, on the other hand, depends on the total number of authorized shares of capital stock of the company. For example, the annual franchise tax for a company with 1 million authorized shares is \$400.^[1] To learn more about franchise taxes, [see our article on franchise taxes](#).

Additional costs associated with being a Delaware corporation

While the franchise tax is lower in Delaware than in California, companies incorporated in Delaware but conducting business in California must qualify to do business in California and pay the minimum franchise tax of \$800. Additionally, a Delaware corporation operating in California must maintain a registered agent in Delaware, which costs approximately \$100 per year.

You can find more information about qualifying to do business in another state in our article on [qualifying to do business](#).

The chart below summarizes the minimum costs of incorporation in each of the two states as of the date of this article.

Costs of incorporation		
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	California	Delaware
Initial filing fees ^[2]	\$145	\$98
Annual franchise tax	\$800 (minimum)	\$400 (<i>plus</i> \$800 minimum CA franchise tax for non-CA companies operating in CA)
Annual registered agent fees	\$0	\$100
Total	\$945	\$1,398

Corporate laws

Despite the higher initial combined costs of incorporating in Delaware, startups seeking funding often incorporate in Delaware because of the perception that it has a more established set of corporate laws. This is particularly true for companies that will be seeking venture financing in the near future. Delaware is the preferred (and often, required) state of incorporation by venture capitalists for a number of reasons, including:

- Delaware's corporate statute, the Delaware General Corporation Law, or DGCL, which is current, modern, flexible and business-friendly, and is recognized and replicated in other jurisdictions
- Delaware's well-developed case law, which interprets the DGCL in a consistent, predictable manner, and therefore, provides more certainty for business planning
- Delaware's Chancery Court, which is one of the leading business law courts in the country, hears only Delaware business entity cases, and uses judges who are experts in business law matters instead of juries and
- Delaware's Secretary of State's office, which is user-friendly and processes filings efficiently.

Ultimately, the decision about where to incorporate your business depends on whether your company will be seeking venture financing in the near future. If so, greater consideration should be given to Delaware as the state of incorporation, because most venture capitalists will require a Delaware C corporation for its business-friendly laws. If the company does not plan to seek venture financing in the near future, or at all, California could be the superior alternative for fiscal reasons. Of course, if a California corporation later decides to seek venture financing, it can reincorporate in Delaware.

For more information about incorporating your business, see our other posts: [Reasons for Incorporation](#), [The Incorporation Process](#) and [Pre/Post-Incorporation Checklist](#), as well as our article on [the differences between a Delaware C corporation and S corporation](#), or contact a member of the DLA Piper corporate team.

^[1] This number of authorized shares is a common setup of a company's capitalization structure upon incorporation.

^[2] These filing fees do not include the fees a registered agent would charge to file the incorporation documents on behalf of the company.



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