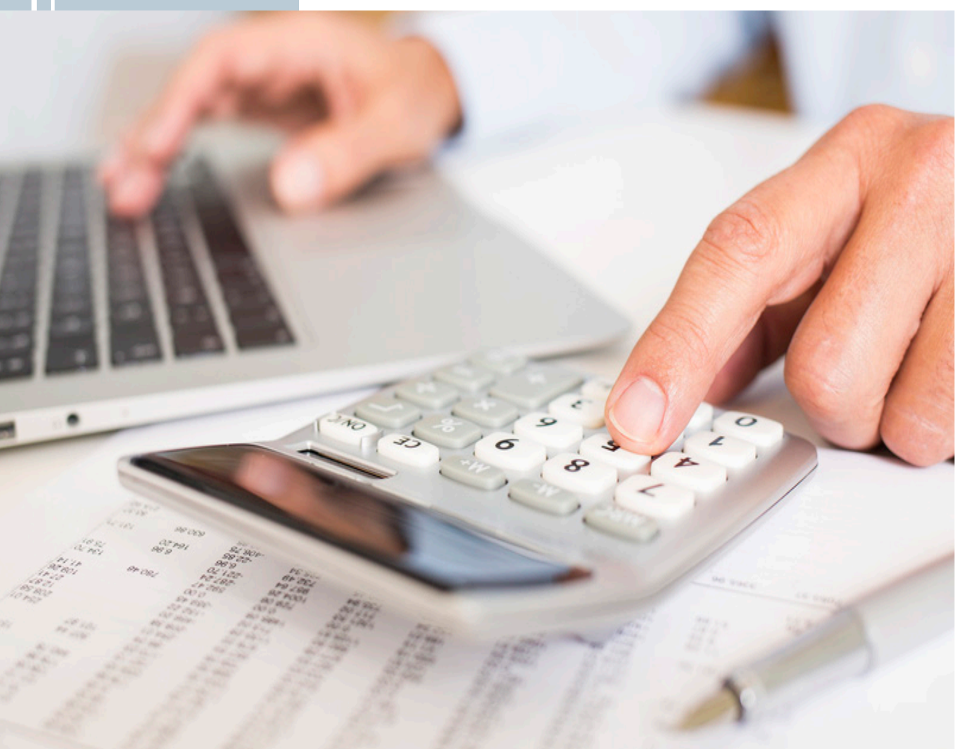
PLDW
CORPORATE & BUSINESS

CLIENT ADVISORY:

DELAWARE FRANCHISE TAXES – TWO METHODS OF CALCULATION WITH VERY DIFFERENT RESULTS

Many corporations, limited liability companies and other business entities are organized under Delaware law, even though they do business elsewhere and have no other connections to the State of Delaware. There are three primary reasons why so many companies, both public and private, chose Delaware as their place of organization. First, the business organization statutes are well thought out, regularly updated and business friendly.



Perhaps more importantly, there is a well-developed body of case law interpreting the Delaware business organization statutes; far more so than most other states. This is a tremendous benefit to companies and their advisors in terms of structuring transactions to achieve predictable results.

Finally, disputes involving governance, mergers and acquisitions and other commercial matters, which are tried in Delaware, are heard by judges in the Delaware Chancery Court, who are widely recognized as experts in these areas of the law.

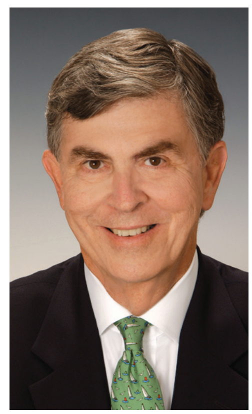
Annual Delaware Franchise Taxes

In order to remain in good standing, Delaware corporations are required to file an annual report and a Delaware franchise tax return each year. Both are due on March 1, 2016. Delaware typically sends notification of the filing requirements and due date each year. These are sent to the corporation's resident agent in Delaware and are then sent along by the resident agent to each corporation. The Delaware filings must be made electronically. The minimum annual franchise tax in Delaware is $175 and the maximum is $180,000.

The Delaware law provides two different methods for calculating each corporation's Delaware franchise tax: the "Authorized Share Method" and the "Assumed Par Value Capital Method". The notice each corporation receives from Delaware will include a statement of the franchise tax calculated using the Authorized Share Method. It is important to note that these two methods can produce very different results. In particular, the Authorized Share Method used by Delaware in its annual notice will almost always produce a much higher franchise tax than the Assumed Par Value Capital Method for early stage companies and established small companies with fairly modest assets.

An explanation of both methods can be found at the website of the State of Delaware, Corporations Division (corp.delaware.gov). Suffice it to say that private companies would be well advised to run the tax calculation under both of the two approved methods. In many cases, the results may be surprising.

For additional information, please contact your regular PLDW attorney or Attorney William F. Miller.



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William F. Miller is a Partner with Pannone Lopes Devereaux & West LLC and a member of the Corporate & Business Law Team. He is a highly skilled attorney with more than 30 years of experience who focuses his practice on corporate and business law matters, including mergers and acquisitions, angel, venture capital and private equity financing, commercial contract matters, intellectual property protection and licensing, and entity and investment fund formation. Mr. Miller frequently advises early stage technology companies, manufacturers, service and distribution companies as well as investors in such companies.

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