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**SMALL BUSINESS**

# How to Expand a Business to Another State

Are your clients interested in expanding their businesses to a new state? Here's a valuable guide to help you advise them as they grow their businesses.

**Nellie Akalp** • Jan. 17, 2023



**By Nellie Akalp.**

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## **Foreign Qualification**

If your client wants to keep their home state as the primary state of business and expand their business to another state, the first determination is whether they must file for foreign qualification. Because sole proprietorships and partnerships are not state-governed entities, they do not need to file for foreign qualification. The rules for corporations and limited liability companies (LLCs) are different: both must file for foreign qualification to do business in a state other than the state of formation.

Foreign qualification is legally registering a business in another state to conduct business. Although the process varies by state, most foreign qualifications can be filed in each Secretary of State's office. Your clients should know that operating a business in a state includes the following:

- Having a physical presence (office space, warehouse, or retail store)
- Purchasing property or a building to conduct business
- Any company representative conducting in-person meetings with customers
- Having full or part-time employees living or working in the state
- Any offer of services, selling of products, or bidding for a contract
- Having a professional license (such as medical, accounting, etc.)

Again, because LLCs and corporations are legally formed in one state, any activity in another requires foreign qualification.

## **Registered Agents**

A company with foreign qualification must name a registered agent with a local address in the state. A registered agent is a person or company with the authority to accept "service of process" (legal documents and government notices) on behalf of a business. Examples of documents include:

- Official federal and state correspondence
- Subpoenas for information
- Tax notices from the IRS and local tax authorities
- Lawsuits
- Summonses to appear in court
- Wage garnishment notices when ordered to withhold a portion of your employee's wages and send it directly to a person or organization to which that worker owes money
- Corporate filing notifications

## Is There Nexus?

Since the Supreme Court ruling on the [South Dakota v. Wayfair case](#) in 2018, expanding a business to make sales in another state establishes economic nexus for your clients and extends their compliance requirements. At a minimum, states can require out-of-state companies with more than 200 transactions or \$100,000 in-state sales to collect and remit sales taxes to the state where the goods or services are purchased—even without a physical presence in a state.

Sales tax regulations and economic thresholds vary by state, so ensure your client knows what is expected. Typically, when a remote seller has met the threshold in that state, it obtains a seller's permit and registers with the state's revenue office to remit the state's sales tax on each taxable purchase. In most cases, sellers using a marketplace facilitator, such as Amazon, can rely on the facilitator to collect and remit the sales tax on their behalf.

Most states also require sellers to collect and remit local taxes (either city or county), so be sure your clients know to obtain the appropriate seller permits and tax account licenses to comply.

## Paying Employees in Another State

Clients planning to have employees working and/or residing in another state must register to comply with the state's payroll tax regulations. Again, the process varies by state; however, the business usually must register with the state's Department of Revenue and Unemployment Office. Once registered, the company will be issued an employer account number and an unemployment insurance account number. Your client must provide the account numbers when filing returns and making deposits in all electronic and paper filings.

Each state determines its state income tax, and there may be an additional local tax for employees working or living in certain cities or counties. In addition, the unemployment insurance tax varies by state and is only paid by the employer. Some states have flat income tax rates; others have progressive ones, depending on income—and the same goes for unemployment taxes.

Make sure your client finds out if there are any state-specific taxes they must also pay or if an employee is exempt due to being in a lower-income area or a protected population. Some states have reciprocal agreements which allow employees in those states to be exempt from income tax withholding.

## Other Licenses and Permits

It's essential for clients expanding to other states to make sure they have all the necessary licenses and permits required before taking that step. States typically give new companies a short window to register their companies with the state, so your help and knowledge will send them down the right path.

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