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| **New York** | | |
|  | **Corporation** | **LLC** |
| **Formation Costs** | [NY incorporation fee](https://www.dos.ny.gov/forms/corporations/1239-f.pdf) is **$125** | [Filing fee](https://www.dos.ny.gov/corps/llcguide.html) for the articles of organization is **$200** |
| **Publication Costs** | No publication requirement | NY requires a [notice of formation](https://www.dos.ny.gov/corps/llccorp.html#dompub) published in two newspapers for six weeks. Costs can vary **between $80 and $1,000**  The LLC must then file a [certificate of publication](https://www.dos.ny.gov/forms/corporations/1708-f.pdf) (attaching affidavits of publication from the newspapers) with a **$50** filing fee |
| **State Franchise Taxes****[[1]](#footnote-1)** | Both [C-corporations](https://www.tax.ny.gov/bus/ct/def_art9a.htm#fix%20min%20tax) and [S-corporations](https://www.tax.ny.gov/bus/ct/s_corporations_post.htm) pay an annual franchise tax in NY. Until the business generates >$100,000 in taxable revenue in any tax year, the franchise tax is a fixed tax of $25/year.  To be [treated as an s-corp in NY](https://www.tax.ny.gov/bus/ct/s_corporations_post.htm), you must:   1. *First* elect federal s-corporation taxation by filing [IRS Form 2553](https://www.irs.gov/pub/irs-pdf/f2553.pdf). The form [must be filed](https://www.irs.gov/pub/irs-pdf/i2553.pdf) within 2 months & 15 days after the earliest of the date on which the company first had shareholders, had assets or was doing business. 2. *Next*, elect NY s-corp taxation by filing [Form CT-6](https://www.tax.ny.gov/pdf/current_forms/ct/ct6_fill_in.pdf). NY does not automatically follow federal tax treatment of s-corps. | There is [no NY franchise tax](https://www.tax.ny.gov/pit/efile/llc_llp.htm) on an LLC that is treated as a pass-through entity for federal tax purposes. |
| **Federal Income Tax1** | * A C-corp’s income is taxed at a 21% rate * S-corps do not pay federal corporate income tax | * An LLC does not pay federal corporate income tax |
| **Biennial Report Fee** | Must file [biennial reports](https://www.dos.ny.gov/corps/bus_llc_faq_statements.asp) with the New York Secretary of State. The filing fee is **$9** | |
| **Registration in Other States** | If you will be doing business in states other than New York, you may need to register your company in some or all of those states. Each state has its own rules on registration of foreign entities. Generally, though, registration is not required until the business starts generating taxable income in a particular state or sets up an office or other physical presence in that state. | |
| **Estimated Total Formation Cost** | **$125** (incorporation fee) | $200 (formation fee) +  $300 (assumed publication fees) +  $50 (certificate of publication filing fee)  = **$550** |
| **Estimated Total Annual Costs2** | $9 (biennial report) +  $25 (assumed franchise tax)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  = **$34/year** ($25 in years with no biennial report) | **$9/year** (biennial report) |

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| **Delaware** | | |
|  | **Corporation** | **LLC** |
| **Formation Costs** | [DE incorporation fee](https://corpfiles.delaware.gov/Aug09feesch.pdf)is a minimum of **$89**. This minimum fee assumes 1,500 shares at no par value; it may increase, depending on the number of shares and their par value | [DE formation fee](https://corpfiles.delaware.gov/Aug09feesch.pdf) is **$90** |
| **Publication Costs** | No publication requirement | Because the LLC will likely need to register to do business in NY (see below), it will need to comply with the same NY publication requirements as an LLC organized in NY, as summarized in the preceding table |
| **Registered Agent Fees** | A registered agent’s annual fees vary by company, from **about $50 - $250 per year**. Several of our clients use [this company](https://www.delawareinc.com/), which charges $50/year for registered agent services. | |
| **Registering as a Foreign Entity in New York** | Because you will be forming your entity in Delaware, but likely doing business in New York,[[2]](#footnote-2) the entity will need to [apply for authority to do business in New York](https://www.dos.ny.gov/corps/buscorp.html) as well. | |
| **$225** to file the [application](https://www.dos.ny.gov/forms/corporations/1335-f-a.pdf), which must be accompanied by a DE [Certificate of Status](https://corp.delaware.gov/directweb/) (**$50**) | **$250** to file the [application](https://www.dos.ny.gov/forms/corporations/1361-f-a.pdf), which must be accompanied by a DE [Certificate of Status](https://corp.delaware.gov/directweb/) (**$50**) |
| **State Franchise Taxes1** | [DE franchise tax](https://corp.delaware.gov/frtaxcalc/) is calculated on the basis of either the # of authorized shares or the assumed par value   * If you authorize 5,000 shares, the company will pay the minimum flat tax of **$175** per year   If the company registers to do business in NY, it would also pay NY franchise taxes and file a biennial statement (see the NY cost table) | For an LLC, the [franchise tax](https://revenue.delaware.gov/business-tax-forms/franchise-taxes/) is fixed at **$300** per year  If the company registers to do business in NY, it would also file a biennial statement (see the NY cost table) |
| **Federal Income Taxes1** | See the NY cost table | See the NY cost table |
| **Annual Report** | The [annual report filing fee](https://corp.delaware.gov/paytaxes/) is **$50** | An LLC [does not file an annual report](https://revenue.delaware.gov/business-tax-forms/franchise-taxes/) |
| **Registration in Other States** | See the NY cost table | |
| **Estimated Total Initial Cost** | $89 (assumed incorporation fee) +  $50 (assumed registered agent fee) +  $225 (NY application for authority) +  $50 (DE certificate of status)\_\_\_\_\_\_\_\_\_\_\_\_\_\_  = **$414** | $90 (formation fee) +  $50 (assumed registered agent fee) +  $300 (assumed publication fees) +  $50 (certificate of publication filing fee) +  $250 (NY application for authority) +  $50 (DE certificate of status)\_\_\_\_\_\_\_\_\_\_\_\_\_\_  = **$790** |
| **Estimated Total Annual Cost2** | $175 (assumed DE franchise tax) +  $50 (assumed registered agent fee) +  $9 (NY biennial report) +  $25 (assumed NY franchise tax)  = **$259/year** ($250 in years with no biennial report) | $300 (DE franchise tax) +  $50 (assumed registered agent fee) +  $9 (NY biennial report)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  = **$359/year** ($350 in years with no biennial report) |

1. This section covers only entity-level taxes. As a shareholder of the corporation or member of the LLC, you would pay personal income taxes on your share of the company’s income either as it is earned by the entity (if an S-corporation or LLC) or when it is paid to you as a dividend (if a C-corporation). [↑](#footnote-ref-1)
2. New York does not have clear thresholds for what constitutes “doing business.” Activities that would usually constitute “doing business” in New York including leasing or owning property in the state, generating taxable revenues in the state, or engaging in significant contracts in the state. [↑](#footnote-ref-2)