

**Establishing a
Delaware Holding Company**
*A Corporate Tax Strategy
to Improve Profits*



Santora CPA Group
Right, By Your Side

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Delaware Holding Company

The goal of minimizing taxes and increasing cash flow for your company or your clients is always of substantial concern and constant effort.

There is a technique that can offer you significant savings in state corporate income taxes on investment and certain types of passive income. The technique is known as establishing a Delaware Holding Company (DHC). DHCs have been utilized by many public and private companies for years. The following is a DHC overview of the uses, formation, and compliance with the DHC law.

Uses of a Delaware Holding Company

- ↪ To hold stocks, bonds, and other investments that generate non-operating income
- ↪ For intercompany financing

Forming a Delaware Holding Company

It is relatively simple to form a DHC. Since Delaware's incorporation laws are quite favorable, your own attorney can generally do the legal work necessary to form a Delaware corporation, or we can arrange incorporation services for you. If the DHC is formed with no more than 3,000 shares authorized, the annual franchise fee averages \$250.00.

The Law

Section 1902(b)(8) of the Delaware Code provides an exemption from taxation for *“corporations whose activities within this state are confined to the maintenance and management of their intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this state. For purposes of this paragraph, “intangible investments” shall include without limitation, investments in stocks, bonds, notes, and other debt obligations (including debt obligations of affiliated corporations), patents, patent applications, trademarks, trade names, and similar types of intangible assets.”*

Compliance With 1902(b)(8)

In order to realize state income tax savings, a company should transfer assets that generate dividends, interest, or other non-operating or portfolio income to a DHC subsidiary. The income from these investments is considered as being received in Delaware and is not subject to Delaware corporate income tax. See your own tax advisor for local tax consequences.

To minimize the possibility of taxation of the DHC's activity in other jurisdictions, the corporation must be structured and managed properly. Each DHC must be a bona fide corporation controlled and managed in Delaware. A DHC should have its stated business purpose on file and be created for valid **non-tax reasons**.

Valid Non-Tax Business Reasons:

- To protect the transferred intangibles against the claims of creditors
- To give management greater flexibility to pursue other business strategies

The DHC must also create nexus (definite link) with Delaware by maintaining a physical presence and managing the company affairs in Delaware. Creating nexus is accomplished by establishing substance in Delaware. The following list of **legitimate business activities** is generally considered essential to establishing substance by tax administrators and courts. Each of the activities listed should be performed in Delaware and be separate and distinct from the parent company.

Legitimate Business Activities Include:

- Maintaining a permanent corporate office and bank account in Delaware
- Locating tangible property (office furniture, fixtures, and computers) in Delaware
- Ordering and using stationery with the Delaware address
- Maintaining a telephone number for the Delaware office
- Using a Delaware address for all correspondence, legal documents, and financial statements
- Executing all Delaware corporation documents in Delaware by officers based in Delaware
- Performing all bookkeeping and accounting functions in Delaware
- Safekeeping original accounting and corporate records in Delaware
- Filing of all appropriate unemployment, franchise, payroll, and other tax returns in Delaware
- Documenting the custody of all intangible assets in Delaware
- Using a Delaware bank account to receive income and pay expenses
- Holding regular stockholder and Board of Directors meetings in Delaware
- Hiring Delaware resident employees, officers, and directors and paying them from a Delaware payroll
- Having a Delaware employee make and initiate investment decisions
- Having employees, officers, and directors make daily operating decisions and holding meetings in Delaware

Firm Background

Santora CPA Group is a full-service accounting and business consulting firm providing a full range of DHC services to a client base with over \$2 billion in assets. This client base includes numerous international, mid-size, and smaller companies. Our talented professionals have over 40 years of experience serving holding companies.

We develop and maintain close personal relationships with our clients so that we can understand their businesses and their needs. With this understanding, we can then help our clients increase their profits.

Our client relationship approach means our clients receive customized accounting and business solutions. Instead of just providing clients with information, our services also include a variety of systems and proactive advice.

We are members of the Private Companies Practice Section of the American Institute of Certified Public Accountants' Division for CPA Firms. We also have a national affiliation as a member of the BDO Alliance USA giving us the resources of an international firm while maintaining our distinctly local roots.

Conclusion

We hope that you have found the above overview of Delaware Holding Companies informative. We will be happy to meet with you, your accountants, attorneys, or other advisors to discuss the above concept in greater detail.

Santora CPA Group - DHC Services

Initial Set-Up

Office Space and Administrative Services

- 10 x 20 sq. ft. private office space
- Shared office space

The following administrative services are provided when office space is rented from Santora CPA Group:

- Maintain telephone listing and answering service during normal business hours
- Use of office equipment and conference room facilities
- Use of storage facilities for safekeeping of corporate records and permanent files
- Process and forward daily mail, as instructed
- List company's name in a prestigious office building directory

Employee Services

- Maintain stock of company stationery and business cards with Delaware address
- Maintain and reconcile corporate checking and custody accounts
- Make bank deposits and pay invoices
- Document investment decisions to provide proof of Delaware origin
- Maintain corporate records, correspondence, and permanent files
- Issue royalty and interest invoices, as instructed

Officer/Director

- Execute various legal documents commensurate with position
- Serve as a resident Delaware corporate director and/or officer
- Coordinate and attend Board and corporate meetings
- Maintain corporate minute book
- Document management decisions

Accounting Services

- Maintain an original set of financial records to include ledgers, journals, trial balances, and detail workpapers
- Prepare compiled financial statements, as needed
- Prepare annual budget and financial forecasts
- File all appropriate payroll, unemployment, franchise tax, and information returns in Delaware
- Consult with internal/external auditors, as requested
- Provide quality assurance services
- Coordinate independent financial audits



William A. Santora, CPA

William A. Santora (Bill) graduated from the University of Delaware in 1973 with a Bachelor of Science Degree in Accounting. In 1983, he founded Santora CPA Group. His career includes over forty years in public accounting, servicing businesses and professionals in New Castle County, Delaware.

Bill is a member of the American Institute of Certified Public Accountants and the Delaware Society of Certified Public Accountants. He is one of the founding members of the Advisory Board to the Accounting and MIS Department of the University of Delaware, and he has lectured on a variety of accounting and management advisory issues. He is a candidate for accredited member of the American Society of Appraisers - Business Valuation Division. He is also on the Board of Directors of Corporation Service Company and a member of the Finance Committee of St. Joseph on the Brandywine Roman Catholic Church.

In addition to his responsibilities at Santora CPA Group, Bill has also served as officer and/or director of many renowned corporations such as Aventis, Fiat, Total, Dendrite International, and Secured Finance (Kroger Co.). In that capacity, he performs a variety of functions such as overseeing compliance and business activity in Delaware for a 49-day preferred auction rate stock program. He supervises the filings of certain certificates including a Certificate of Minimum Asset Coverage, Certificate Relating to Required Liquid Assets Test, and Delaware's 1902(b) exemption return.

For his part in service to local businesses, Bill was selected as the 1988 Small Business Advocate of the Year for the State of Delaware by the U.S. Small Business Administration. He has served a variety of organizations and has developed a special expertise in construction accounting, due diligence auditing, and consulting for troubled businesses. Bill has substantial experience in providing litigation support services to the area's legal community. His prior experiences include testimony in the U.S. District Court, Bankruptcy Court, Superior Court, Chancery Court, Family Court, and Court of Common Pleas.