



FOREIGN COMPANIES DOING BUSINESS IN THE UNITED STATES

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2026

FORMS OF BUSINESS ORGANIZATION



U.S. CORPORATION

A corporation, having limited personal liability, is the form of organization most common in the US. Many of the processes and requirements mirror those for forming companies in the UK; however, a U.S. corporation is created at the state level and must comply with the specific corporate laws of the state in which it is incorporated. For example, a US corporation incorporated in New York may have certain restrictions placed on it by New York corporate law, which will not be relevant for a Florida corporation.

In fact, Delaware and Nevada are the states most recognized for having flexible and business friendly corporate law requirements. As a result, even if a U.S. corporation conducts business—and is therefore subject to tax—in a state such as New York, it may still choose to incorporate in Delaware or Nevada to benefit from the greater flexibility these states offer for future amendments to its charter. The articles of incorporation contain the objects and other provisions relating to the corporation and must be filed with the Secretary of State in the state in which the corporation is created. However, a corporation that is formed in one state to take advantage of those rules and does business in another state must register and file tax returns in every state that it does business.

A BRANCH OF FOREIGN CORPORATION

A foreign corporation may establish a branch within the US to conduct its business activities even though most foreign corporations choose to form subsidiary companies for tax and non-tax reasons. Most countries can subject foreign corporations to domestic taxation if they form a branch, open an office, employ staff, maintain inventory or fixed assets, or otherwise conduct business activities in the US which enables the Federal and state taxing administration to assess the foreign corporation as though it had a deemed permanent establishment.

The US and state governments have the concept of taxable income "effectively connected" with a US source, and if a foreign corporation has effectively connected income, then the foreign corporation will be subject to US tax on such income the same way as a US domestic corporation. Moreover, if 25% or more of a foreign corporation's gross income is effectively connected, then any dividends paid by the foreign corporation to a non-US resident will be subject to US withholding tax unless an applicable tax treaty provides otherwise.

US tax law also imposes a 30% branch profits tax, in addition to US corporate-level income taxes, on a foreign corporation's US branch's earnings and profits for the year. The branch profits tax may be reduced or eliminated entirely if a treaty so provides.



PARTNERSHIP

General and limited partnerships may be formed, by a written partnership agreement, which is usually registered under state law. For legal purposes, a partnership is defined as an association of two or more people or entities formed to carry on a business for profit as co-owners. As defined for US tax law, a partnership includes a syndicate, pool, joint venture or other unincorporated organization by which any business is conducted - and which is not, for federal income tax purposes, a corporation, trust or estate. Each state and the District of Columbia have its own laws governing the formation and operation of partnerships.

Partnerships are treated as conduits for US income tax purposes, and each partner recognizes a proportionate share of income, loss and credit, whether or not it is distributed to the partners. Partnerships allow for much flexibility for the allocation of profits and losses, as well as distributions. Any partnership engaged in a trade or business in the US that has foreign partners must withhold US tax on the foreign partner's distributive share of business income.

LIMITED LIABILITY COMPANY ("LLC")

Limited Liability Companies are a popular form of organization in the US. The LLC is usually defined from a US legal perspective as a company that is characterized by limited liability to its owners, management by members, and limitations on ownership transfer. As a legal entity, the LLC can own property in its own name, incur debts and other liabilities, enter contracts, and initiate judicial proceedings.

The LLC is a relatively new business form in the US that allows members flexibility to manage the entity's internal affairs; in fact, most state statutes permit LLC members to participate in the entity's management without sacrificing their limited liability protection. As with other legal entities, state law governs the creation of an LLC.

A multi-member LLC is treated as partnership for US federal tax purposes unless it elects to be taxed as a corporation. A single member LLC is treated as a disregarded entity for tax purposes unless it elects to be taxed as a corporation. The election to be taxed as a corporation must be made within 75 days of the beginning of the LLC's fiscal year to be effective for that year.

TAXATION AND FORMS



INCOME TAXATION

Under the current law, Federal corporate tax rates on income and net capital gains are on a flat rate of 21%.

A foreign corporation engaged in business in the US is taxed at regular US corporate tax rates, but only on income that is effectively connected to the US for that business.

US-source income that is not generated by assets used in a foreign corporation's US trade or business—and is not effectively connected with that US trade or business or attributable to a US permanent establishment (for example, dividends, interest, or royalties)—is generally subject to a 30% withholding tax, unless a lower rate applies under an applicable tax treaty.

The states and some municipalities (e.g., New York City) generally impose corporate income tax at rates varying between 1% and approximately 12%. These taxes are levied on US and foreign corporations conducting business activities in the state. For example, a Delaware corporation with an office in New York will pay New York state taxes as well as any Delaware taxes payable because of business operations in Delaware. The calculation of the state tax is generally based on the taxable income declared for federal tax purposes and can be subject to minor adjustments so that the entity is not taxed twice on the same income. Each state has its own allocation formula, although most use either the three-factor formula (sales, payroll, and assets located within the state) or a single factor of sales within the state.

**Please see the Wayfair discussion of State Income Tax filing obligations at the end of the "Sales Tax" section.*

SALES TAX

Sales taxes are imposed at state and local levels for products and certain services sold within the US. In this respect, it differs from a value added tax system because it is a consumer tax which is only levied once at the point of consumption, as opposed to throughout a chain of transactions leading to final consumption. The applicable tax rates vary between 4% and 11.5%, with exemption generally given for food and medical products (for example the rate of sales tax in New York City is currently 4.875% and New York State is 4% for a combined total of 8.875%).

Also, merchandise that is being purchased for re-sale is often exempt from sales tax. Moreover, sales taxes are not levied on intangible property, e.g., royalties regarding copyrights, as compared to the VAT system in EU countries.

Where do states stand when it comes to implementing the "blueprint" from Wayfair v. South Dakota (the recent Supreme Court case that re-defined nexus for Sales Taxes in the US)?

As of January 1st, 2026, all states and the District of Columbia have an economic nexus model in place like South Dakota's regime, which the Wayfair Supreme Court decision suggested was constitutionally valid. Twenty-four states are full members of the Streamlined Sales and Use Tax Agreement (SSUTA), and only one state is classified as an associate member state, which could make them more vulnerable to litigation, according to language in the Wayfair opinion.

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SALES TAX (CONTINUED)

Many of these states have also enacted other online tax regimes, including:

- Notice/reporting regimes that require retailers to alert customers to their tax liabilities.
- Marketplace provider provisions that require Amazon-type sellers to collect sales tax on third-party transactions conducted on their platforms.
- "Cookie nexus" regulations, which require online vendors to collect state sales tax if they have property interests in or use in-state apps and "cookies."

Considering the Court's unequivocal statement in Wayfair that physical presence is not a necessary element for "substantial nexus," taxpayers will need to revisit positions they may have taken regarding both sales/use taxes and other taxes and the need for physical presence in order to establish substantial nexus.

Public Law 86-272 remains the key limit on states' ability to impose net income tax on sellers of tangible personal property, even in states that assert economic-presence nexus. If a seller's in-state activities are limited to soliciting orders—plus ancillary activities—with orders approved and fulfilled from outside the state, the state cannot impose its income tax. Consequently, after Wayfair, Public Law 86-272 has become even more important for sellers of tangible goods.



SOCIAL SECURITY TAXES

Social security taxes will need to be paid by resident individuals working within the US by both employer and employee at the rate of 6.2% each on the first \$184,500 of salary (for 2025), plus a "Medicare" tax, again payable by employer and employee at 1.45% of the entire salary with no limitation.

However, under any of the totalization agreements entered into by the US, foreign nationals will not pay social security taxes in the US if they are transferred temporarily to the US for a period of less than five years, provided they remain subject to social security tax in their home country (not all totalization agreements have the five-year rule).

Moreover, they would still be entitled to benefits within the US, provided that ultimately the foreign national has contributed to the social security system for at least 18 months in the US.

There are also other types of payroll taxes such as Federal Unemployment Insurance, State Unemployment Insurance, Workers' Compensation Insurance and State mandated Disability Insurance.

FORM W-8BEN

When a foreign person receives certain types of income from the U.S., the U.S. government usually takes out 30% of that income as a withholding tax, unless the person provides valid documentation to prove their beneficial status. This valid documentation is the Form W-8BEN, which foreign individuals must provide to the withholding agent (a person or entity that has custody of the amount subject to withholding) in the U.S.

Form W-8BEN Is Used To Establish:

- Whether the person is a U.S. resident for tax purposes.
- Whether the person is a foreign resident and the beneficial owner of the income who qualifies for a reduced withholding rate or is exempt from withholding, based on a tax treaty between their home country and the U.S.



FORM 5471

Some U.S. taxpayers must file a Form 5471 if they have connections to certain foreign corporations. The form may be required if:

- You own 10% or more of a foreign corporation's voting power or shares.
- You're an officer or director of a foreign corporation and own 10% or more of the shares.
- You buy or sell stock in a foreign corporation that meets the 10% ownership requirement.
- You controlled a foreign corporation with 50% or more ownership of the voting power or total value of stock at any time during the tax year.
- You own 10% or more of a Controlled Foreign Corporation (CFC), which is a foreign company with U.S. shareholders who collectively have control (50% or more ownership) over it.

The penalties for not filing can be high starting at \$10,000 and increasing to \$50,000 if the issue continues. In recent years, a legal dispute has developed over whether the IRS is allowed to assess these penalties directly. In the original *Farhy v. Commissioner* case, the U.S. Tax Court said the IRS did not have the legal authority to assess these penalties on its own. But the D.C. Circuit Court later reversed that ruling, saying the IRS does have the authority to assess the penalties. Even after that reversal, the Tax Court continued to stand by its original view in later cases like *Mukhi v. Commissioner*, insisting that the IRS still lacks this authority. As of 2026, this disagreement between courts has created confusion, and the issue may eventually need to be settled by the Supreme Court.

FORM 5472

Form 5472 may need to be filed by some U.S. corporations or foreign corporations doing business in the U.S. The form may be required if:

- A foreign entity owns 25% or more of a U.S. corporation.
- A foreign corporation is engaged in trade or business in the U.S.

This form is used to report any transactions that the company has with foreign-related parties. These transactions include monetary transactions, like loans or interest payments, or non-monetary exchanges, like transferring properties or providing services between the company and the foreign-related party. Form 5472 is not required if the company doesn't have reportable transactions with foreign-related parties, or if certain limited exceptions apply. If the form is not filed when required, the company can be subject to a \$25,000 penalty. After 90 days of the notice, an additional \$25,000 penalty applies every 30 days with no maximum penalty.





EMPLOYER IDENTIFICATION NUMBER (EIN)

Nearly every form of business organization that is effectively connected to the U.S.—including sole proprietorships, partnerships, corporations, LLCs, nonprofits, estates, and trusts—need an Employer Identification Number (EIN).

Your Employer Identification Number (EIN) is your federal tax ID. You need it to pay federal taxes, hire employees, open a bank account, apply for business licenses and permits, file tax returns for employment, excise, alcohol, tobacco, and firearms and/or withhold taxes on income, other than wages, paid to a non-resident alien.

Although every business that has employees needs an EIN, the “Employer” label in “EIN” doesn’t mean a business has to have employees to need an EIN. For instance, corporations, trusts, and partnerships must have an EIN, even if they don’t employ anyone.

Much like a Social Security number, the government uses your EIN (also known as a federal business tax ID number) to identify your business. Additionally, banks, credit card companies, and vendors will likely demand your EIN before transactions.

It’s free to apply for an EIN, and you should do it right after you register your business. The need for a state tax ID number ties directly to whether your business must pay state taxes. While your federal EIN is used for federal taxes and sometimes referenced for state filings, many states require a separate state tax ID—especially for payroll withholding, unemployment insurance, or sales tax purposes. The process to get a state tax ID number is similar to getting a federal tax ID number, but it will vary by state.

TRANSFER PRICING



The IRS increases its scrutiny on transfer pricing when US and foreign group members are involved. Regulations were issued that reinforce the "arms-length" standard while increasing the emphasis on comparability and documentation. Arms-length transactions are identified as activity between two unrelated companies. Exchanges between a holding company and its wholly owned subsidiary are not considered at arms-length.

Several methods are permitted to determine a proper arms-length price, including the use of transaction comparables, comparable profits and profit split methods. Taxpayers must identify and document the best method, depending on their circumstances. Failure to maintain up-to-date documentation of pricing determinations, including a written transfer pricing study, may result in substantial penalties—potentially up to 40% of the tax due on the transfer pricing adjustment. IRS adjustments also could result in double taxation since some treaty country partners may not give correlative adjustments in US transfer pricing cases. In cases where a treaty country is involved, consult a competent authority on inter-company transactions.

To mitigate controversies in transfer pricing disputes, the IRS encourages using Advanced Pricing Agreements (APA). An APA is a prospective agreement between the IRS and the taxpayer to determine compliance with the arms-length standard. It is expected that when treaty partners are involved, the competent authorities in the relevant countries will be engaged as well. If possible, taxpayers should seek bilateral, and possible multilateral, agreements to ensure the pricing strategy is agreed upon by all countries involved.

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FIRM OVERVIEW


Accounting firms, like people, have distinctive personalities. The attribute that best describes Hoberman & Lesser (HL) is our ability to go beyond the routine to provide an extra dimension in quality, effort, and service.

Our NYC accountants work with a wide spectrum of clients—public companies, private businesses, and individual entrepreneurs—throughout the tri-state area and across the United States. In addition to understanding the challenges you face, our professionals offer practical, creative insights to help you seize opportunities and avoid potential pitfalls.

HL's services are performed in accordance with the professional and ethical requirements of the American Institute of Certified Public Accountants (AICPA). Hoberman & Lesser is a member of MGI Worldwide, a Top 20 international accounting network of independent audit, tax, and accounting firms. This combines the expertise of more than 5,000 professionals in over 260 locations throughout North America and around the world.

Through MGI Worldwide, Hoberman & Lesser has established relationships and connections with professionals who we know and trust in all corners of the globe. With our MGI colleagues, we can provide a complete service assisting you in making your national or international business operations a success. MGI Worldwide is a quality-controlled network and, like all independent member firms, Hoberman & Lesser is subject to review of our quality assurance systems and procedures that comply with international standards.

CONTACT US

 Hoberman & Lesser CPAs, LLP
252 West 37th Street, Suite
600 New York, NY 10018

 1+ 212-463-0900

 ea@hobermanlesser.com

 www.hobermanlesser.com


A member of the


 mgi worldwide



ROBERT HOBERMAN

Managing Partner

 1+ 212-463-0900

 robert@hobermanlesser.com

Robert Hoberman joined the firm in 1981, became a partner four years later and now serves as the firm's managing partner and MGI Worldwide Key Contact. He has over 30 years of experience in management consulting working with all types of businesses. His expertise ranges from structuring business deals, tax planning, and estate and gift planning, valuations, including the use of trusts. He also has extensive familiarity dealing with banks and financial institutions, as well as tremendous knowledge of data processing, systems analysis, and consulting for commercial applications.

A graduate of Syracuse University with a B.S. in Accounting, Robert is a Certified Public Accountant in New York, New Jersey, Connecticut and Florida. He is a member of both the American Institute of Certified Public Accountants (AICPA) and the New York State Society of CPAs (NYSSCPA).

Robert received the Humanitarian of the Year award for his work with the NYC Chapter of The Crohn's & Colitis Foundation of America (NYC CCFA). He currently serves as a board member for the Lester M. Entin Foundation.

Robert regularly authors articles that are published in Rapaport Magazine to address timely tax and financial issues related to the jewelry industry.