

## To qualify or not to qualify?

**A** growing number of business owners face the question of whether or not to qualify as they look to expand their operations to states outside their state of incorporation. There are many factors owners and executives must take into account when deciding whether to qualify, and the wrong decision could lead to legal woes, monetary penalties, and even jail time for company executives. A new book from CSC® Publications, *The 50-State Qualification Handbook*, is designed to help make the decision-making process easier.

Suppose you own a corporation and you are looking to grow your business. You hire out-of-state sales representatives to sell your products, and you do a little advertising in those states. Soon, business is booming. You are shipping products to customers across the country.

A customer refuses to pay for a purchase, and when you file suit to recover the money owed, the customer tries to have the suit dismissed, arguing that since you never qualified to do business in the state, you cannot take him to court. Is he right? Should you have qualified to do business before selling your products in “foreign” states like this one?

The answer is: It depends. It depends on such factors as whether the sales representatives had the authority to approve the sale themselves, how much the transaction was worth, and what other business

activities your company has in that state. It also depends on the state in question, because although most states follow a similar set of rules for determining whether companies need to qualify, a number of states use their own rules or exceptions.

So how do you determine whether you need to qualify to do business in any state that is not the one where your business is incorporated? Making such a determination is a complex and time-consuming process, and even finding comprehensive and up-to-date information about qualification can be a chore. Corporate and legal professionals trying to decide whether to qualify often find themselves calling state by state to inquire about the process.

“Every day, customer service representatives at Corporation Service Company receive calls from business owners, attorneys, and paralegals who are unsure if they need to qualify and where to find the answers,” says Kathy Grube, publications associate at CSC. “They are frustrated by the lack of information and the time they have to spend on the process.”

“There is a real need in the legal and corporate community for a qualification resource,” agrees Andrea Unterberger, associate general counsel for CSC. “Qualifying to do business is vital to any corporation looking to expand its activities, and making the wrong decision could prove a costly error. Business executives and their legal representatives need a reference that can guide them through the process.”

CSC Publications has responded by developing a how-to book designed to walk lawyers, paralegals, corporate executives, and administrators through the qualification process. The result, *The 50-State Qualification Handbook*, is an easy-to-read resource that includes real-life examples to help readers understand which types of business activities trigger the qualification requirement in the states where they plan to do business.

The book begins with a discussion of the Model Business Corporation Act (MBCA), which serves as a template for most states' laws governing foreign corporations' business activities within their borders. It then provides an overview of those activities listed in the MBCA that are not subject to regulation and those activities that will require a foreign corporation to register to do business. Both types of activities are illustrated with relevant case law and summarized in an easy-to-use chart that lists by state the activities that do not constitute doing business.

An area of increasing concern in terms of qualification is the corporate Internet and e-commerce activity. *The 50-State Qualification Handbook* addresses this issue by considering the different types of Internet activity that could trigger the qualification requirements.

In addition to providing insights about the need for qualification, the handbook provides general guidance for qualifying to do business in foreign states, as well as the consequences for failing to qualify. There is also a chapter focusing on the qualifying and registration procedures for charitable organizations.

The handbook is packed with useful resource material. A chart details by state the consequences of failing to qualify, an appendix contains contact information for each of the 50 states and URLs to each state's division of corporation Web page, and a companion CD-ROM contains the qualification forms for each state in writable PDF format.

Another important resource included in the handbook is an extensive statutes section. This comprehensive collection of annotated business statutes from all 50 states and the District of Columbia provides readers with easy access to the current statutes and relevant case notes that relate to doing business outside their state of incorporation.

"It's the ideal resource for lawyers and nonlawyers who need come up to speed quickly on whether they need to qualify to do business," says Unterberger. "It's got the background, the analysis, and the tools they need to get started."

For more information about *The 50-State Qualification Handbook* or other publications or to place an order, please call 800-927-9801 or visit [www.incspt.com/publications](http://www.incspt.com/publications).