

Delaware Corporations – Don't Authorize Too Many Shares, or “No Par Value” Shares

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Occasionally, we will see Canadians or Canadian companies assume that they can authorize as many shares for issuance as they want when forming a Delaware corporation, or that they can authorize shares without par value. That's technically true, but Delaware will make you pay dearly for it, up to \$180,000 per company per year.

A Delaware corporation must pay the state an annual franchise tax. This tax is initially based on the number of authorized shares. Provided the authorized shares have a stated par value, the tax assessment can be re-calculated on an assumed par value basis using a formula that involves the number of shares authorized for issuance by the certificate of incorporation, the number of shares actually issued and outstanding, the par value of the shares, and the issuer's total assets. For a properly formed Delaware subsidiary, the annual tax is usually \$175. The tax is often more for an operating parent company, but by setting the authorized capital and par value appropriately, the tax can be managed.

Unfortunately, we have seen situations where Delaware companies have been formed or acquired without adequate advice, resulting in a \$180,000 annual tax. Among other situations, this can occur when no par value shares are authorized, or when the number of shares authorized is a large number compared to a small number of shares actually outstanding, and the franchise tax obligation may fluctuate annually based on the company's total assets.

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