



## **The Proposed Rule on Overdraft Fees**

# Accounting for Success

## What Exactly is a Delaware Holding Company?



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*"Setting up a subsidiary holding/family-owned investment company can be a good and cost-effective way to minimize taxes on income on intangible assets."*

**W**ith all the tax laws and high rates on intangible income, corporations and high-net-worth families are looking for a way to minimize the tax on that income. One way is to set up a Delaware holding company/family investment company.

Many of you might be asking, "What exactly is a holding company?" A holding company is set up to manage and maintain investments, intangible property, and trusts. Investments and intangible property would include trademarks, patents, marketable securities (stocks and mutual funds), and debt obligations (notes). The parent company would set up a subsidiary company and transfer ownership of these intangible assets to the subsidiary company. These subsidiaries are separate companies, with their own books and records.

Income from these intangible assets is not taxed by Delaware under 30 Del. C., §1902(b)(8) which provides an exemption for "Corporations whose activities within this State are confined to the maintenance and management of their intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside this State, which is a benefit for the parent company since these income items are usually large amounts. The income from dividends, interest, and capital gains/losses in these investments is protected in Delaware, and so are the underlying assets that generate this income.

The benefits of setting up a company in Delaware to hold these assets fall into two categories: 1) legal benefits and 2) the Delaware holding company advantage. Setting up a Delaware holding company can be simple and there are many resources available in Delaware to assist in setting up and formation of the company. These resources will not only assist in preparing and filing setup paperwork with the state of Delaware but will also serve as a registered agent for delivering of legal documents from Delaware and filing annual non-tax reports with various states, including Delaware.

Delaware holding companies will need to establish and maintain their own bank account separate from the parent company account. There are various banks available to set up bank accounts for payment of operating expenses and receiving of incoming wires. These banks also have accounts which hold the intangible assets for safekeeping and receive the income on these intangible assets such as dividends, interest, and capital gains.

The holding company should have their own board of directors or managers with some Delaware directors and main decision making for these companies in Delaware, by holding at least one meeting a year in Delaware. There are numerous legal and accounting firms that can assist with the formation documents as well as scheduling and hosting the annual meeting, which is one of the nexus requirements of a holding company. Also, accounting firms, such as Belfint, Lyons & Shuman, can handle the reporting and tax filing requirements of these companies. Since the holding company needs to have a physical presence in Delaware, such as employees and a lease, to establish substance in Delaware, the employees of these legal and accounting firms can serve as employees, officers, and directors of the holding companies and the holding company can lease office space from these firms. Nexus requirements also state that to establish substance in Delaware through a holding company is to have residents of Delaware serve as authoritative figures of the company, so the making and execution of management decisions come from Delaware.

As summarized above, setting up a subsidiary holding/family-owned investment company can be a good and cost-effective way to minimize taxes on income on intangible assets. With the various resources available here in Delaware, setting up and maintaining a holding/investment company can be pretty painless. Not all companies or families would benefit, but it might be beneficial to research options with a consultant that specializes in holding companies.