



Are Elon Musk and Tesla leaving Delaware? What's happening Thursday



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The stage is set Thursday afternoon for an epochal showdown between an unlikely pair of antagonists: billionaire and Tesla CEO Elon Musk and the entire state of Delaware.

The shareholders of Tesla, currently incorporated in Delaware, will determine late Thursday whether the electric car company will leave the First State and re-incorporate in Texas.

Shareholders will also decide whether to reinstate a pay package for the Tesla CEO that was previously valued at \$56 billion.

A Delaware judge voided that compensation package in January after some stockholders sued. The pay deal, described as the largest “ever observed in public markets,” was ruled by Court of Chancery Judge Kathaleen McCormick to be excessive, not to shareholders' benefit and riddled with conflicts of interest.

Since then, Musk has embarked on a public relations campaign calling the First State unfriendly to corporations. On Twitter/X in February, Musk wrote that CEOs should “never incorporate your company in the state of Delaware,” touting Nevada and Texas instead.

He's moved multiple companies he runs out of Delaware, including Neuralink and SpaceX, and now would like to do the same with Tesla if shareholders and lawyers both approve.

So why's Elon Musk so miffed at Delaware? And what's at stake for Delaware if Tesla skedaddles? Here's the landscape.

Why is Musk upset with Delaware?



Musk is approximately \$56 billion worth of upset. That's how much the on-again, off-again richest man in the world was set to receive as compensation in his role as CEO of Tesla, according to a pay deal reached in 2018.

But after a shareholder lawsuit, the Delaware Chancery Court agreed with plaintiffs in January that the compensation package was a "conflicted-controller transaction" because of Musk's role as both CEO and a shareholder with significant influence.

The court's 200-page ruling substantively seemed to agree with plaintiffs' claims that Tesla's board was conflicted, consisting in large part of Musk's friends and family. The decision also ruled that shareholders were not adequately and accurately apprised of the negotiation process.

Musk has since signaled that he believes Texas and Nevada offer more forgiving legal landscapes than Delaware.

So is Tesla guaranteed to leave Delaware?



The shareholder vote is not as assured as it seems, say some observers.

Musk has touted numbers showing that individual shareholders resoundingly voted in favor of his pay raise last time around. He has also conducted public polls of his followers on X/Twitter, which dramatically favored Tesla leaving Delaware for Texas.

But nearly half of Tesla's shareholders are institutional investors.

Some of these, including Norway oil fund Norges and public funds from California and New York, have already signaled they'll vote against Musk's proposed pay package this time around.

Large institutional investors tend to like the predictability and the investor protections offered by courts in Delaware when compared to the more untested and maybe less predictable states like Texas and Nevada, said corporate law expert Charles Elson, founding director at University of Delaware's Weinberg Center for Corporate Governance.

"Most public companies, their shares are dominated by large institutions," Elson said. "Delaware has a very balanced approach to disputes between managers and shareholders, and we've

maintained over the years a very careful balance between the two interests, which is why institutions favor us."

Some investors, however, have argued that much of Tesla's stock value stems from Musk's continued involvement in the company.

"Without his relentless drive and uncompromising standards, there would be no Tesla," wrote Ron Baron, chairman of investment fund Baron Capital, in a letter to fellow investors. "Tesla is Elon."

So why should Delaware care if Musk takes Tesla to Texas?



In most ways that count, Tesla's already in Texas. That's where its headquarters are.

What's at stake is the company's incorporation papers. As with about two-thirds of Fortune 500 companies, Tesla's incorporation papers are filed in Delaware. Companies tend to favor Delaware's business-friendly reputation, unique tax structure and streamlined legal framework for settling corporate disputes.

Why does this matter? Money. In fiscal year 2023, corporations and other entities such as limited liability corporations paid Delaware about \$1.86 billion in franchise taxes and fees. This amounts

to nearly 30% of state revenues for last year, more than any other revenue source except personal income tax.

In general, if the state gets much of its revenue from corporations, your average Delaware citizen might not have to shoulder as much of the burden.

The state doesn't release figures for individual companies, but Delaware-incorporated corporations the size of Tesla and SpaceX tend to pay the maximum annual franchise tax: \$250,000 a year.

If Tesla leaves, will other corporations follow suit? And will Delaware finances be affected?



That's a stickier question.

John Boyd, who advises corporations at his corporate site relocation business, The Boyd Company, says Musk's influence on companies' decisions about incorporation can't be overlooked.

The court case over Musk's compensation agreement is nothing less than a "cataclysmic event," he said, in a world where companies are increasingly willing to look at the legal environment in each state when deciding where to incorporate.

"It's no longer a slam dunk for these companies to be in Delaware," Boyd said.

Delaware's projected franchise tax receipts are down significantly in 2024 compared to the previous year, according to the state's Department of Finance. This comes after a decade of increased revenues from the corporate franchise tax.

As of May, the state projects a nearly 5% dip in franchise tax revenues in 2024, compared to last year. That could mean about \$70 million less in Delaware's piggy bank.



Only a small fraction of this would be due to any of Musk's companies leaving the state. But at a February Joint Finance Committee meeting, committee members quizzed Secretary of State Jeffrey Bullock about whether any drop in revenues could be a trigger effect caused by Elon Musk.

"He'll leave, that's what, a quarter of a million? But if he can convince others to do the same thing, eventually a quarter of a million becomes another million becomes ten million, and then it becomes a problem," said a committee member.

Bullock was terse, saying he doesn't "subscribe to that notion at all," touting Delaware's long stability. Companies come, and companies go, he said, and it's been that way for years. He declined, repeatedly, to call Musk by name.

Corporate governance expert Elson takes a similar long view.

"You can't just react to a specific case, or a specific instance," he told Delaware Online/The News Journal. "This has happened before in Delaware. It happens every so many years, where someone gets upset. Cooler heads need to prevail."

Where can one watch the Tesla shareholder meeting?

The meeting will stream live at 4:30 p.m., Eastern Daylight Time, at tesla.com/2024shareholdermeeting.