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RE: Corporate Transparency Act — Beneficial Ownership Information Reporting Requirement

Hi Folks:

I wanted to say “Happy Holidays”, but I don’t feel happy about asking you to read a mind-numbing letter. Unfortunately, you do need to read this letter if you own or have any direct or indirect control of any legal entities like corporations, LLC’s, limited partnerships, etc. This issue is not a tax issue. This is a new reporting requirement under the Corporate Transparency Act of 2021.

The Corporate Transparency Act (“CTA”) was enacted into law as part of the National Defense Act for Fiscal Year 2021. The CTA requires the disclosure of the beneficial ownership information (otherwise known as “BOI”) of certain entities from people who own or control a company.

It is anticipated that 32.6 million businesses will be required to comply with this reporting requirement. The intent of the BOI reporting requirement is to help US law enforcement combat money laundering, the financing of terrorism and other illicit activity.

The CTA is not a part of the tax code. Instead, it is a part of the Bank Secrecy Act, a set of federal laws that require record-keeping and report filing on certain types of financial transactions. Under the CTA, BOI reports will not be filed with the IRS, but with the Financial Crimes Enforcement Network (FinCEN), another agency of the Department of Treasury.

We’re here to help assess if you have a BOI reporting requirement and how to meet the reporting obligation. Please contact us at your earliest convenience to discuss your business situation.

In the meantime, below is preliminary information to consider as we approach the implementation period for this new reporting requirement.

What entities are required to comply with the CTA’s BOI reporting requirement?

Entities organized both in the U.S. and outside the U.S. may be subject to the CTA’s reporting requirements. Domestic companies required to report include corporations, limited liability companies (LLCs) or any similar entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.

Domestic entities that are not created by the filing of a document with a secretary of state or similar office are not required to report under the CTA.

Foreign companies required to report under the CTA include corporations, LLCs or any similar entity that is formed under the law of a foreign country and registered to do business in any state or tribal jurisdiction by filing a document with a secretary of state or any similar office.

Are there any exemptions from the filing requirements?

There are 23 categories of exemptions. (See Appendix A.) Included in the exemptions list are publicly traded companies, banks and credit unions, securities brokers/dealers, public accounting firms, tax-exempt entities and certain inactive entities, among others. Please note these are not blanket exemptions and many of these entities are already heavily regulated by the government and thus already disclose their BOI to a government authority.

In addition, certain “large operating entities” are exempt from filing. To qualify for this exemption, the company must:

1. Employ more than 20 people in the U.S.;
2. Have reported gross revenue (or sales) of over \$5M on the prior year’s tax return; and
3. Be physically present in the U.S.

Who is a beneficial owner?

Any individual who, directly or indirectly (broadly defined) , either:

- Exercises “substantial control” over a reporting company, or
- Owns or controls at least 25 percent of the ownership interests of a reporting company

An individual has substantial control of a reporting company if they direct, determine or exercise substantial influence over important decisions of the reporting company. This includes any senior officers of the reporting company, regardless of formal title or if they have no ownership interest in the reporting company.

The detailed CTA regulations define the terms "substantial control" and "ownership interest" further.

What is a “company applicant”?

Reporting companies created after January 1, 2024, are required to identify and report company applicants. Each such reporting company will have at least one and a maximum of two company applicants. Under the BOI rule, a “company applicant” is defined as: (1) the individual who directly files the document that creates a domestic reporting company or first registers a foreign reporting company to do business in the US; and, if applicable, (2) the individual primarily responsible for directing or controlling the filing of the creation or registration document.

Reporting companies created or registered on or before December 31, 2023, do not have to report company applicants when they start reporting by January 1, 2025.

When must companies file?

There are different filing timeframes depending on when an entity is registered/formed or if there is a change to the beneficial owner’s information.

- New entities (created/registered after 12/31/23) — must file generally within 30 days
 - There was relief created for 2024 only allowing for new entities created in 2024 only to extend the 30-day timeframe to 90 days.
- Existing entities (created/registered before 1/1/24) — must file by 1/1/25
- Reporting companies that have changes to previously reported information or discover inaccuracies in previously filed reports — must file within 30 days

What sort of information is required to be reported?

Companies must report the following information: full name of the reporting company, any trade name or doing business as (DBA) name, business address, state or Tribal jurisdiction of formation, and an IRS taxpayer identification number (TIN).

Additionally, information on the beneficial owners of the entity and for newly created entities, the company applicants of the entity are required. This information includes — name, birthdate, address, and unique identifying number and issuing jurisdiction from an acceptable identification document (e.g., a driver's license or passport) and an image of such document.

What can FinCEN do with the information on beneficial ownership?

FinCEN may disclose beneficial ownership information for limited, specified uses upon request through established protocols to:

- Federal agencies engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity (Includes IRS);
- State, local and Tribal law enforcement agencies for use in criminal or civil investigations, if authorized by a court of competent jurisdiction;
- Foreign law enforcement agencies, prosecutors or judges when requested through a federal agency, and required to comply with a treaty (e.g., an income tax treaty or tax information exchange agreement) or limited to use in an authorized investigation or national security or intelligence activity

What should you do before December 31, 2023?

There are some tasks you may wish to consider before the end of the year. Please consider:

1. Obtaining a "FinCEN Identifier" as soon as you can. That system is supposed to be available on or after January 1, 2024. Individuals will need to provide their full legal name, date of birth, address, unique identifying number and issuing jurisdiction from an acceptable identification document, and an image of the identification document. Having an identifier lets each person keep information up to date in one location; rather than constantly having to update information. (Updates are required within 30 days of a change.)
2. Whose name you want to be listed as an "applicant".
3. Cleaning up (make current) the officers and directors lists.
4. Establish policy and procedures for reporting – both initial reports and changes. (Remember, every time an officer or director changes or moves, an update is required.) For complex organizations, a "system" may be necessary to facilitate the reporting.
5. Set up new entities before the end of 2023 to enjoy a deferred initial filing.

Understand your reporting requirement.

Penalties for willfully not complying with the BOI reporting requirement can result in criminal and civil penalties of \$500 per day and up to \$10,000 with up to two years of jail time. Please contact our office today at (814) 880-3753 to discuss. As always, planning ahead can help you comply and understand your filing obligations.

Kind regards,



Edward R. Jenkins, CPA, CGMA
Managing Member

Appendix A
23 Exemptions (Must read the descriptions.)

1. Governmental authorities,
2. Securities issuers (e.g., public companies),
3. Banks,
4. Credit unions,
5. Bank holding companies,
6. Money transmitters,
7. Broker/dealers,
8. Securities exchanges and clearing agencies,
9. Other Securities Exchange Act of 1934 registered entities,
10. Investment companies and advisers,
11. Venture capital fund advisers,
12. Insurance companies,
13. State-licensed insurance producers,
14. Commodity Exchange Act registered entities,
15. Public accounting firms,
16. Public utilities,
17. Financial market utilities,
18. Pooled investment vehicles,
19. Tax exempt entities,
20. Entities assisting tax exempt entities,
21. Subsidiaries of certain of the above-named exempt companies,
22. Dormant companies, and
23. "Large Operating Companies" noted in the letter.