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RE: Corporate Transparency Act — Beneficial Ownership Information Reporting Requirement

This topic applies to anyone who has an LLC or corporation with less than \$5 Million in sales. It is extremely important and urgent!

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.

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.

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 twenty-three categories of exemptions. 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:

- a) Employ more than twenty people in the U.S.
- b) Have reported gross revenue (or sales) of over \$5M on the prior year's tax return; **and**
- c) Be physically present in the U.S.

Who is a beneficial owner?

Any individual who, directly or indirectly, 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.

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 within 30 days.
 - There is [proposed](#) rulemaking 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 12/31/24.
- 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 is 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.

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.

We always recommend you to have an annual meeting with your attorney to discuss corporate issues. This is a good example of one of those issues.

At this time there is not a clear definition of who should provide this reporting service to you i.e. your CPA or your attorney. We believe corporate transparency laws align with legal services. As a result, Zelitsky & Company, LLC and its members, advisors, agents, representatives, and employees (hereinafter "CPA Firm") *are not providing any service which can be construed as legal advice as part of this CTA engagement. We assume no responsibility for advising you on the legal or regulatory aspects of the CTA. In addition, we assume no responsibility for submission of any reports to FinCen and client's beneficial ownership information. Therefore, you should consult your attorney. It should be noted that management is responsible for complete compliance with the CTA.*

You need to gather information for all of your LLC's and corporations that are active with the Secretary of State. Even if you no longer use an entity, if it is still active with the Secretary of State, the BOI reporting requirement applies. So, make sure you give your attorney the names of all your entities. Also, you may have one entity that is exempt from the BOI reporting requirements but may have one or more other entities that qualify. Do not overlook the smaller entities when consulting your attorney.

As always, planning ahead can help you comply and understand your filing obligations.

In summary, YOU NEED TO DISCUSS THIS LETTER WITH YOUR ATTORNEY!

Sincerely,

Robert Zelitsky, CPA

Zelitsky & Company, LLC