January 8, 2024

Estate Planning Update Winter 2023/2024 - Corporate Transparency Act: New Reporting Requirements for Family-Owned LLCs and Other Business Entities

The Corporate Transparency Act (CTA) is a new federal law that took effect on Monday, January 1. A summary of the CTA and its regulations can be found here in our previously published *Generations* newsletter spring/summer 2023 edition. The goal of the CTA is to allow the Financial Crimes Enforcement Network (FinCEN) to gather information related to the ownership and control of closely held corporate entities, as a tool for federal, state and local law enforcement agencies to prevent money laundering and other criminal activity, including acts of terrorism. The CTA creates a broad beneficial ownership reporting requirement for "reporting companies." A reporting company is a corporation, limited liability company (LLC) or other similar entity (i) created by the filing of a document with the secretary of state of a given state or (ii) formed under the laws of a foreign country and registered to do business in the United States. Common law trusts and common law partnerships are not reporting companies. Examples of "other similar" entities include limited partnerships and limited liability partnerships, which are also classified as reporting companies. However, there are 23 categories of exempt entities that are not subject to the reporting requirements. The CTA does not apply to any entity with (i) more than 20 full-time employees, (ii) a physical office in the United States and (iii) more than $5 million in sales or gross receipts as documented on federal tax returns filed the prior year. Other exempt entities are mostly large entities that are already subject to federal and state regulatory reporting requirements. Reporting companies are required to disclose certain personal information for all "beneficial owners" through the filing of a beneficial ownership information (BOI) report. Beneficial owners are generally defined as persons who own or control at least 25% of the ownership interests and persons who exercise "substantial control" over the reporting company. Four pieces of information must be disclosed about each beneficial owner:

- Name;
- Date of birth;
- Current residential address;
- The identifying number and issuer of a current U.S. passport, state-issued driver's license or similar identification document issued by a state (including a U.S. territory or possession), local government or Indian tribe. If none of those documents exist, an unexpired foreign passport can be used. An image of the identifying document must also be uploaded with the BOI report.

The reporting company must also submit certain information about itself, including its name(s) and address. In addition, reporting companies created after January 1, 2024, are required to submit information about the individuals who formed the company ("company applicants"). Reporting companies formed prior to January 1, 2024, must file their initial BOI report with FinCEN's Beneficial Ownership Secure System (BOSS) by January 1, 2025. This provides a 12-month grace period for all entities formed prior to 2024 to file their required BOI report. However, reporting companies formed in 2024 will have 90 days from the date of formation to file the required BOI report. Entities formed in 2025 or later will have 30 days from the date of formation to file the required BOI report. General information on filing a BOI report can be found here. There is no cost to file the BOI report with FinCEN, and BOI reporting is not an annual requirement. A BOI report need only be submitted once, but once filed, it must be updated within 30 days of any change in the information last reported. For example, if there is a change in ownership of the reporting company, an updated BOI report must be filed within 30 days to report the new beneficial owners. Similarly, if the residential address of a beneficial owner changes, the new address must be reported on an updated

BOI report within 30 days of the change in residence. The information submitted in a BOI report is not public record. All reporting submitted to the BOSS database will be confidential and only disclosed to federal agencies dealing with national security, intelligence or law enforcement activities. State, local and tribal agencies, along with certain private entities, may also access certain information in limited circumstances, typically with court authorization. Any party that willfully fails to file a BOI report or provides fraudulent information on a BOI report will be liable for fines up to $500 for each day there is a willful failure to report complete beneficial ownership information. Such parties may also be subject to criminal penalties of up to $10,000, a prison term of up to two years, or both.

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