Corporate Transparency Act

December 2023

Purpose

- To enhance US national security and protect the US financial system from illicit use
    - Make it more difficult for criminals to launder money, traffic drugs, and commit serious tax fraud and other crimes
- To obtain information about individuals who ultimately own or control the applicable entities

Background

As a part of the Anti-Money Laundering Act of 2020, Congress enacted the Corporate Transparency Act (CTA), which establishes uniform beneficial ownership information reporting requirements for certain types of corporations, limited liability companies, and other similar entities created in or registered to do business in the United States.

What It Means

- Effective January 1, 2024, reporting companies must file a beneficial ownership information report with the Financial Crimes Enforcement Network (FinCEN) that discloses certain required information

Key Terms

Reporting Company

- A corporation, limited liability company (LLC), or any 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
  - Can be domestic or foreign

Beneficial Owner

- Any individual who, directly or indirectly
  - Exercises substantial control over a reporting company, or
  - Owns or controls at least 25 percent of the ownership interests of a reporting company

Substantial Control

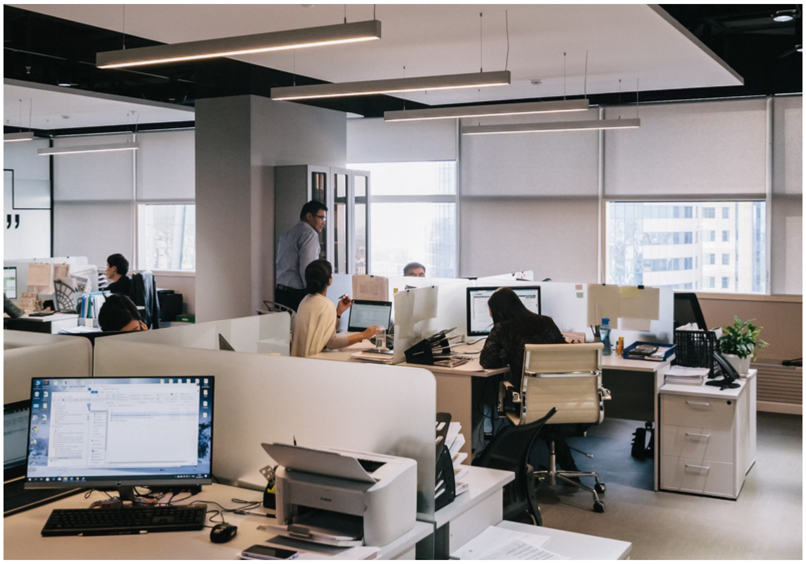
- An individual who
  - Serves as a senior officer of the company
  - Has authority over the appointment or removal of any senior officer or a majority of the board
  - Directs, determines, or has substantial influence over important decisions
  - Has any other form of substantial control
- An individual can have substantial control even if they have no equity interest in the entity!

Company Applicants

- The individual who directly files the document that creates the entity, or
- The individual who is primarily responsible for directing or controlling the filing of a document that creates the entity
- Examples
  - Paralegal who submits the form to the SOS
  - Lawyer who advises the set up of the entity

Reporting Company Exemptions

23 Types of Exempt Entities



- Most exemptions are for entities that are already subject to substantial federal or state regulation
  - Governmental authorities
  - Publicly traded companies and other entities that file reports with the SEC
  - Regulated financial services companies including banks, credit unions, money services businesses, securities brokers and dealers, certain pooled investment vehicles
  - Tax-exempt entities
  - Insurance companies, state-licensed insurance producers
  - Public utilities
  - PCAOB-registered accounting firms

Inactive Entities

- In existence on or before January 1, 2020
- Not engaged in active business
- Not owned by a foreign person
- Not experienced any ownership change in the preceding 12-month period
- Not sent or received more than $1,000 in the preceding 12-month period
- Does not otherwise hold any assets in the United States or abroad, including an ownership interest in a corporation, limited liability company, or other similar entity

Large Operating Companies

- Employs more than 20 full-time employees in the US
- Has an operating presence at a physical office in the US, and
- Has filed a federal income tax return in the US for the previous year that shows more than $5 million in gross receipts or sales

Beneficial Owner Exemptions

- There are 5 types of individuals that are exempt
  - Minor children
  - Individuals acting as nominees, intermediaries, custodians or agents
  - Employees acting solely as employees and not as senior officers
  - Individuals whose only interest in a reporting company is a future interest through a right of inheritance
  - Creditors of a reporting company

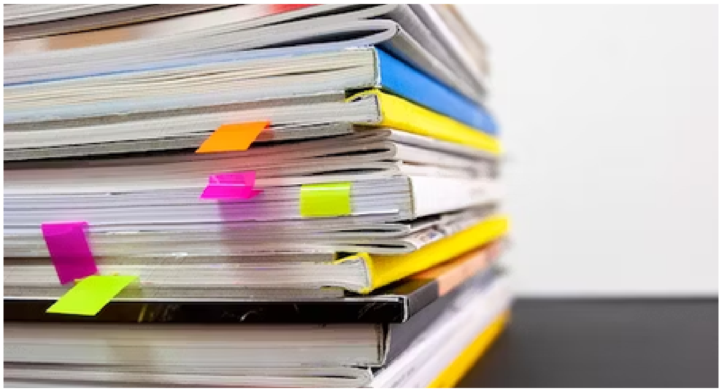
Company Applicants

- Must be reported for any reporting companies created or registered on or after January 1, 2024
- Can list a maximum of two company applicants

FinCEN Identifier

- Individuals may apply for an obtain a FinCEN Identifier
  - Provide their information to FinCEN directly
- The FinCEN Identifier can be provided to a reporting company and reported on a BOI report in lieu of the required information about the individual

What to Report



- Reporting companies must file reports with FinCEN that identify two categories of individuals
  - The beneficial owners of the entity
  - The company applicants of the entity, if applicable

Reporting Company

- Legal name and any DBA names
- Street address of the principal place of business
- Jurisdiction formed or registered in
- Taxpayer identification number

Beneficial Owners

- Full legal name
- Date of birth
- Residential street address
- Identifying number and the issuing jurisdiction from a current document
  - Passport
  - Driver's license
  - State or local ID document
- Image of that identification document

When to Report

- The effective date is January 1, 2024
- Reporting companies created or registered before January 1, 2024, have one year to file their initial reports (by January 1, 2025)
- Reporting companies created or registered after January 1, 2024, have 30 days **(extended to 90 days for entities created 1/1/24 – 12/31/24)** after receiving notice of their creation or registration to file their initial reports
  - Have 30 days to report changes to the information in their previously filed reports
  - Must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware of the inaccuracy of information in earlier reports

Company Applicants (Max of 2)

- Must be reported for any reporting companies created or registered on or after January 1, 2024
- Full legal name
- Date of birth
- Business street address
- Identifying number and the issuing jurisdiction from a current document
  - Passport
  - Driver's license
  - State or local ID document
- Image of that identification document

Report Filing

- FinCEN is not accepting reports before January 1, 2024
- There is no fee for filing the beneficial ownership information report
- Expectation is that BOI reports will be submitted electronically through an online interface
  - FinCEN is continuing to consider how to address cases in which a reporting company is unable to file through the online interface

Penalties

- Willful failure to report or update beneficial ownership information or willfully providing false or fraudulent information
  - Civil penalties up to $500 per day
  - Criminal penalties up to $10,000 and/or imprisonment of up to two years

Resources

- FinCEN has recently published several reference materials to help serve as guidance for business in determining reporting requirements
- FinCEN Website - Beneficial Ownership Information Homepage
- FinCEN Website - Frequently Asked Questions
- FinCEN Small Entity Compliance Guide

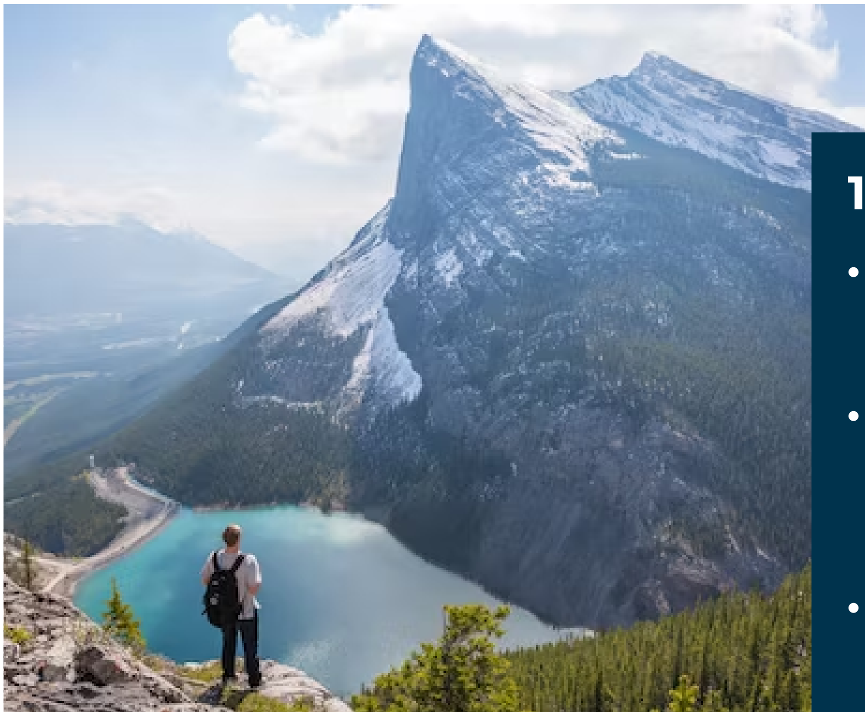
Next Steps

Get ready, it’s coming!

- While groups are seeking to get Congress to delay the effective date, we know they have little time to act before the end of the year of 2023.
- Don’t over-react...If you are an existing entity, you have until the end of 2024 before you must come into compliance. While we do not encourage you to procrastinate, we likewise do not recommend being the first ones to report.
- We recommend that you consult with your attorney to evaluate whether your business entity will be subject to the BOI reporting requirements as well as who will be considered a beneficial owner.
- Awareness – if you form a new entity in 2024, the current time-frame is a business only has 90 days before the reporting must be done.
- We want you to be aware and informed of the Corporate Transparency Act and its beneficial ownership information reporting requirements.
  - However, as these are considered legal filings and do not fall under the authority of the IRS, Seidel Schroeder is unable to offer the filing of these reports as a service.
  - We recommend reaching out to legal counsel with expertise in this area for questions or to assist with compliance.

SALT: State Nexus

(State and Local Taxes)



1,000 Feet View

- Do you have property or payroll outside of Texas?
- Do you have gross receipts that exceed $100,000 that are sourced to states other than Texas?
- Are you registered to do business in a state and/or withhold state payroll taxes outside of Texas?

What is Nexus?

It is the minimum connection a client must have with a state to trigger a tax return filing obligation.

Various State Filings

- State Income Tax
- State Sales Tax
- Franchise Tax, Gross Receipts Tax, Business Privilege Tax
- State Payroll Tax
- Annual Filing Reports

Types of Nexus

- Physical Presence – Employees, independent contractors, property in a state
- Economic or Factor Presence – Property, Payroll, or Sales that exceed a threshold amount. It is crucial that a client's gross receipts are being sourced correctly for both apportionment and nexus determination.

South Dakota v Wayfair

- 2018 US Supreme Court case that eliminated the requirement that a seller have a physical presence in the taxing state for the state to require taxes for that state
- This adds an economic presence nexus. This only enters the analysis phase when the vendor does not have a physical presence in the state being looked at.

Moving Toward Economic Nexus?

- States are moving away from physical presence requirements and leaning more into economic presence.
  - Applied by state with either a bright-line or "factor presence" economic nexus
- It is more than just sales tax!
- This will have an impact on income, franchise, and gross receipts tax.
- Factor presence applied by MTC
  - Property of $50,000 or
  - Payroll of $50,000 or
  - Sales of $500,000 or
  - 25% of total property, total payroll, or sales

P.L. 86-272

- Prevents states from imposing income tax on a person's income derived solely from interstate commerce if the only business was solicitation of orders, the orders were sent outside of the state for approval and if approved were filled by shipment outside of the state.
- Enacted in 1959 and has never been amended despite all of the changes that have happened in how both the US and global economies function today.

MTC's New Interpretation of P.L. 86-272

- MTC's new interpretation effectively negates protections for businesses that have sales activity over the internet.
- MTC released a new model statement on P.L. 86-272 that reads "as a general rule, when a business interacts with a customer via the business's website or app, the business engages in a business activity within the customer's state."
- MTC examples of unprotected internet activities: using provide post-sale assistance with chatbots, placing "cookies" onto computers of in-state customers, allowing credit card or job applications to be submitted on their website, or remotely fixing or upgrading products previously purchased by in-state customers

Action Steps

- If you haven’t already, begin using your accounting system to track your state transactions so that you can use this in your review and discussion with your CPA.
- It is a best practice for a business to conduct regular reviews of its activities in collaboration with their CPA.

SEIDEL SCHROEDER
CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS ADVISORS