TaxViews

A tax periodical for the private club community

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Corporate Transparency Act

The Corporate Transparency Act ("CTA") expanded anti-money laundering laws and created new reporting requirements for certain companies doing business in the United States. Beginning in 2024, in an effort to create a national database for use by national security and law enforcement agencies to prevent the use of shell companies for criminal activity, organizations will be required to report information about their beneficial owners to the Financial Crimes Enforcement Network ("FinCEN"). Generally speaking, the requirement applies to corporations, limited liability companies, limited partnerships, and any entity whose existence is created by a filing with the Secretary of State.

Included within the CTA are twenty-three types of entities **exempt** from beneficial ownership information reporting requirements. **These exemptions include, but are not limited to, certain tax-exempt entities, subsidiaries of certain exempt entities, and certain large operating companies among others.**

- Tax-exempt organizations recognized in Internal Revenue Code ("IRC") Section 501(c), which includes IRC Section 501(c)(7) social clubs, are not considered a reporting company under the CTA and are exempt from filing. However, if a club loses its tax-exempt status, it may become a reporting company 180 days after the loss of that status and may be required to report unless covered by another exemption. It is recommended that clubs with a revoked tax status seek legal counsel.
- Subsidiaries of a tax-exempt club meeting the exemption noted above are exempt from reporting. A subsidiary is an entity whose ownership interests are controlled or wholly owned, directly or indirectly by one or more tax-exempt entities.
- Large operating companies are also exempt. These are companies that employ more than twenty (20) full-time employees in the United States, have an operating presence at a physical office in the United States, and filed a federal income tax or information return in the United States demonstrating more than $5,000,000 in gross receipts or sales in the previous year.

Clubs not recognized as tax-exempt under IRC Section 501(c) may not qualify for the tax-exempt organization exemption noted above. However, such clubs may qualify for the large operating company exemption. It is recommended that any taxable social club or any club who lost tax-exempt status consult with legal counsel with respect to reporting under the CTA.

If not covered by an applicable exemption, an organization is required to report its legal name, any trade and dba names, its principal place of business address, its jurisdiction of formation, and its taxpayer identification number. In addition, the organization must report the legal name, date of birth, residential address and a unique number from an acceptable document for each beneficial owner.

Filings, if applicable, are due by:

- For existing reporting companies created or registered before 2024, the initial report is due by January 1, 2025.
- For reporting companies created or registered in 2024, the initial report is due 90 days after the entity's creation or registration.
- For reporting companies created or registered after 2024, the initial report is due 30 days after the entity's creation or registration. *This includes organizations that were previously exempt from filing but subsequently do not meet such exemption.*

If there is a change to previously reported information about the reporting company or its beneficial owners, an updated report must be filed within 30 days of the change. So, it is imperative that the organization implement a system to identify reportable changes and file an updated report with FinCEN in a timely manner. Noncompliance with the CTA's reporting requirements can result in significant penalties and the possibility of imprisonment. Fines range from $500 per day up to $10,000 and imprisonment of up to two years.

If applicable, reports must be filed electronically. FinCEN's e-filing portal, available at **https://boiefiling.fincen.gov/**, provides two methods to submit a report: (1) by filling out a web-based version of the form and submitting it online, or (2) by uploading a completed PDF version of the report. Some third-party service providers may also offer the ability to file the Beneficial Ownership Information ("BOI") report through their software. There is no fee for filing the report.

FinCEN has issued a guide for small businesses to understand compliance and reporting. This information can be found at: https://www.fincen.gov/boi/small-entity-compliance-guide.

As of the date of this publication, a District Court has ruled that the Corporate Transparency Act may be an unconstitutional exercise of Congress's enumerated powers, leaving the CTA and the future reporting process in limbo. In addition, there have been requests to delay implementation of the law. However, until a formal ruling and/or delay is issued, organizations should become compliant with the CTA, if applicable.

We are not attorneys, and we do not practice law, therefore we strongly recommend any club reviewing the applicability and reporting of the CTA consult with legal counsel.

This bulletin is prepared by our tax department and is provided to our clients for informational purposes only and may not be used or cited as precedent. If you have any questions on the information contained in this bulletin, please do not hesitate to give us a call.

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