

CLIENT ALERT

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1

NONPROFIT ORGANIZATIONS AND THE CORPORATE TRANSPARENCY ACT

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Effective as of January 1, 2024, the Corporate Transparency Act (“CTA”) requires most corporations, limited liability companies, and other registered entities to report Beneficial Ownership Information (“BOI”) to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). The CTA’s purpose is to combat illicit financial activity, including tax fraud, money laundering, and the financing of terrorism. Despite some recent developments (outlined below), the CTA remains in effect for the vast majority of the entities formed or registered in the United States.

Most tax-exempt entities are exempt from CTA reporting requirements, with a few important exceptions. The CTA contains reporting exemptions for 23 different types of entities, including some that will commonly apply to nonprofit entities and their affiliates:

- **501(c) Organizations:** All organizations described in Section 501(c) of the Internal Revenue Code (the “Code”) and exempt from taxation under Code Section 501(a), including typical 501(c) (3) charitable, educational, religious, etc. organizations as well as less common organizations exempt under Code Section 501(c), such as social welfare organizations, certain types of homeowner’s associations (see below), business leagues, and social clubs;
- **Entity Assisting a 501(c) Organization:** Entities operating exclusively to provide financial assistance to, or hold governance rights over, organizations described in Section 501(c) of the Internal Revenue Code (the “Code”) and exempt from taxation under Code Section 501(a);
- **Political Organizations:** Political organizations (as defined in Code Section 527(e)(1)) that are exempt from taxes under Code Section 527(a);
- **Charitable Trusts:** Charitable Trusts and Split-Interest Trusts (i.e. charitable lead and remainder trusts);
- **Wholly Owned Subsidiaries:** Subsidiaries whose ownership interests are controlled or wholly owned, directly or indirectly, by an entity exempt under 501(c), regardless of whether they are exempt themselves; and
- **Joint Ventures of a 501(c) Organization:** Non-exempt entities that are owned by more than one organization exempt under Code Section 501(c).

Simply being incorporated as a nonprofit entity, or having a nonprofit entity as a co-owner, without more, does not automatically exempt an organization from BOI reporting requirements. Nonprofits should be aware of the following less common situations that can lead to BOI reporting requirements:

- **Mixed Ownership Joint Ventures:** Entities that are owned by a combination of one or more 501(c) exempt entities and at least one non-exempt entity are required to report BOI.
- **Homeowners Associations (HOA):** Generally, there are two options for federal income tax exemption for HOAs, but only one category is exempt. HOAs exempt from taxation under Code Section 501(c)(4) are exempt from BOI reporting requirements. However, HOAs exempt under Code Section 528, including condominium management associations, residential real estate management associations, and timeshare organizations, are not exempt from BOI reporting requirements.
- **Governmental Organizations:** CTA does not apply to entities that 1) are established under the laws of the United States, an Indian tribe, a state, or a political subdivision, and that 2) exercise governmental authority on behalf of the United States or any such Indian tribe, state or political subdivision.
- **Non-Exempt Economic Development Organizations:** Many organizations that are involved in local economic development activities may be formed as not-for-profit corporations. Some of these organizations may be exempt from income taxation under 501(c) and are thus exempt from BOI reporting on that basis. Some organizations may be exempt from reporting under the governmental organization exemption. Regardless, all such organizations should review the CTA carefully to confirm whether they are subject to BOI reporting requirements.
- **Organizations That Have Had Their 501(c) Exemption Revoked:** If the IRS revokes a 501(c) organization’s tax-exempt status, the organization has 180 days from the date of the revocation to report its BOI to FinCEN. In the rare situations in which the IRS reinstates an organization’s tax-exempt status within the 180-day period, the organization is not obligated to report any BOI.
- **Newly Formed 501(c)(3) Organizations:** The CTA contains ambiguous language regarding the topic, but many attorneys are advising their clients that newly formed 501(c)(3) organizations are exempt from reporting requirements even if they have not yet been recognized as tax-exempt by the IRS. Until further guidance is published on the topic, the issue remains unclear. If an organization concludes that it is not CTA-exempt until recognized as tax-exempt by the IRS, the organization must file an initial BOI report within 90 days of formation. Upon receiving the IRS determination letter granting tax-exempt status, the organization must then file an updated report with FinCEN within 30 days indicating that it has obtained tax-exempt status and is therefore exempt from further BOI reporting requirements.

The consequences of violating the CTA are serious and include both civil and criminal penalties. All nonprofit organizations should take steps to determine whether they are subject to reporting requirements under the CTA.

On March 1, 2024, a United States District Court in Alabama issued an order enjoining the enforcement of the CTA. FinCEN, through a release on its website, has indicated that it will comply with the court's order as long as it remains in effect and will not "currently" be enforcing reporting requirements specifically against the plaintiffs in that lawsuit. On March 11, 2024, FinCEN filed a Notice of Appeal in the case with the Eleventh Circuit Court of Appeals.

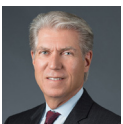
It is unclear how this order and its subsequent appeal will affect the CTA's long-term prospects or reporting requirements for other Reporting Companies. Given this uncertainty, entities existing before December 31, 2023, with a filing deadline currently set at December 31, 2024, might stand back for a couple of months and see what develops. We suggest, however, that newly formed Reporting Companies facing the 90-day filing deadline continue to submit their information until FinCEN advises otherwise.

Dickinson Wright PLLC is prepared to answer questions and assist with any required filings. We will strive to provide timely updates on this case and any other challenges to the CTA in the months to come. Additionally, we have a dedicated email address, ctacompliancegroup@dickinson-wright.com, for CTA-related inquiries. You can also subscribe to our Client Alerts on this topic through that link.

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