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CORPORATE TRANSPARENCY ACT

There's a new item on the horizon called the **Corporate Transparency Act** which you need to be aware of. Below, I've highlighted the most pertinent items for you. This will be a topic of discussion for all of us this fall as we prepare for year-end.

What is the Corporate Transparency Act?

Congress passed a bill in 2021, and Treasury released final regulations in September of 2022 that require reporting by entities and owners with the Treasury Department. Generally, any entity that's registered with the Secretary of State must register and report certain information to the Treasury Department. The stated objective of this information gathering is to use the data to combat money laundering. This information will be maintained in a database that is only available to Treasury personnel, it is NOT publicly available.

Called "Beneficial Ownership Information Reporting", the filing dates are as follows:

Initial Reports:

For any entity created or registered to do business in the United States *before* January 1, 2024; reports are due on January 1, 2025.

For any entity created or registered to do business in the United States *after* January 1, 2024; reports are due within 30 days of creation.

Updated Reports:

Required when there is a change to previously reported information about the reporting entity or its beneficial owners. Updated reports are required within **30 calendar days** after a change occurs.

Corrected Reports:

Corrected reports must be filed within 30 calendar days after the date the reporting company becomes aware of, or has reason to know of, an inaccuracy in previously reported information.

Who must report, and what gets reported?

This reporting is generally required by all small business entities. Single-member, or multi-member LLCs, S-Corporations, Corporations – any entity that is formed under the Colorado (or any other state) Secretary of State's office is subject to the reporting requirements. There are exceptions of course; any

entity that is registered with the SEC, banks, and similar entities are excluded – and they generally already are filing disclosure reports in other ways.

Certain tax-exempt entities are excluded from the reporting as well. Interestingly, larger business concerns may be exempt – if you have more than 20 full-time employees, and have more than \$5,000,000 in gross receipts, then you meet the “large company” exception. For this purpose, ‘full-time employee’ has a very specific definitions and if you feel that it might apply, great care should be taken when computing the number of FTEs. We’re used to this type of exception working the other way; but in this case, the smaller companies are the targets of this reporting system.

Each reporting entity must report the following data:

1. Legal name, trade name and any DBA used.
2. It’s street address.
3. The jurisdiction in which it was formed.
4. Taxpayer ID Number

The term ‘beneficial owner’ refers to any individual who exercises substantial control over your company, or who owns, or controls, 25% of the entity. As you might guess from this language, it is possible to be required to report data on more than just the owner in certain circumstances. Generally, anyone owning 25% or more will find that they need to provide the following information:

1. Legal name
2. Birth date
3. Home address
4. Identifying number from driver’s license or passport
5. An image of the document used in #4

In most cases, determining who is, and is not, a “beneficial owner” will be straightforward. However, there will be many cases where certain employees may be close to this status and thus care must be taken in this determination. Treasury has issued some FAQ type guidance to assist in this determination.

Additionally, for entities formed AFTER, January 1, 2024, in addition to the beneficial owners, entities will also have to report the above information with respect to their “Company Applicant”. This is the person who directly files the document that first registers or creates the entity, and the individual who is primarily responsible for directing or controlling the filing of said document. Generally, this would be the attorney who assists in the formation of the entity, but it could be the same as the owner themselves.

What this all means for you:

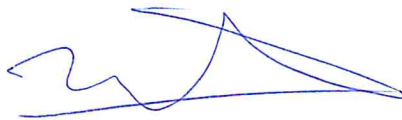
First, you must determine if you are required to file, and I expect that many of my clients will. Second, you must identify who the beneficial owners are. Then, you simply should be prepared to complete the Initial Report in January of 2024. From then on you need to have some system of monitoring and tracking this data for updates as things change over time be prepared to file the Updated Report.

Treasury is developing an online portal for this purpose. It’s worth noting that this program is being managed by the Financial Crimes Enforcement Network (FinCEN) – the same agency that deals with the

reporting of foreign bank accounts. The portal used for that purpose actually works quite well. It's notable that this is not being administered by the IRS.

The Treasury is very serious about this reporting – so much so that the potential penalties for failure to file are \$500 PER DAY. This is in no way like late filing penalties that we are accustomed to with respect to income tax.

Because of the severity of penalties, I felt it was very important to get this information out to you now, so that you can prepare for this. I am evaluating my ability to assist in this issue and by the time this is effective, I hope to have a process where my office can lend assistance in both the initial reporting and in the monitoring and updating as well.

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract shape.