

33rd Annual
Tax Symposium

**THE CTA DEADLINES ARE HERE:
WHAT ARE YOU WAITING FOR?**

David H. Freedman, Esq.
and
Jordan M. Small, Esq.



Maddin, Hauser, Roth & Heller, P.C.
One Towne Square, Fifth Floor, Southfield, MI 48076
p (248) 354-4030 f (248) 354-1422 maddinhauser.com



OVERVIEW

- Status of challenges to the CTA and potential outcomes
 - Is there any chance we won't have to file?
- A defunct entity may not have a free pass
 - Analysis under the inactive entity exemption and additional FinCEN FAQ guidance
- Tidbits learned along the way
 - Keys to efficient and secure CTA filings

CTA REPORTING DEADLINES

CTA REPORTING DEADLINES

- **The clock is ticking at an alarming speed.**
- **A little more than 6 weeks left for most companies.**
- **There are at least 32 million affected companies and the vast majority have done nothing (many are unaware of the CTA).**
- **The filing rate of Beneficial Ownership Information Reports with FinCEN as of mid-October was approximately 16%.**



CTA REPORTING DEADLINES

- **Existing domestic or foreign Reporting Companies formed before January 1, 2024: On or before January 1, 2025** (one year after the effective date of the CTA).
- **New domestic or foreign Reporting Companies formed during calendar year 2024: Within 90 days after its date of formation** (i.e., the filing date of its Articles or Certificate).
- **New domestic or foreign Reporting Companies formed on or after January 1, 2025: Within 30 days after its date of formation** (i.e., the filing date of its Articles or Certificate).

CTA CHALLENGES

CTA CHALLENGES

- **C'mon, is the nightmare over yet, surely I won't have to file?**
- **Stop calling me Shirley and snap out of your deep slumber. The CTA is real, the deadlines are real, and the civil and criminal penalties are real.**
- **The bottom line, is absent legislative or judicial changes, the CTA remains good law.**
- **Waiting for a change or delayed implementation is not prudent.**

CTA CHALLENGES

- Judicial Challenges
- There are nine different cases in the federal court system challenging the constitutionality of the CTA (AL, OH, ME, MI, TX, MA, OR, UT and VA).
- The Alabama case and others farthest along
- Other cases generally
- Timing

CTA CHALLENGES

- Legislative Challenges
- **Small Business Red Tape Relief Act of 2024**
- **Repealing Big Brother Overreach Act**



EXEMPTIONS

EXEMPTIONS – A REFRESHER

- ***Non-exempt reporting companies*** are required to file BOI reports
- Commonly used exemptions: **large operating company, wholly-owned subsidiary, inactive entity, tax-exempt entity** (23 total exemptions - most already regulated entities)
- If a Reporting Company and no exemption available, ***BOI Report required***

INACTIVE ENTITY EXEMPTION

INACTIVE ENTITY EXEMPTION

An inactive entity exempt from reporting under the Act is any entity that:

- was in existence on or before January 1, 2020; **AND**
- is not engaged in active business; **AND**
- is not owned by a foreign person, whether directly or indirectly, wholly or partially; **AND**
- has not experienced any change in ownership in the preceding twelve month period; **AND**
- has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve month period; **AND**
- does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

INACTIVE ENTITY EXEMPTION

***THAT'S A LOT OF REQUIREMENTS –
WHAT DOES IT MEAN TO TRULY BE
AN “INACTIVE” ENTITY?***

INACTIVE ENTITY EXEMPTION

NO ASSETS – REAL OR PERSONAL

- **Bank accounts – are they actually closed?**
- **Real or personal property?**
- **Line of credit? Debt?**

INACTIVE ENTITY EXEMPTION

NOT ENGAGED IN ACTIVE BUSINESS

- What was the business they were engaged in?
- When did it end?
- Was the entity dissolved/withdrawn from the appropriate state authority?

INACTIVE ENTITY EXEMPTION

FINCEN FAQ

- If do not satisfy inactive entity exemption, entity must (1) be dissolved prior to January 1, 2024, and (2) cease to exist (formally and irrevocably under state law). Act of dissolution may not be enough as there must be a complete wind down of business affairs.
- Dissolution in 2024 will be ineffective (whether the entity existed prior to 2024 or formed in 2024). Getting rid of a reporting company before the deadline won't work.
- Entity formed short-term for use in merger or reorganization and ceases to exist thereafter is still required to file a BOIR.

INACTIVE ENTITY EXEMPTION

I'M INACTIVE, NOW WHAT?

- Do I need to tell FinCEN?
- What if the entity starts up business again or gains an asset?



TIDBITS AND BEST PRACTICES

TIDBITS

- Single-members LLC's
- FinCEN ID Nos. <https://fincenid.fincen.gov/landing>
- Homeowner's Associations
- Drafting considerations
- Rep and warranty in purchase documents
- Missing beneficial owners (good faith filing v. willful failure to file)
- Effect of election outcome

UNAUTHORIZED PRACTICE OF LAW

- State-level inquiry
 - How does Michigan define it?
- FinCEN comments may be considered
- New Jersey Supreme Court Committee on the Unauthorized Practice of Law
 - CTA filing “**entails applying the terms of a dense statute to a set of potentially complicated facts**”
- Update from Michigan UPL counsel

TROUBLESHOOTING

- File sizes
- Old information on SOS website
- Passports



POST-FILING OBLIGATIONS

- Post-filing monitoring obligation responsibility (30 days)
- Confirmation from Beneficial Owners of correct information
- FinCEN IDs



33rd Annual
Tax Symposium

THANK YOU



David H. Freedman, Esq.

Shareholder

(248) 351-7011

(248) 359-7546 Fax

dfreedman@maddinhauser.com



Jordan M. Small, Esq.

Associate

(248) 351-7001

(248) 208-7003 Fax

jsmall@maddinhauser.com



Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076

p (248) 354-4030 f (248) 354-1422 maddinhauser.com

