

## **Filing your Beneficial reports under the Corporate Transparency Act—**

### **Are they Crying Wolf?**

**By Chuck Thornton**

Starting January 1, 2024 a significant numbers of business entities will need to file with the Corporate Transparency Act (CTA). Companies in existence prior to January 1, 2024 have until the end of 2024 to file.

There are penalties of up to \$500 per day for failure to file.

In some cases, owners of business may be able to do these report themselves. Otherwise, they may want to consider consulting with their attorney on the specifics of these filings and how they pertain to their business.

The discussion below is generic, and individual situations may vary. Consult with your attorney if you have any questions.

#### **Things you should know**

The FINCEN (Financial Crimes Enforcement Network) Website ([www.fincen.gov](http://www.fincen.gov)) has information that you can use, including short videos as to how to complete forms. We suggest you obtain the Small Entity Compliance Guide.

[www.fincen.gov/boi/small-entity-compliance-guide](http://www.fincen.gov/boi/small-entity-compliance-guide)

**Does your company have to report it's beneficial owners?—**In most cases if your company was formed under state or foreign statute you will be a reporting company (i.e. need to file) There are a variety of exemptions. These exemptions arise from other filing requirements outside of this statutes. Exemptions include, but are not limited to; investment companies, insurance companies, and public utilities (to name a few). **Most of these exemptions will not apply to some of our clients with the exception of a "large operating company" This applies to companies, operating in the US, which has at least 20 full-time employees and whose tax return is greater than \$5,000,000.**

**Who is a beneficial owner?**—These are individuals which exercise substantial control over a company OR owns or controls at least 25% of the ownership interest of the company. There is no maximum number of beneficial owners who must be reported.

This control can come via direct ownership, stock rights, capital or profit sharing interest, buy/sell agreements, contracts, employment position, etc.

There are various exemptions, including but not limited to minor children.

**Is my company required to report its applicants?**—Applicants are the individual forming and filing with the state or foreign entity. Applicants do not need to be disclosed for companies in existence before January 1, 2024. After that time, applicants need to be disclosed.

**What specific information does my company need to report?**—There is need to provide a variety of information about the company and beneficial owners. For the company, one can imagine the information to be provided—name, address, trade name, state of formation, and more. But for beneficial owners, there is a need to provide personal information such as home addresses, full legal names, identifying information (such as copies of passports, driver licenses, etc.)

**When do you file your report for your company?**—

- For companies in existence prior to January 1, 2024, the report is due by January 1, 2025.
- If your company is formed after December 31, 2023, you need to file the report withing 90 days after the receipt of the effective date registration with the state.
- For companies formed after January 1, 2025, the time period is 30 days.
- If there are changes to items required to be disclosed (like ownership) you are required to file within 30 days of that event.
- Note, if nothing changes with your entity, you may only have to file one time!

**A couple of wrap up thoughts.**

- Many organizations will be formed to offer this service. (Remember the proliferation of ERC companies?) Be careful if you utilize some

organization. You will be providing confidential information. And one needs to consider if they are practicing law, and have the financial backing to compensate you for any errors on their part.

- Use a FINCEN identifier—This is a unique identifying number that FINCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain information to FINCEN. This number allows you not to repeat personal information “over and over” if you have multiple companies. We suggest that you do this now. See page 40 of the Small Entity Compliance Guide referenced above.

**What will be the role of R.C. Thornton Accounting Group, LLC in the preparation of these reports?**

As this program has developed, many have questions whether or not CPAs, accountants, and even any non-lawyers can provide preparation of these reports. It is one thing to talk about generalities, but it is generally considered to be practicing law if you apply the generalities to a client specific situation.

In the area of tax, CPAs can advise about tax law, and this has long been decided with the rule of practice with the IRS. But these reports are not part of the IRS, but part of FINCEN.

Legal counsel as well as insurance carriers and educators on this topic advise CPAs, that preparing these report or applying the law to a client situation is the “practice of law”

As CPAs, we cannot practice law. And if we did, we would not be covered by our professional insurance.

We know there will be many interpretation of this, and interpretations may change over time. But for now...

R.C Thornton Accounting Group, LLC can only discuss this generically with clients. But we cannot apply specific analysis to your situations, even though we may well believe we have a “good” answer. This is why you will undoubtedly hear us say, “now that we have talked about this in general, you should consult with your attorney for specifics in your case.”

So please call us anytime, if you have a general question!