

CORPORATE TRANSPARENCY ACT REPORTING REQUIRED FOR CERTAIN NONPROFIT ORGANIZATIONS

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THE CORPORATE TRANSPARENCY ACT (CTA) REQUIRES most businesses to provide information regarding their ownership through an e-filing service provided by the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN). The CTA was enacted as an attempt to combat illicit activity by individuals and foreign organizations that have been able to capitalize on the anonymity available to entities in the United States. The disclosures required under the CTA include information such as the owners' names, addresses, dates of birth, and additional identification numbers (e.g., driver's license, FinCEN identifier, etc.).

Established nonprofit organizations may have learned that 501(c) organizations are exempt from reporting under the CTA. However, the exception for 501(c) organizations may not apply to all organizations that consider themselves "nonprofits." As a result, professional advisors working with nonprofits should ensure leadership of those organizations are made aware of what the CTA is and how they may be required to make reports to FinCEN in certain cases.

Under 31 CFR 1010 of the CTA, nonprofit organizations, and entities related to them, are exempt from the CTA reporting requirements if the entity qualifies as one of the following types:

1. The entity is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code;
2. The entity is a political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code;

3. The entity is a section 4947(a) charitable trust;
4. The entity is a wholly owned subsidiary of one of the entity types listed above; or
5. The entity operates exclusively for the benefit of one of the entity types listed above by providing financial assistance to, or holding governance rights, over any such entity.

Notably, the regulations require organizations to be recognized as tax-exempt under Section 501(a) and described in section 501(c) to meet the CTA exemption for 501(c) organizations. Many 501(c) organizations, including most 501(c)(3) organizations, are not recognized by the IRS as tax-exempt until they have filed an application with the IRS for a formal determination of tax-exempt status. FinCEN has publicly confirmed that they have declined to change the regulations to give nonprofits exemption when their tax-exempt status is pending or when their tax-exempt status has been revoked.¹ As a result, many organizations may be nonprofits but still have obligations to file FinCEN reports because their status as a 501(c) organization is not yet recognized. The reporting requirements for an organization may also change if the organization's tax-exempt status changes.

Existing Nonprofit Organizations & Organizations Automatically Having 501(c) Status

If the nonprofit organization is already in existence, has not received a revocation of its tax-exempt status, and has been granted recognition as a 501(c) entity prior to Jan. 1, 2024, the organization is currently exempt from the reporting requirements under the CTA. However, if the IRS revokes the organization's tax-exempt status for any reason, the directors and officers should be aware the organization must satisfy the



reporting requirements under the CTA within 180 days of the revocation. It is essential the nonprofit's leadership keep an eye on this 180-day deadline as it may arrive prior to the IRS' reinstatement of the organization's tax-exempt status.

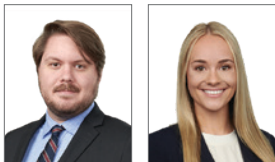
Nonprofit Organizations Formed Before Jan. 1, 2024, That Have Not Yet Received Recognition as 501(c) Organizations

If an organization is required to apply for recognition of tax-exempt status and the IRS has not yet issued a determination letter recognizing the organization's status under 501(c), the organization is not exempt from the reporting requirements under the CTA. However, for nonprofit organizations formed prior to Jan. 1, 2024, there is a one-year grace period to comply with the CTA. Directors and officers of these organizations should be monitoring when they expect a determination letter from the IRS regarding tax-exempt

status and the requirement to report under the CTA by Jan. 1, 2025, if tax-exempt status has not yet been granted.

New Nonprofit Organizations Formed in 2024 or Later That Are Required to File for Recognition of Tax-Exempt Status

For nonprofit organizations formed after Jan. 1, 2024, the organization is required to report under the CTA within 90 days of formation. Because it is very unlikely that the IRS would grant a determination of a new organization's tax-exempt status within 90 days, advisers to new nonprofit organizations should discuss reporting responsibilities under the CTA during the time that the organization may be waiting to obtain tax-exempt status. ◀



Nick O'Brien and Kate Hughes, attorneys at Koley Jessen, are integral members of the firm's Estate, Succession, and Tax Department. Their expertise spans a spectrum within this specialized area, covering estate and wealth transfer

planning, charitable planning, nonprofit formation and compliance, and tax. With their extensive knowledge and experience, they serve as dependable guides for CPAs navigating the nuanced impact of the Corporate Transparency Act on charities. For additional information or assistance, please contact O'Brien at nick.obrien@koleyjessen.com and Hughes at kate.hughes@koleyjessen.com, respectively.

ENDNOTES

¹ See 87 FR 59498 (2023) (including official comments by FinCEN regarding public comments and final regulations).

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