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How The Corporate Transparency Act May Impact Your Estate Plan

By Liz Altman & Elizabeth Green

Starting on January 1, 2024, under a new law called the Corporate Transparency Act (CTA), owners of certain business entities must file a report with the federal government including details regarding the ownership of their entity. The CTA was enacted to help combat money laundering, financing of terrorism, tax fraud, and other illegal acts. If you have an entity (corporation, limited liability company, family limited partnership, etc.) as part of your existing estate plan, this is important information you need to know to ensure that you comply with the new law.

What is the Corporate Transparency Act?

The CTA is a law that requires business entities it identifies to disclose certain information about the company and its owners to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). Under the CTA, a reporting company is defined as a corporation, limited liability company (LLC), or other similar entity (i) created by filing a document with the secretary of state or a similar office under the laws of a state or Indian tribe or (ii) formed under the laws of a foreign country and registered to do business in the United States. The following information about the reporting company must be included in the report:

- company's legal name and any trade names or doing business as (d/b/a)
- street address of the principal place of business
- jurisdiction where the business was formed
- tax identification number

Additionally, the reporting company must inform FinCEN about its beneficial owners, defined as persons who hold significant equity (25 percent or more ownership interest) in the reporting company or who exercise substantial control over the reporting company:

- full legal name
- date of birth
- current address
- unique identification number from an acceptable identification document

For reporting companies created on or after January 1, 2024, the same information must be provided about the company's applicant, who is the person who files the creation documents for the reporting entity.

Note: Although a trust is not considered a reporting company under the CTA, if your trust owns an interest in a reporting company, such as an LLC, certain information about your trust may also have to be disclosed under the CTA because it may be deemed to be a beneficial owner.

Does the CTA impact you?

Many business regulations apply only to large businesses, but the CTA specifically targets smaller entities. If you own a small business, you may be subject to this act unless your business falls under one of the stated exemptions, which primarily apply to industries already heavily regulated and have their reporting requirements. Your business may also be exempt from the reporting requirements if it employs over 20 full-time employees, filed a return showing more than $5 million in gross receipts or sales, and has a physical office within the United States.

Complying with the CTA is imperative if you own a business entity or have one as part of your estate plan. We routinely create entities that might qualify as reporting companies as part of our clients' estate plans. These include LLCs and family-limited partnerships.

Limited Liability Companies

An LLC is a business structure that can own many types of accounts and property. These entities can provide asset protection and probate avoidance.

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Asset Protection

Because an LLC is a separate legal entity from its members, the LLC's creditors can typically recover only business debts from the LLC's money and property, not the member's accounts or property. Also, if the proper formalities are in place, the member's creditors may not reach the LLC's accounts and property to satisfy the member's debts.

Note: In states, a single-member LLC does not enjoy the same protection from the member's creditors. The rationale of these laws is that your creditors should be able to recover your debts through your LLC interests to satisfy their claims because there are no other members that will be negatively affected by the seizure of money and property owned by the LLC.

Probate Avoidance

Anything that is owned by the LLC—retitled into the name of the LLC during your lifetime, bought by the LLC, or transferred by law at your death—will not go through the public, costly, and time-consuming probate process. The probate process only transfers accounts and property you owned at your death. By using an LLC to own accounts and property, the LLC—not you—owns them. However, if you own the membership interest in your name, transferring the membership interest at your death may still need to go through the probate process.

Family Limited Partnerships

A family limited partnership (FLP) is an entity owned by two or more family members, created to hold the accounts, properties, or businesses contributed by one or more of the family members. An FLP has at least one general partner responsible for the management of the partnership, has unlimited liability, and is compensated by the partnership for their work according to the partnership agreement. An FLP also has one or more limited partners who may vote on the partnership agreement but may not manage the partnership. The limited partners receive the income and profits of the partnership but have no personal liability for the partnership's debts or obligations. Asset Protection

This estate planning strategy is useful because an FLP can help protect accounts, properties, and businesses held by the entity from your and your family's creditors. Those items are not owned by you and your family as individuals but instead are owned by the entity. If a creditor obtains a judgment against you or your family for a claim not related to the FLP, it is more difficult for the creditor to access anything that the FLP owns to satisfy that claim.

Tax Planning

Also, because of its lack of control and restrictions on selling a partnership interest, the value of a limited partnership interest, you give to a family member can be discounted, allowing you to maximize your annual gift tax exclusion and lifetime estate and gift tax exemptions.

What must you do to comply with the CTA?

To comply with the act, gather the required information for all reporting companies you own and all other beneficial owners. For entities created before January 1, 2024, submit the initial reports for each reporting company by January 1, 2025. The current requirement for reporting companies created after January 1, 2024, is that the initial report is due within 30 days of the entity's creation. Please note, however, that a new rule has recently been proposed that would temporarily extend this deadline from 30 to 90 days for business entities formed during 2024. If implemented, this rule would allow additional time to understand and comply with the new requirements.

Timeline for Reporting

Any existing company formed before the effective date will have a full year to file their initial reports, December 31, 2024. Newly formed companies registered after the effective date will have thirty days to comply after receiving notice. Companies that have changed their beneficial ownership will have thirty days to report too, and companies must fix errors with their initial filing within thirty days. Reporting will take place through a secure electronic filing system through FinCen's website.

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(this system is currently under development).

Having a business entity as part of your estate plan can be an excellent tool depending on your unique situation. If you have one entity or are considering forming one, please contact us at Altman & Associates at 301 468 3220 or through our website altmanassociates.net to discuss the next steps to ensure that you comply with the CTA. For those who have created entities that must comply, please call us to schedule an appointment or your financial advisor so you comply.

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