

Corporate Transparency Act Reporting Requirements: Is Your Nonprofit Organization Exempt?

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Congress passed the Corporate Transparency Act (the “**CTA**”) in January 2021 to provide law enforcement agencies with further tools to combat financial crime and fraud. The CTA requires certain legal entities (each, a “**reporting company**”) to report, if no exemption is available, specific information about themselves, certain of their individual owners and managers (“**beneficial owners**”), and certain individuals involved in their formation (“**company applicants**”) to the Financial Crimes Enforcement Network (“**FinCEN**”) of the U.S. Department of Treasury.

Nonprofit organizations are “reporting companies” under the CTA and must assess whether an exemption applies. **All reporting companies that are not exempt and formed on or after January 1, 2024 will need to comply with the CTA’s new reporting requirements in 2024, and those in existence before January 1, 2024 will have to file an initial report on or before January 1, 2025.**

There is a three-pronged exemption for tax-exempt entities. Specifically, the following types of tax-exempt entities are exempt from the CTA's reporting requirements:

- **Organizations described in IRC 501(c)**, determined without regard to IRC 508(a);
- **Certain political organizations**; and
- **Certain non-exempt charitable or split interest trusts**.

The first prong encompasses all IRC 501(c) organizations, including most charities, schools and other educational institutions, churches and other religious organizations, private foundations, social welfare organizations, labor organizations, trade associations, chambers of commerce, and social clubs. Notably, this prong applies without regard to whether the qualifying organization has filed an application for recognition of tax-exempt status pursuant to IRC 508(a).

Significantly, nonprofit status by itself is insufficient to qualify for this exemption: the organization must also be described in IRC 501(c). This could mean that defective drafting of a nonprofit's Articles of Incorporation could inadvertently trigger the reporting disclosures of an organization that might otherwise qualify for exemption from those requirements.

Nonprofit organizations that lose their IRC 501(c) exempt status could also inadvertently become subject to the CTA's reporting requirements. For example, this could occur if the organization fails to file its annual information return (IRS Form 990) for three consecutive years. In situations like this, the CTA provides such organizations a period of 180 days in which to reactivate their exempt status before the CTA reporting obligations are triggered. However, that is a relatively short window of time.

Keep in mind, too, that other types of tax-exempt entities exist but fall outside the exemption from the CTA's reporting requirements. For example, homeowner and condominium associations covered by IRC 528 fall outside the CTA's exemption for tax-exempt entities.

Nonprofit organizations and their Boards of Directors and Trustees should prepare now and familiarize themselves with the CTA, as fines of

\$500 per day can be levied for failure to timely comply with the new reporting requirements if not exempt. Criminal penalties (including imprisonment) are also available to regulators in certain circumstances, including where a person willfully fails to file any required report.

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