

Part 5: Addressing and Demystifying Common Denials Surrounding the Upcoming CTA

By: William Quick

CTA Denial #5: “I just won’t report.”

Statements similar to the foregoing are uttered by a shocking number of business owners with whom I speak about the CTA and its reach, application, and exposure. However, there are a number of factors uniquely associated with the CTA, its origins, and its implementation that make its enforcement and your possible noncompliance exceptionally problematic. Chief among these, at least for individuals,^[2] is that their refusal will be conspicuously noted on a reporting company’s filing with FinCEN. A checkbox is included on the BOI reporting questionnaire: “(check if you are unable to obtain any required information on one or more Beneficial Owners).” Once checked, this conspicuous omission will be a red flag to FinCEN, and other law enforcement agencies, for initial or further investigation.

Further, the Internal Revenue Service (“IRS”) recently announced its taxpayer enforcement initiatives, which include plans to hire nearly 87,000 new employees and invest \$80 billion over the coming years^[3] to improve tax enforcement and customer service, with more than one-third of the new hires being enforcement staff. The agency also plans to hire more data scientists to complement traditional tax attorneys and revenue agents in using new data analytics technology to identify audit targets. FinCEN’s BOSS database, created under the CTA, will likely be a key component to such data analytics technology and will provide an inexpensive, efficient investigative tool and corroborating (or “red flag”) source of taxpayer information for the IRS. The IRS initiatives’ stated aims are to close the “tax gap” between taxes owed and those paid, and to rebuild the IRS’s audit capabilities and computer technology. The IRS’s stated goals also include expanding enforcement for taxpayers with complex tax filings and high-dollar noncompliance, including high-income and high-wealth individuals, complex partnerships, and large corporations.^[4]

Hopes that the CTA is nothing more than another pro forma survey data collection initiative by the government are naïve and misguided. FinCEN’s BOSS database will be a critical point of diligence for investigation by federal government agencies. Your business entity’s conspicuous absence from the BOSS database, or your personal omission from a reporting company’s CTA filing, will most certainly be discovered—and will spearhead other federal investigations into you and your business practices.

Conclusion

The Corporate Transparency Act is a new beneficial owner reporting requirement in the United States. Beginning January 1, 2024, tens of millions of U.S. business entities, and their beneficial owners, will become subject to FinCEN's new requirements which were originally designed to catch "bad" actors choosing to hide behind the "corporate veil." Whether you like it, hate it, or are indifferent, the CTA is here to stay. Compliance is both mandatory and advisable. Now is the time to discuss this with your legal team for guidance.

[2] It bears noting that the person responsible for a reporting company's CTA filing, in some instances, may not be a "beneficial owner" of the business entity, or only one of several "beneficial owners," and will likely make the filing (even over potential objections) to avoid personal culpability. The willingness of one person to violate the law, problematic on its face, also implicates the rights and risk profile of other persons associated with the reporting company. The other implicated individuals in the business organization may not share this risk tolerance.

[3] Note that section 251 of the debt ceiling bill, Pub. L. No. 118-5 (2023), rescinded \$1,389,525,000 of IRS earmarked funding.

[4] See [*Beware, the IRS Is Coming: More IRS Audits to Focus on High-Net Worth Individuals and Passthrough Entities*](#), Polsinelli (Apr. 18, 2023).