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New York Legal Alert

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News & Announcements

New York Adopts Its Own LLC Transparency Act

You have probably seen a number of notices about The Corporate Transparency Act (CTA), *which goes into effect January 1, 2024*. In the wake of that Federal statute, New York has adopted its own LLC Transparency Act, signed by Gov Hochul on December 22.

New York State has just adopted its own LLC Transparency Act (LLC TA) that very much rides the coattails of the Federal Corporate Transparency Act (CTA). In fact, the LLC TA incorporates the definitions “beneficial owner” and “reporting company” from the CTA. And, subject to some of the issues discussed below, a reporting company can satisfy its obligation under the LLC TA by filing with New York State a copy of its FinCEN filing under the CTA.

So, what makes the LLC TA different from the CTA?

First, the LLC TA applies only to limited liability companies formed in New York or qualified to do business in New York. The CTA covers a multitude of business entities, including LLCs, corporations and limited partnerships.

Second, under the LLC TA existing LLCs and entities formed or qualified in NY through December 2024 that qualify as reporting companies have until January 1, 2025 to make an initial filing. Thereafter, an initial report is due as part of the formation or qualification process for new entities. The CTA also allows existing entities all of 2024 to make an initial filing, but entities created in 2024 have 90 days after formation to file and new entities formed after 2024

have 30 days to file. The timing for when the New York report is due versus the FinCEN report is one reason why filing the FinCEN report with New York may not be practical.

Third, while the New York report must include “beneficial owner” information, a “beneficial owner” can provide a business street address. The CTA requires a residence address. This difference is the other reason why filing the FinCEN report with New York may not be desirable.

Quick aside; there is one further reason why filing your FinCEN report with New York may not work. The CTA allows individual beneficial owners to obtain personal FinCEN identifiers. Reporting companies then only need to provide that number; not all of the beneficial owner's personal information. However, a report with only a FinCEN identifier will not have the information required by New York.

Fourth, the LLC TA provides for much of the collected data to be public, while the FinCEN database will not be publicly available. While the public New York database will not include the business street addresses of beneficial owners, the names of beneficial owners will appear alongside the LLC name and its business street address. Individuals who have a “significant privacy interest” can apply for a waiver. If granted, then only a random ID number will appear in lieu of their name. How narrow or expansive this exception will become remains to be seen. All that the New York statute provides is that:

Significant privacy interests shall include, but not be limited to, where a beneficial owner is a natural person participating in an address confidentiality program, or is a member of a limited liability company acting as a relator in a *qui tam* action filed pursuant to section one hundred ninety of the state finance law or 31 U.S.C. section 3729.

Fifth, under the CTA, companies that are not reporting companies have no obligation to file. In contrast, the LLC TA requires that “exempt companies”

file a statement indicating the provision under which they are exempt.

Clearly, New York will know if a pre-existing LLC fails to make an initial filing or if a new LLC fails to submit its initial report with its formation or qualification certificate. However, there is no obvious way for New York to know when a change has occurred necessitating the filing of an amendment. Notwithstanding, the LLC TA provides that an LLC can be declared delinquent for failing to file. Once delinquent, good standing can be restored by making the necessary filing and paying a \$250 civil penalty.

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This Alert contains only a brief summary of the key points discussed, and is not intended as a complete description of the LLC TA.

If you have questions about your reporting obligations, SSRGA is here to help. Please reach out to your regular contact partner or any of the members of SSRGA's CTA Working Group:

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