

# DECEMBER 2021 NEWSLETTER

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## **A. CORPORATE TRANSPARENCY ACT**

## **B. PENNSYLVANIA DECENNIAL REPORTS**

### 1. AWARDS:

Pozzuolo Rodden Pozzuolo, PC is proud to announce that Acquisition International's Legal Awards following dedicated research and merit based judging named this law firm the "Best Estate Planning & Elder law Firm 2021-Greater Philadelphia".

Pozzuolo Rodden Pozzuolo, PC is proud to announce that Joseph R. Pozzuolo, Esquire was voted and selected a 2021 Top Attorney by Suburban Life and Philadelphia Life Magazines. This honor is limited to no more than 5% of the attorneys practicing in Pennsylvania.

### 2. BLOGS:

The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website [www.pozzuolo.com](http://www.pozzuolo.com):

- a. Can An Employer Ask An Employee If He/She Received and/or Require The COVID-19 Vaccine;

- b. Can You Use A 529 Plan To Pay For SAT Prep?; and,
- c. Living Wills and Power of Attorney.

Please visit our website [www.pozzuolo.com](http://www.pozzuolo.com) for more information on these and other relevant business, tax, estate, business litigation and employment topics.

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## **A. CORPORATE TRANSPARENCY ACT**

On January 1, 2021 Congress passed the National Defense Authorization Act (“NDAA”) overriding President Trump’s veto which included a piece of legislation known as the Corporate Transparency Act (“CTA”). The CTA requires all entities formed or registered to do business in the United States or under an Indian Tribe (a “Reporting Company”) to report who the beneficial owners are of each such Reporting Company. The impetus for the CTA is to fight shell companies used for criminal activity including, but not limited to, money laundering, human trafficking, tax evasion, counterfeiting, piracy, securities fraud, and promoting terrorism, therefore, it received overwhelming bipartisan support. However, with this on the horizon, many business owners need to know what is necessary to comply with the CTA or potentially face substantial civil and criminal penalties and/ or potential jail time.<sup>1</sup>

### **Who does it apply to?**

More generally, the CTA applies to any entity deemed a Reporting Company. This is an all-encompassing definition including all corporations, limited liability companies, or other similarly entities created or required to be registered with a secretary of state (or similar office) of a State or Commonwealth in the United States to do business in the United States. With a wide sweeping definition it would cover a majority of entities formed and operated in the United States.

However, there is a laundry list of entities which are specifically exempted from the reporting requirements as a Reporting Company. A non-exhaustive list includes:

- Publicly traded companies;
- Companies that employ more than 20 employees on a full-time basis in the United States; filed income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales; and, has an operating presence at a physical office within the United States;
- Money transmitting businesses already monitored by Financial Crimes Enforcement Network (“FinCEN”);
- 501(c) organizations;
- Political organization;
- Dormant companies which have been in existence for more than a year and are not engaged in active business and are not owned by non-US individuals; and,

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<sup>1</sup> This newsletter is not meant as a complete summary that can be used in substitute for professional legal advice, but is to put people on notice about the new CTA rules to comply with on the horizon.

- Depository institutions, credit unions, banks, securities broker or dealers, insurance companies, and other entities which are already subject to strict federal monitoring and stringent reporting requirements.

As a result, the majority of closely held businesses will be deemed a Reporting Company and be required to report under the CTA unless it fits one of the specific exceptions. Even with an exemption an entity is required to file stating which exemption applies and there needs a certification by an officer, director, or similar agent providing identification information with relation to the person making such certification.

### **What needs to be reported?**

Each Reporting Company is required to send a list of the “Beneficial Owner(s)” to FinCEN. A Beneficial Owner does not include every owner, but specifically includes any natural person who directly or indirectly:

- Exercises substantial control over a corporation or limited liability company;
- Owns 25 percent or more of the equity interests of a corporation or limited liability company; or,
- Receives substantial economic benefits from the assets of a corporation or limited liability company.

The CTA does specifically exempts certain people such as minor children, someone acting as an intermediary or representative for another person, someone acting solely as an employee of a Beneficial Owner, or creditors.

The CTA requires the following identifying information on each Beneficial Owner and whoever submits such information:

- Full name;
- Date of birth;
- Current residential or business street address; and,
- Unique identifying number from a non-expired US passport, personal ID card, or driver’s license issued by a State or Commonwealth of the United States.

Further there is a duty to submit an annual filing of the then current Beneficial Owners and note any changes in Beneficial Owners during the previous year.

### **When does a Reporting Company need to submit the beneficial ownership registration?**

The first question for when reporting is required is when does the CTA go into effect. It is effective at the publication of regulations by the US Department of the Treasury’s Financial Crimes and Enforcement Center (“FinCEN”) providing further details as to the CTA, which is not to come later than December 31, 2021. Therefore, it is expected to be in effect as of January 1, 2022, at the latest, unless Congress extends this deadline.

Once regulations are in place, newly filed entities will need to report upon filing, but it is not specifically stated whether that means immediately or, more likely, whether there will be a grace period of 30 days or so. This would likely be mapped out in such regulations. Entities that existed before the date of regulations will have two years from the date of issuance of such regulations to file any reports required by the CTA. Therefore, existing entities have some time to comply, but eventually compliance will be necessary.

### **Effects of non-compliance**

The knowing, willful, or even negligent failure to comply with the CTA can lead to: i) civil penalties of up to \$500 for every day the violation continues; ii) criminal penalties of up to \$10,000; and/or, iii) imprisonment for not complying up to 2 years. Thus, it is important to comply with all reporting rules to avoid such penalties.

### **Conclusion**

The CTA creates a whole new era of reporting requirements for business entities, largely which will be applicable to closely, privately held businesses. The requirements do not start until regulations are published, which should provide further details on how and when requirements can be met. If you own a closely held business, pay attention and be on the lookout for when these final regulations are published to make sure you comply with the new rules.

Please feel free to contact our offices if you would like to discuss how or whether the CTA is applicable to your specific business situation and entity.

## **B. PENNSYLVANIA DECENNIAL REPORTS MUST BE FILED BY DECEMBER 31, 2021**

A Decennial Report is a report of a Pennsylvania entity's continued existence which is required to be filed every ten (10) years in years ending with the numeral "1". Specifically:

“All domestic and foreign business corporations, non-profit corporations, limited liability companies, limited partnerships, limited liability partnerships that are not also limited partnerships, business trusts, as well as insignias and marks used with articles and supplies that have not made a new or amended filing with the Bureau of Corporations and Charitable Organizations (Bureau) from January 1, 2012 thru December 31, 2021, must file a report that they continue to exist. This report must be filed with the Bureau (part of the Pennsylvania Department of State) during the calendar year 2021. 54 Pa.C.S. § 503(b)(1), § 1314(b), § 1515(b). Fictitious names and trademarks are not required to make decennial filings.”

The purpose of the Decennial Report is for the Commonwealth to determine which entity names and/or marks are no longer being used so that they can be reissued for use by other

entities.

The Pennsylvania Department of State has a deadline of December 31, 2021 for Decennial Reports to be filed by Pennsylvania entities. If you received an “Action Requested” post card dated January 15, 2021 from the Pennsylvania Department of State, you must follow the instructions on the post card and/or go to the following website to click the link to complete the Decennial Report of Association Continued Existence:

<https://www.dos.pa.gov/BusinessCharities/Business/Resources/Pages/Decennial-Filing.aspx>

The fee is \$70, made payable to the PA Department of State.

If you did not receive a post card, you should visit the above link to check to confirm whether your entity name appears on the searchable documents that list each Pennsylvania entity that is required to file the Decennial Report of Association Continued Existence. Failure by the Department to give notice to an entity or failure by a party to receive notice of a decennial filing requirement does not relieve a party of the obligation to make the decennial filing. If you fail to make the required filing by December 31, 2021, your entity no longer has exclusive use of its name on or after January 1, 2022.

Feel free to contact our offices if you need further guidance on this mandatory filing.

This newsletter is courtesy of Pozzuolo Rodden Pozzuolo, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at [INFO@POZZUOLO.COM](mailto:INFO@POZZUOLO.COM).