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TO: NC Business Entity Clients
FROM: Elizabeth E. Robbins
DATE: November 29, 2023
RE: Corporate Transparency Act

As a courtesy to our North Carolina business entity clients, I write to inform you of a federal law that will soon go into effect and require information reporting of your business entity. In 2021, Congress enacted the Corporate Transparency Act (the “Act”), which will go into effect January 1, 2024. The purpose of the Act is to increase oversight of business entities not subject to heavy federal regulation in order to reduce, among other objectives, money laundering, tax fraud, and other illicit activities. It is designed to capture more information about the ownership of specific entities operating in or accessing United States markets. I am providing you with general information so that you will be prepared to be in compliance with the new reporting requirements. This memo focuses on those entities that will be subject to the reporting requirements under the Act.

Certain business entities will soon be required to report specific information regarding its owners and responsible parties to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). **Based on the broad application of the Act, the vast majority of our clients who own any interest in or are in a position of control over a corporation, limited liability company and/or partnership (either directly or indirectly through a trust or other entity), and/or are impacted by, will be subject to the reporting requirements under the Act.**

Who is subject to the Act?

Any corporation, limited liability company (LLC), partnership, and other entity formed by filing documents with the relevant department of state (e.g. N.C. Secretary of State) is subject to the reporting requirements. There are very limited exceptions to the reporting requirements, primarily for large entities already subject to various federal reporting requirements. The full list of exempt entities can be found on the FinCEN website which is linked in the body of this email.

Penalties

The responsibility of reporting on behalf of the entity will be on the owners and/or senior officers of the entity. If a Reporting Company or individual willfully reports false or fraudulent information, or willfully fails to report complete or to revise outdated or incorrect information, penalties include: 1) up to two years in prison, 2) up to a \$10,000.00 fine, and 3) a \$500 fine for each day of noncompliance.

It will be the Reporting Company's responsibility to file the initial report and to timely update or correct information previously filed with FinCEN; it shall not be and do not assume that Casey & Robbins, PC will undertake this responsibility!

What information must be reported to FinCEN?

Those entities that are required to report information to FinCEN are referred to as a “Reporting Company” in the Act. The Reporting Company must report and provide the following information for each “Beneficial Owner” of the Reporting

Company: full name, date of birth, residential and business street addresses, and the identification number from, and a copy of a driver's license issued by a U.S. state or U.S. passport (or if none, then a foreign passport).

Any Reporting Company created *after* January 1, 2024, not only will be required to report information about the Beneficial Owners, but also be required to report the foregoing information for each "Company Applicant". A Company Applicant is any person who creates the company on behalf of the owners. For example, if our firm was to form a new LLC for a client, the attorney who directs the filing and the legal assistant who facilitates the filing would be considered Company Applicants whose identifying information must be reported to FinCEN.

The Act does provide a means by which individuals who must report his or her identifying information, may submit his or her aforementioned identifying information directly to FinCEN and obtain a FinCEN identifier that the Reporting Company can use for a Beneficial Owner and/or Company Applicant.

The details regarding the process for obtaining a FinCEN identifier have not yet been made available by FinCEN as the forms for reporting Beneficial Owners, Company Applicants, and FinCEN identifier are still being finalized.

FinCEN will not be accepting any reporting information prior to January 1, 2024.

Who is considered a Beneficial Owner?

A "Beneficial Owner" is any individual who, directly or indirectly: 1) exercises substantial control over the Reporting Company, or 2) owns or controls 25% or more of the ownership interests in the Reporting Company. In determining the ownership percentages, all types of ownership interests are taken into account. For example, whether the ownership interest includes voting or non-voting rights is not a factor in determining the owner's status as a Beneficial Owner for the purposes of the Act.

The test for "substantial control" is satisfied by 1) being a senior officer of the Reporting Company, 2) having the power to appoint or remove a senior officer or a governing body of the Reporting Company, or 3) having substantial influence over important choices made by the Reporting Company.

If a trust owns an ownership interest in a Reporting Company (e.g. a revocable or irrevocable trust that owns LLC membership interests), the following individuals are considered Beneficial Owners: the trustee(s), any individual(s) with a power to dispose of trust assets, any beneficiary who is the sole permissible recipient of income or principal, any beneficiary who has a right to demand substantially all trust assets or withdraw the same, and the grantor who may revoke the trust or withdraw assets from the trust. *The Act provides that this is an open-ended list.*

Duty to Update FinCEN of any Changes to Reporting Information

After the initial report is filed with FinCEN, any changes to the Beneficial Owners or information previously reported for a Beneficial Owner, must be reported by the Reporting Company within 30 days of the date of change. Similarly, any individual who obtains a FinCEN identifier must report any changes to his or her personal information within 30 days of the change. Furthermore, should a Reporting Company have reason to know of inaccurate information previously reported, the Reporting Company has 30 days in which to file a correction.

Key Dates

According to current information a Reporting Company created before January 1, 2024, must file its initial report on or before January 1, 2025.

A Reporting Company created on or after January 1, 2024, must file its initial report within 90 calendar days of the earlier of (i) being notified that the Reporting Company was created or (ii) the public posting that the Reporting Company as been created (e.g. posted on the North Carolina Secretary of State's website).

What Steps should you and/or the Reporting Company be taking now?

Now is the time to consider dissolving an existing entity that may be of no further use to you. Such entities should be dissolved prior to January 1, 2024.

If you are considering creating a new business entity, now would be the time to move forward and create the entity prior to January 1, 2024, to reap the benefit of the longer timeframe for reporting.

If you have an existing entity that you plan to keep active, you should begin identifying those who will be considered Beneficial Owners and start to gather the personal information of each individual that is required to be reported under the Act.

If you presently own a single member LLC that is disregarded for income tax purposes (meaning the company does not have its own EIN and uses your Social Security Number as its taxpayer identification number), then you may be required to obtain a separate EIN for your entity.

More Questions?

Additional information about the reporting requirements and guidance materials are available at www.fincen.gov/boi.

FinCEN has issued and will continue to issue "frequently asked questions" to address specific issues. This information can be found at www.fincen.gov/boi-faqs.

If you have any questions regarding reporting obligations, contact FinCEN at www.fincen.gov/contact.

In conclusion, this memo is designed as an informative announcement; it is not legal advice. ***Casey and Robbins, PC will not be responsible for ensuring your entity's compliance with the Act or provide assistance with your entity's reporting.*** As such, I strongly urge you to visit <https://www.fincen.gov/boi> now in order to familiarize yourself with all Beneficial Ownership Information (BOI) and the requirements and directions on filing this mandatory report.

Best Regards,
Elizabeth E. Robbins