



Tax-Saving Tips

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BOI Edition

Beneficial Ownership Information (BOI)

In 2021, Congress enacted the Corporate Transparency Act. This law creates a beneficial ownership information reporting requirement as part of the U.S. government's efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures.

New Federal Reporting Requirements

Beginning on January 1, 2024, many companies in the United States will have to report information about their beneficial owners, i.e., the individuals who ultimately own or control the company. They will have to report the information to FinCEN, which is a bureau of the U.S. Department of the Treasury.

A company may be a reporting company and need to report information about its beneficial owners if it is:

1. A corporation (including an S corporation), a limited liability company (LLC) (including a single member LLC disregarded for federal tax purposes), or was otherwise created in the United States by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe, or
2. A foreign company registered to do business in any U.S. state or Indian tribe by such filing.

There is no de minimis exception to the reporting requirement. Small businesses with no employees, including sole proprietors who file with their secretary of state to be an LLC or LLP are required to report. However, a sole

proprietor or partnership that does not file any documents with their secretary of state to be a corporation or LLC is not a reporting company.

Certain companies are exempt from reporting, including a large operating company that has more than 20 full time employees.

What information must be reported?

The following information about the reporting company must be reported:

1. Full legal name, plus any trade name or “doing business as” (DBA) name,
2. Complete current U.S. address (not a P.O. Box number),
3. State, Tribal, or foreign jurisdiction or formation, and
4. Taxpayer identification number (TIN) of the entity (such as an Employer Identification Number (EIN) or Social Security Number of a single member LLC). If a foreign reporting company has not been issued a TIN, report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

The following information about each beneficial owner and company applicant must be reported:

1. Full legal name,
2. Date of birth,
3. Complete current address (not a P.O. Box number), and
4. A unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents:
 - a. U.S. passport
 - b. State driver’s license
 - c. Identification document issued by a state, local government, or tribe
 - d. If an individual does not have any of these documents, a foreign passport.

NOTE: Upon request, FinCEN will issue to an individual or reporting company a FinCEN unique identifying number that may be used instead of personal information about the individual in the BOI report (for example, instead of using the individual’s Social Security Number). This personal information must still be provided to FinCEN to get the unique identifying number. However, it then avoids having to put such personal information of the report itself.

How to report?

Reporting companies must report beneficial ownership information electronically through FinCEN's website: <https://fincen.gov/boi>

The system will provide the filer with a confirmation of receipt once a completed report is filed with FinCEN.

There is no provision to file these reports on paper.

If a company was created or registered prior to January 1, 2024, it will have until January 1, 2025, to report BOI.

Breaking News

Originally, the Corporate Transparency Act (CTA) and its implementing regulations, which require U.S. business entities to report stakeholder information to the Treasury Department, required that an estimated 32.6 million existing business entities disclose their beneficial owners to the Treasury Department's Financial Crimes Enforcement Network before 2025.

The government argued that the law's function—to crack down on anonymous shell companies and deter money laundering, terrorism financing and other illicit economic activity—falls within Congress's regulatory duties.

On 12/3/2024 a Federal District Court in Texas

ruled that Congress exceeded its authority in enacting the CTA, resulting in an unconstitutional infringement on states' rights to regulate businesses. The court granted a nationwide injunction prohibiting FinCEN from enforcing the Jan.1, 2025, reporting deadline for all reporting companies.

On 12/23/2024 the Fifth Circuit Court of Appeals granted a Justice Department motion to lift an injunction imposed by the Federal District Court ruling. Because of this decision, **FinCEN announced that the January 1, 2025 reporting deadline is extended to January 13 for most reporting companies.**

On 12/26/2024 In another turn of events, the **Fifth Circuit Court of Appeals issued an order**, stating it was reinstating a lower court's injunction halting enforcement of beneficial ownership information (BOI) reporting requirements imposed by the Corporate Transparency Act (CTA) and enforced by the Financial Crimes Enforcement Network (FinCEN). This reverses an order the same court issued earlier this week "in order to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments."

As the law stands on 01-01-2025, penalties cannot be imposed against businesses who fail to file BOI reports with FinCEN.

However, gathering the required information and being ready to file if the injunction is lifted, may be the best approach.

On Tuesday 12/31/2024 the Justice Department (DOJ) filed an emergency application with the Supreme Court asking it to stay the district court injunction that is preventing the government from enforcing the Corporate Transparency Act and its requirements to report beneficial ownership information (BOI).

On Friday 1/3/2025, the Supreme Court set a deadline of Jan. 10 at 4 p.m. ET for the plaintiffs in the case to respond to the DOJ request.

As of 1-24-2025, BOI remains voluntary.

According to an alert posted on FinCEN's beneficial ownership information (BOI) reporting webpage, BOI reporting is still voluntary for now despite the U.S. Supreme Court's stay of the preliminary injunction issued by a federal district court in **Texas Top Cop Shop Inc. v. McHenry**. ((January 23, 2025) U.S. Supreme Court, Case No. 24A653)

This is because another judge in a separate case has also issued a nationwide injunction against the BOI reporting requirements. (**Smith v. U.S. Department of Treasury** (January 7, 2025) U.S. Dist. Court, Eastern Dist. of Texas, Case No. 6:24-CV-336)) To date, the Department of Justice has not filed an appeal in **Smith**. It is not known whether the new administration will appeal the case.

This means that, for now, businesses are not required to file BOI reports and cannot be penalized for failing to do so.

It is also important to note that two bills (HR 425 and S 100) have been introduced in Congress to repeal the Corporate Transparency Act, which created the BOI reporting mandate.

As of 2-18-2025, BOI is mandatory again (however, congress is in the process of trying to pass a law to push the deadline to at least 12/31/2025).

FinCEN announced that the beneficial ownership information (BOI) filing mandate is now back on, with a new filing due date of March 21, 2025. The reinstatement was triggered by the U.S. District Court for the

Eastern District of Texas's February 18, 2025, decision to lift the preliminary injunction that it had issued in the **Smith** case.

The new March 21, 2025, due date applies to most reporting companies to file an initial, updated, or corrected BOI report, including those entities formed prior to January 1, 2024. Entities formed in 2025 must file by the later of March 21, 2025, or 30 days from the date of formation.

FinCEN indicated that during the next 30 days it will "assess its options to further modify deadlines, while prioritizing reporting for those entities that pose the most significant national security risks. FinCEN also intends to initiate a process this year to revise the BOI reporting rule to reduce the burden for lower-risk entities, including many U.S. small businesses."

As of 3-3-2025 The BOI reporting requirement is canceled for most businesses

On Sunday, March 2, 2025, FinCEN continued with its rollercoaster guidance by announcing that it will not enforce any penalties or fines associated with the beneficial ownership information (BOI) reporting rules under existing regulations. Additionally, FinCEN will not enforce any penalties or fines against U.S. citizens or domestic reporting companies, or their beneficial owners.

The reason for the relief is that the Department of the Treasury will propose new rulemaking that will narrow the scope of the beneficial owner reporting rules to apply to foreign reporting companies only. This means that domestic entities will not be required to file any BOI reports.

At this time there is no information on what, if anything, will need to be done for domestic entities that have already filed.

On 3-21-2025 FinCEN Removes Beneficial Ownership Reporting Requirement for U.S. Companies, Persons; Sets New Deadlines for Foreign Companies

On March 21, the Financial Crimes Enforcement Network (FinCEN) issued an interim final rule that removes the requirement for U.S. companies and U.S. persons to report Beneficial Ownership Information (BOI) under the Corporate Transparency Act.

The interim final rule revises the definition of "reporting company" to mean only those entities formed in a foreign country and registered to do business in the United States. Foreign entities that meet the new "reporting company" definition and do not qualify for an exemption must file BOI reports in accordance with the following revised deadlines:

- Reporting companies registered to do business in the United States before the date of publication of the IFR (March 21) must file BOI reports no later than 30 days from that date,
- Reporting companies registered to do business in the United States on or after the date of publication of the IFR (March 21) have 30 calendar days to file an initial BOI report after receiving notice that their registration is effective.