



The Corporate Transparency Act and Tax-Exempt Organizations

December 19, 2023

Beginning January 1, 2024, many types of legal entities must report information regarding their "beneficial owners" and certain other information (collectively, "BOI") to the Financial Crimes Enforcement Network ("FinCEN"). As the Minnesota Secretary of State and others (including Lathrop GPM) are spreading the word about these new reporting requirements, managers of nonprofit and tax-exempt organizations might be wondering how these rules apply to them. The short answer is that most tax-exempt organizations are exempt from these reporting requirements—so long as they maintain their tax-exempt status.

The new requirements are a result of the federal Corporate Transparency Act, which requires every new and existing "reporting company" to report certain information to FinCEN. More details on these reporting requirements are available [here](#). Perhaps because tax-exempt organizations already must make significant information available to the IRS and the public on their annual Forms 990, there is an important exemption from the definition of "reporting company" for "tax-exempt entities," which for these purposes includes:

- organizations described in Section 501(c) of the Internal Revenue Code (the "Code") (which includes 501(c)(3), (c)(4), and other types of exempt organizations);
- political organizations described in Code Section 527 (including PACs and certain issue advocacy organizations); and
- certain charitable trusts and split-interest trusts.[1]

There is also an exemption that applies to certain subsidiaries of tax-exempt organizations (defined here to mean any entity "whose ownership interests are controlled or wholly owned, directly or indirectly," by one or more tax-exempt entities).[2]

Given these exemptions, generally, tax-exempt organizations do not need to worry about these new reporting requirements. But there is a catch. Organizations that lose their tax-exempt status—including by failing to file an annual Form 990 with the IRS for three consecutive years—must report BOI to FinCEN unless their tax-exempt status is reinstated within 180 days.[3]

Finally, we are aware of some uncertainty in the legal community of whether the exemption from the definition of "reporting company" applies to *new* 501(c)(3) organizations that have not yet received IRS



recognition of their tax-exempt status. We believe that the exemption does apply to these organizations. The exemption states that it applies to organizations "described in section 501(c) of the [Code] (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code" Because Section 508(a) requires most 501(c)(3) organizations to apply to the IRS for recognition of their tax-exempt status, we believe that the reference to that section here is intended to mean that tax-exempt organizations fall within the exemption from the BOI reporting requirements even if they have not yet applied for or received IRS recognition.

For more details, you may go to the CTA Resource Center on our website, or contact the authors listed above or your Lathrop GPM attorney.

[1] 31 C.F.R. § 1010.380(c)(2)(xix).

[2] 31 C.F.R. § 1010.380(c)(2)(xxii).

[3] 31 C.F.R. § 1010.380(c)(2)(xix)(A). In addition, *taxable* nonprofit corporations (that are not controlled nor wholly owned by exempt organizations) must report BOI to FinCEN.