



SCWA Legislative & Regulatory Update

December 16, 2024

Additional Summary Language for CTA Court Action

Brief Summary

The U.S. District Court for the Eastern District of Texas granted a nationwide injunction suspending enforcement of the Corporate Transparency Act (CTA) and its Beneficial Ownership Information (BOI) Reporting Rule. The injunction suspends obligations to file initial BOI reports by Jan. 1, 2025. The court found that the CTA is likely unconstitutional, but an appeal is expected; however, businesses should monitor deadlines and be prepared to file.

Analysis

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction temporarily suspending enforcement of the Corporate Transparency Act (CTA) and its Beneficial Ownership Information Reporting Rule. The injunction effectively suspends the requirement under the CTA for reporting companies to disclose their beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN). The injunction applies nationwide, providing that all businesses subject to the CTA's reporting requirements are relieved of their CTA filing obligations until further notice. For companies created prior to 2024, the ruling suspends their obligation to submit their initial BOI reports to FinCEN before the Jan. 1, 2025, deadline. For companies created in 2024, this suspends their obligation to report within 90 days of formation.

Appeal Likely, Businesses Should Remain Cautious

Businesses should remain cautious and continue to monitor their reporting obligations. The district court's injunction is preliminary and likely to be appealed and could be reversed or vacated on appeal. If compliance requirements are reinstated, there is no assurance whether or how the prior reporting deadlines may be extended. In view of these developments, it seems likely that FinCEN will take action in response before the end of the year, such as issuing interim guidance or a position statement on the case.

Court Ruling

The court's decision to grant the injunction was based on the court's preliminary assessment that the CTA and the reporting rule is outside of the power granted to Congress and may violate constitutional protections. In his 79-page opinion, Judge Amos Mazzant ruled that the reporting rule "is likely unconstitutional as outside of Congress's power," noting that the law only regulates the "existence" of anonymous corporate entities, not their economic or commercial activity or operations. In granting the injunction, the court determined the injunction should apply nationwide, noting that the CTA and its reporting obligations apply to "approximately 32.6 million existing reporting companies" across the nation. The court determined it could not provide meaningful relief to those affected without enjoining the CTA and reporting rule nationwide. Specifically, the court ruled that:

- The CTA, 31 U.S.C. § 5336, is enjoined
- Enforcement of the reporting rule, 31 C.F.R. 1010.380, is enjoined
- The compliance deadline is stayed
- Neither the CTA nor the reporting rule may be enforced

Therefore, for the time being at least, reporting companies need not comply with the CTA reporting deadlines. The ruling, however, is not a final determination of the CTA's constitutionality; instead, it only temporarily halts enforcement while the case proceeds. SCWA has long supported efforts to repeal/delay the CTA.

IRS Alert: Charitable Contribution Scams on the Rise; Taxpayers Beware of Fraudulent Schemes

The Internal Revenue Service warned taxpayers to avoid promoters of fraudulent tax schemes involving donations of ownership interests in closely held businesses, sometimes marketed as "Charitable LLCs."

These promotions often target higher-income filers and are considered abusive transactions by the IRS.

Taxpayers should remember they are always responsible for the accuracy of information reported on their tax return. Participating in an abusive scheme to reduce their tax liability can result in assessment of the correct tax owed, penalties, interest, and potentially fines and imprisonment. Charities also need to be careful they do not knowingly enable these schemes. While taxpayers can properly deduct donations of closely held business interests, unscrupulous promoters sometimes lure taxpayers into schemes involving false charitable deductions. These schemes typically encourage higher-income taxpayers to create limited liability companies (LLCs), put cash or other assets into the LLCs, then donate a majority percentage of nonvoting, nonmanaging, membership units to a charity while the taxpayer maintains control of the voting units and reclaims the cash or asset(s) directly or indirectly for personal use. The promoter sometimes has control over the charity that receives the donation.

IRS investigating abusive transactions

The IRS is currently using a variety of compliance tools to combat abusive donations, including thorough audits of tax returns and civil penalty investigations. The IRS has seen hundreds of tax returns filed using this abusive charitable contribution scheme. IRS active promoter investigations and taxpayer audits in this area have resulted in a promoter [pleading guilty](#) and others being [criminally convicted](#) of this scheme, including a donor who [pled guilty to obstruction](#).

To avoid penalties, interest, and potential fines or imprisonment, the IRS encourages taxpayers to watch out for abusive transactions marketed by unscrupulous promoters.

Abusive scheme design

In the "Charitable LLCs" scheme, promoters create documents establishing the LLC for a fee. They then assist in the transfer of the taxpayer's assets to the LLC and create documents that purport to transfer membership units in the LLC to a charity. The promoter might supply an appraisal supporting the valuation for the claimed gift and might even provide a list of charities willing to accept the membership units or identify a single charity that will accept the donation. Promoters might incorrectly advise clients that they can retain control and legally access the cash or other assets transferred to the LLC for their own personal use after the donation. Promoters might also execute an "exit strategy" for taxpayers to buy back their contributions at a significantly discounted price after a period of time.

Generally, taxpayers cannot deduct a charitable contribution of less than their entire interest in property, and retaining rights to control the donated interests or buy back assets will disqualify the transaction as a deductible charitable contribution.

Watch for Red Flags

Taxpayers should be wary of any scheme that involves transferring assets to an LLC, followed by the "donation" of a majority percentage of nonvoting, nonmanaging, membership units to a charity as a "charitable contribution" while the taxpayer retains control over and access to the assets. A valid charitable contribution requires the taxpayer give control over the donated assets to the charity.

Taxpayers should use caution when they are promised any personal benefit, beyond the tax deduction, based on a charitable donation.

Taxpayers should scrutinize transactions that include potential red flags. A few examples are described below:

- Promoters marketing a transaction as a way to grow wealth in a “tax-free environment” and claim charitable contribution deductions.
- Promoters marketing a plan that requires the creation of one or more entities in order to make a charitable donation.
- Creating entities that do not engage in any business activity to facilitate a charitable donation.
- Donating an interest in an LLC that loans cash or other assets back to the taxpayer or a related party.
- The charity, as the majority owner of the LLC, has no control over the LLC or its assets.
- The taxpayer is allowed to personally use the assets contributed to the LLC after the donation.
- The promoter assists the taxpayer in the creation of intellectual property to fund the LLC prior to the donation.
- The taxpayer uses the LLC funds to purchase life insurance policies benefitting their heirs or a related party after the donation.
- The taxpayer retains the ability to reclaim the donated LLC interests from the charity for less than fair market value.
- The promoter requires the taxpayer to use specific appraisers and/or charities.
- Appraisals fail to take into account all facts and circumstances of the entire transaction, like the ability of the taxpayer to remove all assets from the LLC after the donation.

Properly claiming a donation of a closely held business interest

To properly claim a charitable contribution deduction for a donation of a closely held business interest, a taxpayer must keep records to show:

- Name and address of the charitable organization that received the business interest.
- Date of the contribution.
- Detailed description of the closely held business interest.

Additional requirements, based on the value of the claimed deduction, include the following. For donations of:

- \$250 or more, the taxpayer must obtain a [contemporaneous written acknowledgement](#) of the contribution from the charitable organization. They need to have that document on or before the earlier of the date on which they file a return for the taxable year in which they made the contribution, or the due date, including extensions, for filing such return.
- More than \$500 but not over \$5,000, the taxpayer must also complete [Form 8283, Noncash Charitable Contributions](#), Section A, and attach it to their tax return.
- More than \$5,000, the taxpayer must obtain a qualified appraisal of the donated property and complete Form 8283, Section B, including the signature(s) of the qualified appraiser(s) and the charity.
- \$500,000 or more, the taxpayer must do all the above and attach a complete copy of the qualified appraisal to their tax return.

See [Publication 561, Determining the Value of Donated Property](#), for requirements of a qualified appraisal.

How to report tax schemes

Taxpayers can report abusive tax schemes using:

- [Form 14242, Report Suspected Abusive Tax Promotions or Preparers PDF](#), to report a suspected abusive tax avoidance scheme and tax return preparers who promote such schemes.
- The complaint form located at [Treasury Inspector General for Tax Administration](#) or by calling 800-366-4484.

More information

- [Publication 526, Charitable Contributions](#)
- [Publication 561, Determining the Value of Donated Property](#)
- [Form 8283, Noncash Charitable Contributions](#)
- [Tax Topic 506, Charitable contributions](#)



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