TTAA Legislative & Regulatory Update

October 28, 2024

FTC Appeals Decision Halting National Noncompete Ban

The Federal Trade Commission (FTC) has requested the 5th U.S. Circuit Court of Appeals to review a ruling by a Texas district court that nullified its prohibition on noncompete clauses in employment agreements. This appeal, submitted on October 18, aims to overturn a prior decision that had invalidated the ban for employers nationwide.

In August, Judge Ada Brown ruled in Ryan, LLC v. Federal Trade Commission that the FTC's ban on noncompete agreements violated the Administrative Procedure Act and exceeded the agency's legal authority. According to Brown, the statute permits the FTC to regulate certain anti-competitive practices but does not grant it the power to implement significant policy changes such as the ban on noncompete agreements.

The future of the FTC's litigation efforts regarding the noncompete ban could hinge on the results of the 2024 presidential election. The commission's decision to enforce the ban was narrowly passed with a 3-2 vote, with both Republican members opposing it.

The FTC faces an uphill battle in its appeal, and the legal landscape for noncompete agreements remains unchanged at this time.

Employers can continue to enforce these agreements as permitted under state laws, but should remain mindful of the National Labor Relations Board's ongoing scrutiny of noncompete provisions and related contract terms such as "stay-or-pay" clauses.

CTA Regulatory Update

This from the FinCEN website:

A "large operating company" is exempt from reporting requirements.

What is considered a "large operating company?"

For an entity to qualify as a "large operating company," the following criteria must be met:

- Employs more than 20 full-time employees in the United States.
- Has an operating presence at a physical address within the United States.
- Filed a federal income tax or information return in the United States for the previous year demonstrating more than $5M in gross receipts or sales. This excludes gross receipts or sales from sources outside the United States.

A recent post from K&L Gates highlights a troubling warning from FinCEN when it comes to filing BOI reports:

However, as we quickly approach year end, that compliance window continues to shorten, Reporting Companies should ensure that they have positioned themselves to meet the 1 January 2025 filing deadline. We note that the analysis for reporting under the CTA can be complex and time consuming and one that must be done on an entity-by-entity basis. ***FinCEN has said that it cannot rule out potential technical issues or website outages due to the expected high volume of filings the last two weeks of the year. FinCEN's stated position is that a potential failure or difficulties of***

their system to accept filings for technical reasons will not excuse late filings*. As such, the CTA should remain a priority well before the last few weeks of the year to allocate sufficient time to determine which entities may be Reporting Companies and to prepare any required filings, and we are encouraging our clients to file sooner rather than at the last minute.*

FinCEN is worried its systems won't be able to handle high volumes come year-end but is preemptively putting the blame on filers.

FinCEN also quietly moved the goalposts when it updated its BOI FAQs to reflect a new position regarding the large company exemption. Here's Piliero Mazza with the summary:

One of the requirements causing headaches for many businesses is the "operating presence at a physical office in the United States"—many companies abandoned their physical office space during COVID. A number of clients have inquired whether a home office in a personal residence qualifies as a "physical office" under the exemption. For a personal residence to qualify as the "physical office," the entity that qualifies for the exemption must itself lease or own the physical location, regularly conduct business at that location, and the location must be physically distinct from the place of business of any other unaffiliated entity. Thus, a company must actually rent or own the space in the personal residence that it uses to qualify for the large operating company exemption.

In a post-covid world where remote work is increasingly becoming the norm, this is yet another example of how challenging CTA compliance will be.

CTA Legal Update

The Community Associations Institute, the group representing Homeowners Associations across the country – yes, homeowners associations must file under the CTA, too – presented oral arguments in their case before the US District Court for the Eastern District of Virginia.

As we've written previously, this is one of several cases proceeding across the country, all with the goal of shutting down the CTA's reporting requirements before the start of 2025.

As a reminder, there are now ***nine*** cases in various courts across the country challenging the validity of the CTA. Here are the links:

- Alabama (appealed): NSBA et al v. Yellen (11/15/2022)
- Ohio: Robert J. Gargasz Co., L.P.A. et al v. Yellen (12/29/2023)
- Michigan: Small Business Association of Michigan et al v. Yellen (3/1/2024)
- Maine: William Boyle v. Yellen (3/15/2024)
- Texas: NFIB et al v Yellen (5/28/2024)
- Massachusetts: BECMA et al v Yellen (5/29/2024)
- Oregon: Firestone v Yellen (6/27/2024)
- Utah: Taylor v Yellen (7/29/2024)
- Virginia: Community Associations Institute v. Janet Yellen (9/10/2024)

IRS Releases Tax Inflation Adjustments for Tax Year 2025

The Internal Revenue Service announced the annual inflation adjustments for tax year 2025.

Revenue Procedure 2024-40 PDF provides detailed information on adjustments and changes to more than 60 tax provisions that will impact taxpayers when they file their returns in 2026.

Notable changes for tax year 2025

The tax year 2025 adjustments described below generally apply to income tax returns to be filed starting tax season 2026. The tax items for tax year 2025 of greatest interest to many taxpayers include the following dollar amounts:

- Standard deductions. For single taxpayers and married individuals filing separately for tax year 2025, the standard deduction rises to $15,000 for 2025, an increase of $400 from 2024. For married couples filing jointly, the standard deduction rises to $30,000, an increase of $800 from tax year 2024. For heads of households, the standard deduction will be $22,500 for tax year 2025, an increase of $600 from the amount for tax year 2024.

- Marginal rates. For tax year 2025, the top tax rate remains 37% for individual single taxpayers with incomes greater than $626,350 ($751,600 for married couples filing jointly). The other rates are:
- 35% for incomes over $250,525 ($501,050 for married couples filing jointly).
- 32% for incomes over $197,300 ($394,600 for married couples filing jointly).
- 24% for incomes over $103,350 ($206,700 for married couples filing jointly).
- 22% for incomes over $48,475 ($96,950 for married couples filing jointly).
- 12% for incomes over $11,925 ($23,850 for married couples filing jointly).
- 10% for incomes $11,925 or less ($23,850 or less for married couples filing jointly).

- Alternative minimum tax exemption amounts. For tax year 2025, the exemption amount for unmarried individuals increases to $88,100 ($68,650 for married individuals filing separately) and begins to phase out at $626,350. For married couples filing jointly, the exemption amount increases to $137,000 and begins to phase out at $1,252,700.

- Earned income tax credits. For qualifying taxpayers who have three or more qualifying children, the tax year 2025 maximum Earned Income Tax Credit amount is $8,046, an increase from $7,830 for tax year 2024. The revenue procedure contains a table providing maximum EITC amount for other categories, income thresholds and phase-outs.

- Qualified transportation fringe benefit. For tax year 2025, the monthly limitation for the qualified transportation fringe benefit and the monthly limitation for qualified parking rises to $325, increasing from $315 in tax year 2024.

- Health flexible spending cafeteria plans. For the taxable years beginning in 2025, the dollar limitation for employee salary reductions for contributions to health flexible spending arrangements rises to $3,300, increasing from $3,200 in tax year 2024. For cafeteria plans that permit the carryover of unused amounts, the maximum carryover amount rises to $660, increasing from $640 in tax year 2024.

- Medical savings accounts. For tax year 2025, participants who have self-only coverage the plan must have an annual deductible that is not less than $2,850 (a $50 increase from the previous tax year), but not more than $4,300 (an increase of $150 from the previous tax year).
- The maximum out-of-pocket expense amount rises to $5,700, increasing from $5,550 in tax year 2024.
- For family coverage in tax year 2025, the annual deductible is not less than $5,700, increasing from $5,550 in tax year 2024; however, the deductible cannot be more than $8,550, an increase of $200 versus the limit for tax year 2024. For family coverage, the out-of-pocket expense limit is $10,500 for tax year 2025, rising from $10,200 in tax year 2024.

- Foreign earned income exclusion. For tax year 2025, the foreign earned income exclusion increases to $130,000, from $126,500 in tax year 2024.

- Estate tax credits. Estates of decedents who die during 2025 have a basic exclusion amount of $13,990,000, increased from $13,610,000 for estates of decedents who died in 2024.

- Annual exclusion for gifts increases to $19,000 for calendar year 2025, rising from $18,000 for calendar year 2024.

- Adoption credits. For tax year 2025, the maximum credit allowed for an adoption of a child with special needs is the amount of qualified adoption expenses up to $17,280, increased from $16,810 for tax year 2024.

Unchanged for tax year 2025

By statute, certain items that were indexed for inflation in the past are currently not adjusted.

- Personal exemptions for tax year 2025 remain at 0, as in tax year 2024. The elimination of the personal exemption was a provision in the Tax Cuts and Jobs Act of 2017.

- Itemized deductions. There is no limitation on itemized deductions for tax year 2025, as in tax year 2024 and preceding, to tax year 2018. The limitation on itemized deductions was eliminated by the Tax Cuts and Jobs Act of 2017.

- Lifetime learning credits. The modified adjusted gross income amount used by taxpayers to determine the reduction in the Lifetime Learning Credit provided in Sec. 25A(d)(1) of the Internal Revenue Code is not adjusted for inflation for taxable years beginning after Dec. 31, 2020. The Lifetime Learning Credit is phased out for taxpayers with modified adjusted gross income in excess of $80,000 ($160,000 for joint returns).

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