

Business and Estate Planning 2024

Presented To:

THE FORD MINORITY DEALERS ASSOCIATION

TABLE OF CONTENTS

A. CORPORATE TRANSPARENCY ACT -----	page 3
B. FOREIGN BANK ACCOUNTS (FBAR) -----	page 10
C. FTC RULES TO BE AWARE OF -----	page 12
D. ESTATE PLANNING -----	page 20
E. ESTATE & GIFT TAX -----	page 26

A. Corporate Transparency Act (CTA)

Corporate Transparency Act

The **Corporate Transparency Act** (CTA) requires certain types of U.S. and foreign entities to report beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. A Beneficial Owner is someone who owns or controls at least 25% of a company or has substantial control over a company. This law will exceed its intentions of catching criminals.

FinCEN began accepting reports on January 1, 2024. If your company was created or registered prior to January 1, 2024, you will have until January 1, 2025, to report BOI.

Corporate Transparency Act (cont.)

Companies have to report BOI electronically through FinCEN's website: **www.fincen.gov/boi**. The system will provide the filer with a confirmation of receipt once a completed report is filed with FinCEN.

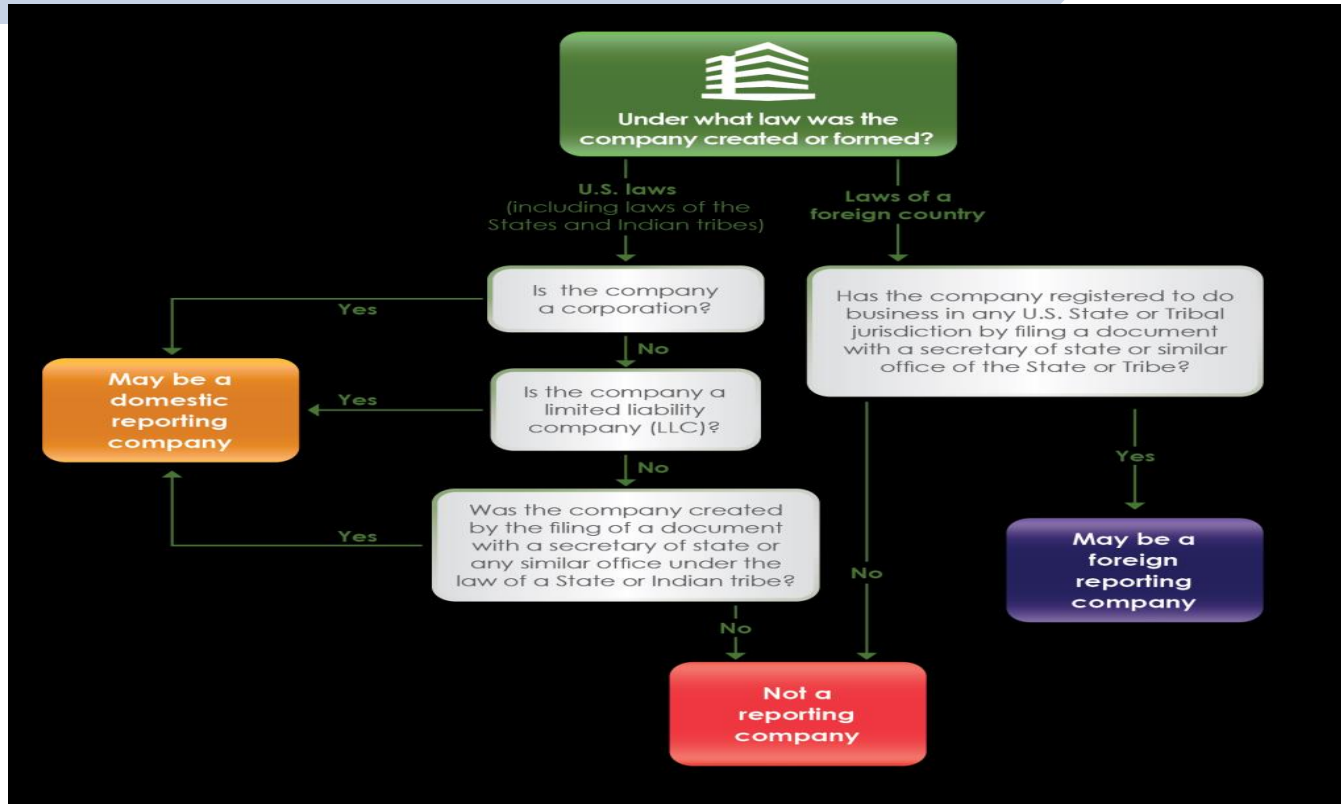
The CTA is aimed at the small business entity and will capture most of them for reporting. This law will impact millions of companies such as most LLCs, corporations, single LLCs owning real estate, LLC holding companies, an estate plan with an LLC owning assets, asset protection plans and so many more entities. It does not matter whether the entity makes money. That is irrelevant. If it owns any asset, then you must report (unless an exception exists.)

Corporate Transparency Act (cont.)

There are significant civil and criminal penalties for failing to comply, civil-up to \$500 a day, criminal-up to 2 years in jail and/or a fine of up to \$10,000. After the initial reporting there is an ongoing requirement to report any change in BOI.

Twenty-three types of entities are exempt from the beneficial ownership information reporting requirements. These entities include publicly traded companies, nonprofits and certain large operating companies. FinCEN's website has frequently asked questions (FAQs) that offer guidance about this law and companies affected. The next page has a flow chart from FinCEN's website to help show whether a company has to file.

Corporate Transparency Act (cont.)



Corporate Transparency Act (cont.)

States means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

Here is an example of an entity that is exempt from the beneficial ownership information reporting requirements - - The entity employs more than 20 full time employees with at least 20 who are employed in the United States and has more than \$5,000,000 in gross receipts or sales.

Corporate Transparency Act (cont.)

There is also a fraud alert regarding the CTA:

FinCEN has been notified of fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the Corporate Transparency Act. The fraudulent correspondence may be titled "Important Compliance Notice" and asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. FinCEN does not send unsolicited requests. Please do not respond to these fraudulent messages or click on any links or scan any QR codes within them.



***B. Foreign Bank and
Financial Accounts (FBAR)***

Foreign Bank and Financial Accounts (FBAR)

BE AWARE

Unreported foreign accounts are a top target of the IRS. If the aggregate value of foreign accounts exceeds \$10,000 at any time during the year it must be reported on the owner's tax return. Failure to file or inaccurate filing carries severe penalties. Non-willful violations are \$10,000 per FBAR. Willful violations incur a fine of \$100,000 or 50% of the highest balance in the account, whichever is greater. Willful violations get very expensive if there are multiple accounts and multiple years involved. Some taxpayers have incurred fines in the millions for willful violations and in some cases paid more in fines than they had in the accounts.



C. FTC Rules To Be Aware Of

THE SAFEGUARDS RULE-AN IMPORTANT REMINDER

The Safeguards Rule was implemented on June 9, 2023 and requires covered companies to take steps to protect their customers' information. Be sure that your business is paying attention to this requirement. The FTC can impose penalties of up to \$100,000 for a violation.

There are Nine Elements to follow for compliance.

FTC SAFEGUARDS RULE (cont.)

1. Designate a Qualified Individual to implement and supervise your company's information security program.
2. Conduct a risk assessment.
3. Design and implement safeguards to control the risks identified through your risk assessment.
4. Regularly monitor and test the effectiveness of your safeguards.
5. Train your staff.
6. Monitor your service providers.
7. Keep your information security program current.
8. Create a written incident response plan.
9. Require your Qualified Individual to report to your Board of Directors.

FTC SAFEGUARDS RULE (cont.)

Section 314.2(h) of the Rule lists 13 examples of the kinds of entities that *are* financial institutions under the Rule, including mortgage lenders, payday lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, collection agencies, credit counselors and other financial advisors, tax preparation firms, non-federally insured credit unions, and investment advisors that aren't required to register with the SEC. This section also listed 4 business examples that aren't financial institutions.

The 2021 amendments to the Safeguards Rule add a new example of a financial institution – “FINDERS”. Those are companies that bring together buyers and sellers and then the parties themselves negotiate and consummate the transaction.

FTC SAFEGUARDS RULE (cont.)

Another FTC Amendment requires financial institutions to notify the FTC as soon as possible, and no later than 30 days after discovery, of a security breach involving the information of at least 500 consumers. Such an event requires notification if unencrypted customer information has been acquired without the authorization of the individual to which the information pertains. The notice to the FTC must include certain information about the event, such as the number of consumers affected or potentially affected.

THE NONCOMPETE RULE

The FTC announced its Final Non-Compete Clause Rule on April 23, 2024 banning Non-Compete clauses between employers and their workers, including Independent Contractors. It will become effective on September 4, 2024. There is an exception for a non-compete pursuant to a bona fide sale of a business. The Final Rule allows employers to maintain existing non-compete agreements with “senior executives,” (those with over \$151,164 annual compensation and in a policy making position for the business) but bars an employer from entering into, or attempting to enter into, a non-compete clause with a senior executive after the Effective Date of the Final Rule.

FTC NON-COMPETE RULE (cont)

The Final Rule does not prohibit employers from enforcing non-compete clauses where the cause of action related to the non-compete clause accrued prior to the Effective Date of the Final Rule. Also, Fixed-term employment agreements with non-competes during the employment term are not covered by the ban. The Final Rule supersedes all state laws to the extent, and only to the extent, that a state's laws permit or authorize conduct prohibited under the Final Rule or conflict with the Final Rule's notice requirements. The Final Rule requires an employer to provide clear and conspicuous notice to workers subject to a prohibited non-compete, in an individualized communication, that the worker's non-compete clause will not be, and cannot legally be, enforced against the worker.

FTC NON-COMPETE RULE (cont)

The Final Rule bans almost all non-competes between employers and workers, but does not explicitly ban non-disclosure agreements, customer non-solicitation agreements, or employee non-solicit agreements. However, the Final Rule makes clear that it bans these other forms of restrictive covenants when they have the same functional effects as non-compete clauses. The Final Rule provides that a non-disclosure clause operates as a non-compete, for example, “where they span such a large scope of information that they function to prevent workers from seeking or accepting other work or starting a business after they leave their job.” Such non-disclosure agreements are so broadly written, the FTC states, that for practical purposes, “they function to prevent a worker from ***working for another employer in the same field*** and are therefore non-competes.

D. ESTATE PLANNING

BASIC ESTATE PLANNING GOALS

Protect/Provide for Spouse/Family/Beneficiaries

Eliminate or Lessen Estate Taxes

Avoid Probate (No Public Access/Keep Privacy)

Maintain Control of Assets

Medical and Health Care

Protect beneficiaries from creditors, a bad divorce or lawsuits.

ESTATE PLANNING (cont.)

There are more “Blended Families” (children from different parents) and more single persons cohabiting together. Children you care for that are not blood relatives or your partner who is not your spouse will not automatically be your beneficiaries. This must be specifically written into the documents.

Please note that a Non-U.S. Citizen Spouse is treated differently as a beneficiary than a U.S. Citizen Spouse. There are restrictions on the amount that can qualify for the Marital Deduction and amounts that can be paid annually to a Non-U.S. Citizen Spouse. For surviving U.S. Citizen Spouses the Marital Deduction is unlimited.

ESTATE PLANNING (cont.)

The “Marital Deduction” for U.S. Citizen Spouses is unlimited. A person can transfer an unlimited amount of assets to his or her spouse during lifetime or at death without gift or estate tax. There is also “Portability” between spouses. Portability means that the unused estate tax exemption of a deceased spouse can be passed to the surviving spouse. Certain procedures must be followed to implement this process.

ESTATE PLANNING (cont.)

The 4 Basic Documents

Last Will & Testament (also called a “Pourover Will”)

Revocable “Living” Trust

Durable Power of Attorney for financial matters

Medical Power of Attorney for Health Care (Health Care Directive and/or Living Will, Funeral Representative)

ESTATE PLANNING (cont.)

One of the most important steps in estate planning is to “Fund Your Trust Plan”. This means putting assets into your trust, or setting up beneficiary designations, joint ownership or other methods to avoid probate. This is especially important if you have property in more than one state.

Planning ahead for the succession of your business is important. Is there a chosen Successor or Successors? Is your estate plan coordinated with your succession plan for your business?

E. ESTATE & GIFT TAX

ESTATE/GIFT TAX RATES

The Federal Estate Tax Rate for taxable estates is 40% and the total Federal Estate Tax exemption is \$13,610,000 in 2024.

Also in 2024, a person may gift up to \$18,000 per donee annually. No Gift Tax return is required to be filed if under the limit of \$18,000. This amount can be exceeded in certain situations (Educational & Medical Expenses paid directly to the institutions or providers).

This amount becomes \$36,000 with a spouse joining or claiming “Gift Splitting”. However, Gift Splitting may require a gift tax return.

ANNUAL GIFT TAX EXCLUSION

IMPORTANT NOTE FOR ESTATE PLANNING

Under the current tax law the federal estate and gift tax exemption amount will revert back to an estimated \$6,000,000 per person on January 1, 2026. The upcoming Presidential election will have a direct effect on this. President Biden has already publicly stated that he will let this rollback take effect if he is re-elected.

In 2027 Revenue from estate and gift taxes based on this “rollback” is projected at \$41 Billion which is less than 1% of total projected US Revenue. In 2033 the projected estate taxes are at \$57 Billion with Revenue at \$7.418 Trillion so the gap widens even more.

US GOV'T INCOME AND EXPENSE PERSPECTIVE

1992 INCOME - \$1.09 Trillion

Estate and Gift Tax Revenue was about \$1 Billion or less than 1%.

1992 SPENDING - \$1.38 Trillion which increased the National Deficit.

2023 INCOME - \$4.44 Trillion

Estate and Gift Tax Revenue was \$19 Billion or 0.64%

2023 SPENDING - \$6.13 Trillion which increased the National Deficit.

From 1868 until 1913 - 90% of all federal revenue came from taxes on liquor, beer, wine and tobacco. Currently 53% of revenue comes from Individual Income Taxes.

QUESTIONS / THANK YOU

FMD
CPAs & Strategic Advisors



Daniell Patterson, CPA
Partner
dpatterson@fmdcpas.com



Alan Rudzewicz, JD
Director of Trust, Estate & Gift Planning
arudzewicz@fmdcpas.com

Fenner, Melstrom & Dooling, PLC
355 S. Old Woodward, Suite 200
Birmingham, Michigan 48009
248-258-8900

www.fmdcpas.com