

Larry's Tax Law

The Corporate Transparency Act Is Under Attack – The Battle Continues to Rage

By Larry Brant on 5.29.24 | Posted in Federal Law, Legislation, Tax Laws

Overview

I am taking a break from my multi-part blog series, *A Journey Through Subchapter S / A Review of the Not So Obvious & The Traps That Exist For The Unwary*, to provide another update on the Corporate Transparency Act (“CTA”). The CTA continues to get a lot of media attention as there have been judicial and legislative efforts to obtain its repeal or to strike it down as unconstitutional.

As reported on [June 7, 2023](#), the CTA is a new federal law that requires most U.S.-based companies, including corporations, partnerships and limited liability companies, to report information regarding their “beneficial owners” to the federal government through the Financial Crimes Enforcement Network (“**FinCEN**”) and a new FinCEN IT system known as the Beneficial Ownership Secure System (“**BOSS**”). Lawmakers enacted the CTA to help the government combat money laundering, financing of terrorist activities, tax fraud and other illegal activities.

While the goal of lawmakers in making the CTA law is worthy, the CTA requires the disclosure of sensitive information. Additionally, as reported on [February 27, 2024](#), the law is ambiguous in many respects, making businesses and their advisers unsure how to comply with many of the reporting responsibilities. On top of that, the penalties for noncompliance are harsh, including monetary fines and/or imprisonment. Consequently, there is great unrest relative to this new law, leading to several attempts to repeal or defeat the CTA.

Opponents of the CTA are attacking it on two fronts, namely in the courts and in the two chambers of Congress. Whether these attempts to end the CTA's life will be successful is yet to be seen.

Judicial Attacks

The National Small Business United, dba the National Small Business Association, an Ohio nonprofit corporation (“NSBA”), among others, filed a lawsuit in the U.S. District Court for the Northern District of Alabama, Northeastern Division (“Court”). The NSBA, whose corporate

mission is “to advocate for its members” and “to provide its members guidance and data on how to navigate government regulations,” seeks to have the CTA declared unconstitutional.

The Court, after determining it had jurisdiction to hear the case, reviewed the constitutionality of the CTA. Ultimately, on March 1, 2024, it ruled that –

“[The CTA] is unconstitutional because it cannot be justified as an exercise of Congress’ enumerated powers.”

The Court enjoined enforcement of the government from enforcing the CTA required beneficial ownership filing requirements of NSBA members. Of course, the Court’s decision has no direct impact on others. So, as it stands, only the NSBA members received any reprieve (which may be short lived depending upon what the appellate courts conclude).

Observation: Given that the Court’s decision solely impacts NSBA members, it would be interesting to know whether the NSBA’s membership roster has grown since the Court rendered its decision.

The government appealed the Court’s decision to the U.S. Court of Appeals for the Eleventh Circuit. That case is pending. Other organizations have joined the fight, filing amicus curiae briefs in the case, asking the Eleventh Circuit to affirm the Court’s ruling that the CTA violates the U.S. Constitution. These groups include the NYU Tax Law Center and the FACT Coalition.

In addition to the case in Alabama, judicial proceedings seeking to find the CTA unconstitutional have been filed in other jurisdictions. These cases follow basically the same theories expressed by the plaintiff in the Alabama case.

In Maine, an individual, William Boyle, who owns a 90 percent membership interest in two real estate limited liability companies, filed a lawsuit on March 15, 2024, in the U.S. District Court for the District of Maine, seeking a declaratory judgment that the CTA is unconstitutional and an injunction to prevent the government from enforcing the CTA. The case is ongoing.

In Michigan, the Small Business Association of Michigan (“SBAM”), among others, filed a lawsuit on March 26, 2024, in the U.S. District Court for the Western District of Michigan, Southern Division, seeking a declaration that the CTA is unconstitutional and an injunction preventing the government from enforcing the CTA. The case is ongoing.

It is likely that other cases will be filed (or have been filed) in other jurisdictions seeking the same relief as the NSBA in Alabama, Mr. Boyle in Maine and the SBAM in Michigan. At any rate, these cases will take time to work themselves through the trial courts and the appellate courts.

Legislative Attacks

In addition to judicial attacks, the CTA is being assaulted on the legislative front. The legislative strikes have occurred in both the U.S. Senate and the U.S. House of Representatives.

U.S. Senate

On May 9, 2024, Senator Tommy Tuberville (R – Alabama) introduced Senate Bill 4297 (“SB 4297”) in the U.S. Senate. The bill, which was read twice in the Senate, has been referred to the Senate Committee on Banking, Housing and Urban Affairs. SB 4297 is designed to repeal the CTA. It has several co-sponsors, including Senator Cindy Hyde-Smith (R – Mississippi), Senator J. D. Vance (R – Ohio), Senator Roger Marshall (R – Kansas), Senator Ted Budd (R – North Carolina), Senator Rick Scott (R- Florida), Senator Mike Lee (R – Utah), Senator John Barrasso (R – Wyoming) and Senator Thomas Tillis (R – North Carolina).

SB 4297 is not dead, but it does not appear to be moving forward with any speed. Time will tell whether it will ever gain any traction.

U.S. House of Representatives

On April 29, 2024, Representative Warren Davidson (R – Ohio) introduced House Bill 8147 (“HB 8147”) in the U.S. House. The bill has been referred to the House Committee on Financial Services. HB 8147, labeled “Repealing Big Brother Overreach Act,” is aimed at one target – the repeal of the CTA. It has several co-sponsors, including Representative Brad Finstad (R – Minnesota), Representative Gregory Steube (R – Florida), Representative Scott Perry (R – Pennsylvania), Representative Russ Fulcher (R – Idaho), Representative Beth Van Duyne (R – Texas), Representative Kelly Armstrong (R – North Dakota), Representative Pat Fallon (R – Texas), Representative Michelle Fischbach (R – Minnesota), Representative Bob Good (R – Virginia), Representative Kevin Hern (R – Oklahoma), Representative Bill Posey (R – Florida), Representative Andrew Ogles (R – Tennessee), Representative Ralph Norman (R – South Carolina), Representative Chuck Edwards (R – North Carolina), Representative Glenn Grothman (R – Wisconsin) and Representative Harriot Hagerman (R – Wyoming).

Like SB 4297, HB 8147 is not dead, but it is also moving forward at a snail’s pace. Time will tell whether it can gain the necessary bipartisan support needed to become law.

Conclusion

The CTA is under attack on both the legislative and the judicial fronts. Given what appears to be strong reasons why the CTA is not a workable solution to the problems that the original legislation sought to alleviate (i.e., money laundering, financing of terrorist activities, tax fraud and other illegal activities), grounds for its defeat or repeal exist. It will be interesting to see whether any of the pending attacks will get the job done. I intend to keep a keen eye on the fight. Stay tuned!

Tags: Beneficial Owners, Beneficial Ownership Secure System (BOSS), Corporate Transparency Act (CTA), Financial Crimes Enforcement Network (FinCEN)