

Larry's Tax Law

## The Corporate Transparency Act Hits a Roadblock

By Larry Brant on 12.6.24 | Posted in Federal Law, Legislation, Tax Laws

I have yet again encountered another important development diverting me from my multi-part blog series on Subchapter S. Earlier this week, the Corporate Transparency Act (“CTA”) hit a massive obstacle. I feel compelled to report about it.

On December 3, 2024, the U.S. District Court for the Eastern District of Texas, in *Texas Top Cop Shop, Inc. et al v. Merrick Garland, Attorney General of the United States et al*, issued a [79-page decision](#), including a preliminary injunction, creating a nationwide prohibition against government enforcement of the CTA.

This decision has created a tsunami of banter among members of the legal profession, the media and the business community. While the decision appears to have delivered an early holiday cheer to many, caution is advised. As my late tax professor, James J. Freeland, would have advised his students after reading the decision, **pause for cause!**

**The injunction is only a preliminary injunction.** I suspect the Texas court will not have the final word on the matter. The government will assuredly seek appellate review of the decision. It may file an appeal to the Fifth Circuit within the next 60 days and request that the matter be heard on an expedited basis. That may not be the end of it. The decision, which is based upon constitutional challenges, will likely see its way up to the U.S. Supreme Court. The higher court(s) will have to wrestle with some complex constitutional issues, including whether passage of the CTA exceeds Congress’ authority under the Commerce Clause and the Necessary and Proper Clause of the U.S. Constitution. Additionally, an issue that may be heard on appeal is whether the scope of the injunction is proper – whether the Texas court had authority to enjoin the federal government on a nationwide basis.

Making matters even more complicated, it is possible the court of another circuit may rule on the same issues in another case while the *Texas Top Cop Shop* case is on appeal. Until the U.S. Supreme Court hears the matter, more uncertainty and confusion may exist.

Reporting companies may be inclined to sit on the sidelines and wait for the appellate court(s) to decide whether they need to report and otherwise comply with the CTA. While that approach may seem prudent, a better approach for reporting companies may be to either: (i) voluntarily register and file the Financial Crimes Enforcement Network (“FinCEN”) report by

January 1, 2025; or (ii) gather all of the required information and be ready to file the FinCEN report should the injunction be lifted. The former approach removes the possibility that the government could assess penalties for late filing should the case be overturned on appeal. Simply waiting and doing nothing, however, is not a good idea!

In the interim, reporting companies and their advisers need to keep a vigilant eye out for any appeals that follow. Given the substantial importance of the matter, do not be surprised if the appeals process moves at lightning speed.

I will soon return to my multi-part blog series on Subchapter S. Stay tuned!

**Tags:** Corporate Transparency Act (CTA), Financial Crimes Enforcement Network (FinCEN), Reporting Companies