Barley Snyder

The Corporate Transparency Act: What to Know About the Exemption for Large Operating Companies

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On January 1, 2021, Congress enacted the Corporate Transparency Act (the "Act"), which requires that certain companies disclose the identities of their beneficial owners to the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") beginning January 1, 2024 (the "Reporting Rule").

Under the Reporting Rule, entities classified as "Reporting Companies" which are formed during the 2024 calendar year must file Beneficial Ownership Information Reports ("BOIRs") with FinCEN within 90 days of their formation. Reporting Companies formed on or after January 1, 2025 must file BOIRs within 30 days of their formation. Reporting Companies formed prior to January 1, 2024 will have until January 1, 2025 to file their BOIRs.

That said, *not every company is a "Reporting Company"* under the Act. In fact, there are 23 different exemptions to the Reporting Rule. One of the most common exemptions is for any entity that qualifies as a "Large Operating Company" or "LOC".

How does an entity fall under the LOC exemption?

To be exempt as an LOC, the entity **must meet each of the following criteria:**

- Employ more than twenty (20) full-time employees in the United States;
- Operate and conduct business out of a physical office that the entity owns or leases in the United States; and
- Show, on the *previous year's* filed federal income tax or information returns, over $5,000,000 in gross receipts or sales in the aggregate.

The LOC exemption clarifies these criteria as follows:

- "Full-time employees" are those who, if looking at a calendar month, work a minimum of thirty (30) "hours of service per week with an employer."
- "In the United States" includes all fifty states, Washington D.C., Puerto Rico, Native American lands (as defined in the Indian Gaming Regulatory Act), and any territories or insular possessions of the United States.
- The greater-than-$5,000,000 aggregate gross receipts or sales:
- Cannot include any amounts from sources outside the United States (in other words, the entity must show aggregate sales/gross receipts *over* $5,000,000 from the United States alone);
- Must have been reported on the entity's applicable IRS form for the previous tax year (e.g., IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, etc.); and
- May be consolidated if the entity is part of an affiliated group under the Internal Revenue Code.

What happens if an entity meets all the above criteria as an LOC?

Just like any other exempt entity, the LOC does *not* need to file a BOIR with FinCEN. Additionally, there is no need to "apply" for this exemption-it depends on whether the entity meets the above requirements under the Act. However, if an entity initially is not exempt, files a BOIR and then subsequently becomes exempt, it should update its report to classify itself as a "newly exempt entity".

What about subsidiaries of an LOC?

There is a subsidiary exemption as part of the Act. This means that a subsidiary of an LOC qualifies under this exemption, so long as the subsidiary's ownership interests are "controlled or wholly owned, directly or indirectly" by an entity that qualifies as an LOC.

The business attorneys at Barley Snyder are ready to help with any questions involving the Act. If you have any questions about the Act, the LOC exemption or any other requirements, please contact partner Dan Desmond, attorney Elizabeth Vanasse or any other member of Barley Snyder's Corporate Transparency Act Response Team.

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