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New Corporate Transparency Laws:

Transportation Companies Must Comply to Avoid Hefty Fines

The Corporate Transparency Act (“CTA”), enacted in 2021 and implemented on January 1, 2024, has sent ripples through the American business landscape – and transportation businesses are no exception. This federal law, aimed at combating financial crimes like money laundering and tax evasion, requires many previously anonymous entities to disclose their true owners to the government. New York State has followed the federal government by enacting the New York Limited Liability Company Transparency Act (“NYLTA”), which has some similarities to the CTA and some notable key differences discussed in this article. For now, New York is the only state to pass its own additional CTA-like law; however, it is likely that other states, likely California, will seek to do so in the future.

The history of this legislation involved years of negotiation and redrafting in Congress, and was spurred by the need to provide law enforcement with beneficial ownership information for the purpose of detecting, preventing and punishing terrorism, money laundering and other misconduct through business entities. The CTA – and NYLTA – were not enacted specifically to address any institutional or widely reported issues or problems in the mobility industry. While the ground transportation industry may not be the direct target of this legislation, the composition of the industry includes so many small businesses that most companies will need to comply or seek an exemption. Compliance is involved not only when new companies are formed, but also retroactively for corporate entities – even if they were formed many years ago.

While there is not much to be alarmed about in terms of the required paperwork and content of the reporting, there are real concerns about NOT reporting and filing paperwork on time, which could lead to massive fines in excess of tens of thousands of dollars, and even criminal penalties and exposure in certain limited circumstances. Penalties for CTA non-compliance can include ***civil penalties of up to \$500 per day, per company***, and ***criminal charges*** that can result in a maximum of ***two (2) years imprisonment***, plus a \$10,000 fine, per company.

While some may find the intent of the legislation to be noble, it is leaving many small transportation companies wondering how these new reporting requirements will impact their day-to-day operations and compliance costs. Understanding the intricacies of the CTA (and the NYLTA for NY operators), and its potential benefits and drawbacks, is crucial for mobility businesses to navigate the changing terrain and ensure their smooth operation in this new era of corporate transparency.

What do these laws mean, and what do they mean for transportation companies in particular? We will provide a brief overview of the CTA and the NYLTA, and then explore the practical implications of these laws, and advise how to go about complying. It is highly recommended that ***YOU NOT DO THIS YOURSELF!*** Any mistakes or mishaps could lead to

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dire consequences for violating in the CTA or NYLTA, so please consult your lawyers immediately. I can be reached anytime at mdaus@windelsmarx.com or (212) 237-1106, with our team of trained professionals at the corporate and transportation law practices at the law firm of Windels Marx, where we can advise you on how to comply, what exemptions may apply, and the logistics and deadlines for filing.

WHO MUST FILE & WHAT TYPE OF INFORMATION MUST BE DISCLOSED?

Reporting companies, which includes any corporation, LLC, etc., which is formed/registered in the U.S. through certain state filings, must file reports with the ***Financial Crimes Enforcement Network (“FinCEN”)***, a bureau of the **United States Department of the Treasury**, disclosing information about:

- (a) ***“Beneficial Owners:”*** This includes any individual who, directly or indirectly,
 - (i) owns at least 25% of the company’s equity, or
 - (ii) has “substantial control” over the company; and

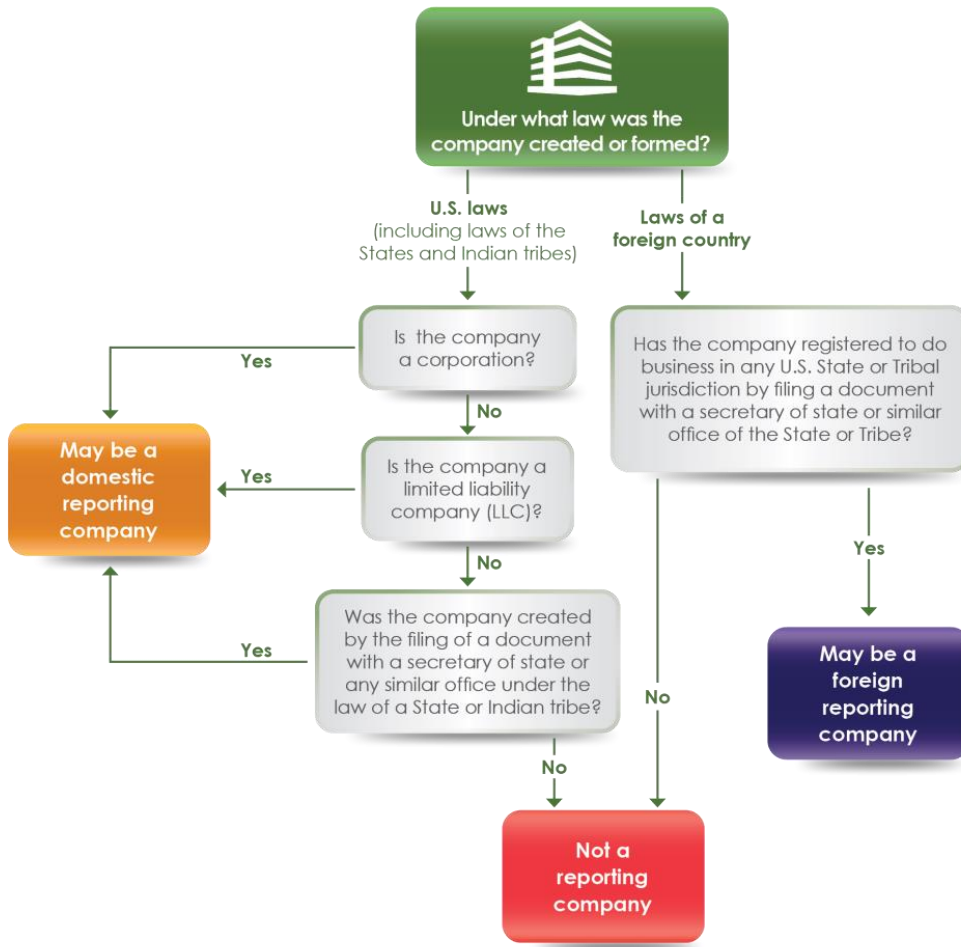
- (b) ***“Company Applicants:”*** This includes the individual who filed the formation documents, and one other individual who primarily directed their filing.

The requirement to report for “Company Applicants” is effective only for companies formed in 2024 or later. Required information includes the legal name, date of birth, residential address and a copy of government issued identification (*e.g.*, driver’s license or passport). If an individual registers with FinCEN, then the company can instead disclose the individual’s FinCEN ID number. This ID number can be used for future formations and filings without having to provide personally identifying information in each instance.

While the CTA aims to shine a light on beneficial ownership for most businesses, it does not cast a blanket net. Recognizing the potential burden on diverse entities, the CTA offers a surprising 23 exemptions. From publicly-traded giants to non-profits, these exemptions create a complex map for navigating reporting requirements. Understanding which exemptions apply and the nuances within each, becomes crucial for businesses to determine their reporting obligations and potential benefits. Other examples of exempt companies include “large operating companies” (*i.e.*, companies with more than 20 U.S. full-time employees [excluding independent operators and part-time workers], more than \$5,000,000 in annual U.S. gross receipts, etc.), certain inactive entities, certain regulated entities (*e.g.*, banks, public utilities, etc.), tax exempt organizations, and certain subsidiaries of exempt companies. In addition to the exceptions, the FinCEN database is not accessible to the general public, and is only available to government agencies. The following flow chart provides some guidance on which company must report under CTA:

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Source: [Beneficial Ownership Information Reporting | FinCEN.gov](https://www.fincen.gov/beneficial-ownership-information-reporting)

WHEN ARE CTA REPORTS DUE?

- Initial filing deadlines:**

Year First Formed/Registered	CTA Report Due Date
Calendar year 2023, or earlier	January 1, 2025
Calendar year 2024	Within 90 days of formation/registration
Calendar year 2025	Within 30 days of formation/registration

- Amendments:** Due within 30 days of *any change* in the information in a filed CTA report.

HOW MUCH ARE LATE FILING FINES & CRIMINAL PENALTIES?

Penalties for CTA non-compliance can include civil penalties of up to \$500 per day, per company, and criminal charges that can result in a maximum of two (2) years imprisonment plus {12282009:1}

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a \$10,000 fine, per company. On the civil side, this could mean that a multi-level group of companies consisting of four (4) separate entities could be subject to \$2,000 per day in penalties. For criminal charges the non-compliance must be done knowingly with an intent to commit fraud or provide false information to FinCEN, which is a high standard for the government to prove, and remains untested because the CTA is so new, making its enforcement unpredictable. However, we caution that any inconsistencies between your CTA reporting and state-level filings may lead to an inquiry, which can cause stress and compliance costs. So, getting this done right and having your corporate affairs in order at this time is critical.

NEW YORK LLC TRANSPARENCY ACT – CTA COMPARISON

December 21, 2024 marks the arrival of NYLTA, a game changer for limited liability companies (“LLCs”) operating in the Empire State. This new legislation follows on the heels of the federal CTA, but adds a New York flair by requiring additional disclosures specifically for beneficial owners of LLCs. While aimed at curbing financial crimes and boosting transparency, the NYLTA raises important questions for small businesses:

- ***Who needs to comply?***
- ***What information needs to be revealed?***
- ***Are there exemptions?***

Understanding these details is crucial for navigating the new regulations and ensuring your New York LLC stays on the right side of the law. Let's delve into the NYLTA and unpack its potential impact on your business. Similar to the CTA, NYLTA requires disclosure of beneficial ownership information for LLCs formed or registered in New York, uses the same definitions of "beneficial owner" and “substantial control” as the CTA, and uses the same 23 categories of exemptions as the CTA.

Key differences with NYLTA include:

- Reporting starts January, 2025 (*an anticipated amendment may delay this date*);
- Applies only to LLCs, not other entities like corporations;
- Requires LLCs to file an "exempt company statement" if claiming an exemption;
- Reports require business address, not residential address, of beneficial owners;
- must disclose the unique number from an ID document, but not a copy of such ID document;
- No FinCEN ID number concept offered in New York;
- No disclosures required for "company applicants;"
- updates only needed on changes to articles of organization, not all information changes (*an anticipated amendment may change this to an annual update requirement*);
- Lower penalties for non-compliance (*i.e.*, no criminal fines or imprisonment); and
- Public access to beneficial owner names and business addresses (*an anticipated amendment may change this to government access only*).

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CTA & NYLTA COMPLIANCE ISSUES – A SAMPLING OF POTENTIAL PROBLEMS

Non-Cooperation of Business Partners

Both the CTA and NYLTA require transportation companies to disclose their beneficial owners – those exercising substantial control or benefit from the company. This includes individuals with 25% or more ownership or voting rights, even if they are not directly named on official documents.

One common scenario expected will be where companies with multiple beneficial owners cannot timely coordinate the submission of information from all individuals. For example, a company that is required to report may be having a difficult time obtaining the personal identifying information from one of its several beneficial owners, and the company is potentially facing the associated penalty of \$500 per day for non-compliance, requiring counsel to send notices and demands to the non-complying owner while insulating the complying owners from any liability.

Transportation companies should get ahead of the curve and ensure that compliance mechanisms are in place so that if this problem arises, the non-complying parties are held responsible for any fines caused by their inaction. Adjustments can be made to operating and stockholder agreements to provide an enforcement mechanism and penalties (including attorneys' fees) against recalcitrant beneficial owners.

Cross-Jurisdiction Compliance & Data Security Issues

Concerns regarding privacy, compliance costs, and data security should be addressed as well in CTA (NYLTA) compliance. Navigating the intricacies of the laws, particularly for cross-border operations, may require professional guidance involving any international investors. For example, beneficial owners who are living abroad and are only invested in the foreign parent company that wholly owns a domestic reporting company may – for the first time – be subject to American scrutiny, and may be reluctant to share personal identifying information.

That personal identifying information may be transmitted electronically through your company's email server, making it subject to unknown data protection and security laws of foreign (and more stringent) jurisdictions like the European Union, or even California if the owner is a California resident. California compliance will be key because it is likely to follow suit and enact its own transparency law in the future.

Your lawyers can help evaluate data privacy and protection risks, and advise on the best course of action to mitigate any of those risks. Depending on your company's ownership structure, you should consider a total review of your commercial and operating agreements to determine the flow of information and how to best comply with applicable laws and regulations.

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WHAT SHOULD YOU DO NEXT TO START COMPLYING?

As you read this, you too may be asking how the CTA and/or NYLTA apply to your business. If you have any questions about these new laws, we are happy to assist with your inquiries. Because the CTA and NYLTA will have sweeping and broad reaching implications for business entities that have never been subject to reporting and disclosure, and will be under the lens of FinCEN and/or the New York Department of State, it is important for each reporting company to take the time to do a refresher to ensure compliance with all corporate requirements, and that all of the necessary governance items are up-to-date and executed. To that end, we can guide you on best practices for corporate formations and governance, and if you follow this initial checklist on the key corporate items necessary for compliance you will be on the right track, or if any items are missing, we can assist you:

- Determine the number of full-time U.S. based employees in each company at the time of reporting;
- Calculate the annual gross receipts for each company for the fiscal year of reporting
- Confirm the stockholders and members of each company;
 - For those individuals you will need:
 - copies of government issued identification
 - full legal name
 - date of birth, and
 - residential address
- Create an organizational chart;
- Certify that governance documents are complete, executed, and accurately reflect the *current* beneficial owners *as of the filing date* – any changes should be done before reporting if the deadline to report has not lapsed;
- Check your state's Secretary of State's website to see that your company is up to date on its state level reporting, filings, & statements;
- If any of the above changes (i.e. reduction or increase in employees or gross receipts), then you should reevaluate whether your company is obligated to report;
- Contact counsel to determine your reporting obligations;

With this basic checklist in mind you will be on the path to complying with the CTA and NYLTA, as well as keeping your company in good order.

While the intent of the CTA and NYLTA represent to legislators a significant step towards more transparent and accountable corporate governance and recordkeeping to combat illegal practices, some in the business world view this as an overreach that creates more red tape and a revenue grab by the government. While small businesses may view the applicability of the law to them as heavy-handed and misguided, it is unlikely to be repealed anytime soon and many states are likely to create their own additional laws like New York just did. As these laws take effect, transportation companies and many other industries must adapt and embrace this new landscape of ownership disclosure. If you would like to join our mailing list and keep up-to-date on developments in this area, please email Kim Ramkishun at kramkishun@windelsmarx.com to be

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added to our industry legal update daily feed, and/or to schedule an appointment with Matt Daus and the transportation practice team at Windels Marx to discuss any compliance advice or questions.

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