

Small Business Notes

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- U.S. Treasury Appeals Federal District Court Decision on Constitutionality of Corporate Transparency Act

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As noted in the March 2024 issue of Small Business Notes, a federal district court judge in Alabama enjoined enforcement against the plaintiffs (principally National Small Business United) of the Corporate Transparency Act (CTA) and its requirements that businesses provide identifying information for all “beneficial owners” of the business.

The U.S Department of the Treasury sought to appeal the decision and injunction at the Eleventh Circuit Court of Appeals and on April 15th filed its appellate brief (Case 24-10736, Document 18).

There the government made the following arguments:

- The CTA is a valid exercise of Congress’ Powers both to regulate interstate commerce and “local efforts” that have an effect on interstate commerce.
- The CTA is a permissible and appropriate means for accomplishing Congress’ end of enforcing prohibitions on financial crimes.
- The CTA is a permissible and appropriate means for facilitating tax collection and advancing national security efforts.

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- The District Court’s position that the CTA regulates the act of incorporation and so is constitutionally defective is incorrect since the CTA does not regulate corporate formation but, rather, identifies entities that can engage in economic transactions in their own name and can thus be vehicles for financial crimes while not disclosing the businesses owners.
- The District Court’s position that CTA requirements are unrelated to federal efforts to halt financial crime is incorrect. The Congress has identified “beneficial ownership Information” as an important part of efforts to combat financial crime.

A motion, requested by both parties, to expedite briefing and oral argument has been granted. The brief for National Small Business United is due May 13, 2024. If the government chooses to reply, it brief is due June 3, 2024.

Treasury’s Financial Crimes Enforcement Network continues to collect beneficial ownership information. The CTA became applicable on January 1, 2024 to entities formed on or after that date. Entities pre-existing on that date have until January 1, 2025 to comply.



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