

2023 YEAR-END TAX PLANNING AND LEGAL UPDATES

This Newsletter (NL) starts with Parts I and II listing 14 predominate Business and Individual year-end *Tax Tips!* This year, we have also included two important business and real estate matters because of their widespread applicability. Part III describes the fundamentals of the new federal disclosure requirements for certain entities, known as Beneficial Ownership Information (BOI) reporting. Part IV explains the basics of a new Oklahoma law pertaining to deed filings, essentially clarifying "foreign non-ownership" of acquiring parties.

I. Business Tax Tips!

✓ Bonus Depreciation is Phasing Out: For 2023, Bonus Depreciation is 80% of the cost of most business personal (as opposed to real estate) tangible property. Bonus depreciation decreases to 60% starting in 2023. Thus, it might make sense for a business to make a 2023 purchase instead of a 2024 acquisition to take advantage of the 20% spread.

✓ Oklahoma Pass-Through Entity (PTE) Election: If your profitable Oklahoma PTE (S corporation or LLC partnership) has not elected to deduct its Oklahoma income taxes at the business level, consider it. For every \$100,000 of income, this deduction can save about \$1,200+ in taxes. Our office can assist with making the election.

✓ Business Vehicles: December vehicle purchases usually reduce taxable income. The 2023 maximum first-year automobile depreciation is \$20,200. For 2023, the larger trucks and SUVs (over 6,000 lbs.) enjoy up to an 80% first year deduction! This is reduced to 60% in 2024.

✓ Pension Plans: Set up pension plans before year-end and fund in 2024. In many cases, if a plan is set up by December 31, you can contribute to the plan as late as October 15, 2024 for a 2023 tax deduction. A small employer can claim up to a \$5,000 credit for the administration costs for pension plans.

✓ Prepaid Expenses & the 12-Month Rule: A cash basis business can typically deduct any amounts paid for a right or benefit that does not extend beyond 12 months after the date of the payment. Thus, a business can prepay expenses in December 2023 that are for 2024. For example, prepaying rent, health insurance, etc. can yield sizable deductions.

✓ Specified Service Business (SSB): For doctors, lawyers, accountants, consultants, etc. that own their practices as a business (not solely a W-2 employee), consider maximizing contributions to traditional IRAs, §401(k)s, and others pension plans to help qualify for the 20% business income deduction which is typically limited for SSBs.

✓ Tax Basis: Deductions and losses from partnerships and S corporations at the individual level are limited to "tax basis" of the stock or membership units. If sufficient basis does not exist, owner withdrawals and dividends can trigger long term capital gains from the transfer. Typically, the tax surprise happens when proceeds from a third-party loan finance large deductions, or when distributions are greater than retained taxable income. To avoid the inadvertent tax, owners should first consider these four ideas prior to year-end: (1) increase owner loans, (2) make capital contributions, (3) slow down deductions or accelerate income, or (4) increase basis through loan guarantees or debt restructuring.

II. Individual Tax Tips!

✓ Maximize Pension & IRA Contributions: Increase your retirement plan contributions to take the maximum write-offs. If applicable, take full advantage of employer matching.

Plan	2023 Limit	Catch-Up (Age 50+)
IRA	\$6,500	\$1,000
SIMPLE	\$15,500	\$3,500
§401(k)	\$22,500	\$7,500

✓ Charitable Stock Donation: Consider gifting appreciated property, typically publicly traded stock, to a charitable organization for a deduction equal to its fair market value without reporting the gain.

- ✓ Harvest Losses: If you have realized capital gains in 2023 and you have "loss stock positions," consider selling the losses in December to offset the capital gains.
- ✓ Harvest the Gains: Our October 2023 Newsletter discussed using the zero capital gains bracket to realize long-term capital gains with little or no increase to federal taxes and get a "step-up" basis by immediately reacquiring the position. Alternatively, consider balancing the portfolio or using the proceeds for other opportunities with minor tax implications.
- ✓ Defer the Sale: If you have a borderline holding period, consider holding the asset a little longer than a year to take advantage of the favorable long-term capital gains rates.
- ✓ Increase December W-2 Withholdings: Avoid underpayment penalties by increasing withholdings from your December paychecks.
- ✓ Gift Tax Strategy: Gift up to \$17,000 per donee before the year end to take advantage of the annual gift tax exclusion. The transfer(s) may save taxes when a lower-bracket family member reports the income generated by the gift.

### III. Beneficial Ownership Information (BOI) Reporting Changes

For tax and legal reasons, LLCs (and to a more limited extent, small corporations) are conducive for creating an opaque ownership structure. The U.S. Treasury wants to know "who owns the company." Starting in 2024, many companies will be required to report their **beneficial owners** – those individuals who own at least 25% or exercise "substantial control" over an entity. To help understand and comply with the BOI rules, we have inserted a BOI Quick Guide. Generally, the rules are:

1. Reporting deadlines: If your company existed before January 1, 2024, it has until January 1, 2025 to submit the initial BOI report. Companies created after January 1, 2024 will only have 30 calendar days from the date of creation to submit the initial BOI report.

2. Exemptions: Certain entities are exempt from BOI reporting, including inactive entities, insurance companies, accounting firms, security brokers, and tax-exempt entities. All 23 exemptions are listed on the BOI Quick Guide.

3. Subsequent Filings: There is no annual filing requirement after the initial report. Instead, companies must file updated reports within 30 days of any changes in information previously reported.

4. It is the Business' Responsibility: Although our firm will assist its current clients in complying with the BOI rules, it is the entity's obligation and responsibility to make certain and verify compliance with BOI filings.

### IV. New Affidavit Requirements for Oklahoma Deeds

A new change to Oklahoma real estate law went into effect on November 1, 2023 requiring most filed deeds to be accompanied by an Affidavit of Land or Mineral Ownership. The change occurred with little notice and even less guidance. Pursuant to Title 60, §121 of Oklahoma statutes, no alien or any person who is not a citizen of the United States shall acquire title to or own land in the State of Oklahoma. The new Affidavit is a written testimony that the party acquiring Oklahoma property does meet the requirements set forth in the law.

✓ The law requires the use the form issued by the Attorney General, which is available online at [oag.ok.gov](http://oag.ok.gov). Alternative or custom Affidavits will not be accepted by the county clerk and will be returned as unfiled. Ensure use of the applicable form for (1) Individuals, (2) Non-exempt Businesses or Trusts, and (3) Exempt Businesses or Trusts.

✓ In their current forms, the Affidavits are two additional pages considered as an "Exhibit" to the actual deed. A small fee is required for the additional pages.

## **Beneficial Ownership Information (BOI) Reporting Quick Guide**

Adapted from the FinCEN Small Entity Compliance Guide Version 1.0 (September 2023)

### **1. Is the entity exempt?**

There are currently 23 business categories exempt from BOI reporting:

1. Securities reporting issuer
2. Governmental authority
3. Bank
4. Credit union
5. Depository institution holding company
6. Money services business
7. Broker or dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser
11. Venture capital fund adviser
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Accounting firm
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax-exempt entity
20. Entity assisting a tax-exempt entity
21. Large operating company
22. Subsidiary of certain exempt entities
23. Inactive entity

### **2. When is the initial report due?**

The company was created **before January 1, 2024**: Initial BOI report due by January 1, 2025.

The company was created **on or after January 1, 2024**: Initial BOI report due 30 calendar days after the date of creation or first registration document with the secretary of state or similar office.

### **3. Who has substantial control?**

**Senior Officer:** Any individual holding the position or exercising the authority of a: (1) president, (2) chief financial officer, (3) general counsel, (4) chief executive officer, (5) chief operating officer; or any other officer, regardless of official title, who performs a similar function as these officers.

**Appointment or Removal Authority:** any individual with the ability to appoint or remove any Senior Officer or a majority of the board of directors or similar body.

**Important Decision-Maker:** Any individual who directs, determines, or has substantial influence over important decisions made by the reporting company including decisions regarding the reporting company's (1) business, (2) finances, or (3) structure.

### **4. Who has ownership interest?**

**Equity, Stock, or Voting Rights:** Any interest classified as stock or anything similar, regardless of whether it confers voting power or voting rights, and even if the interest is transferable. Examples include equity, stock, preorganization certificates, equity securities, and certificates of interest in a business trust.

**Capital or Profit Interest:** Any interest in the assets or profits of a company organized as an LLC, which is similar to stock in a corporation and sometimes referred to as a "unit".

**Convertible Instruments:** Any instrument convertible into equity, stock, or voting rights or capital or profit interest, whether or not anything needs to be paid to exercise the conversion.

**Option or Privilege:** Any put, call, straddle, or other option or privilege of buying or selling equity, stock, or voting rights, capital or profit interest, or convertible instruments, EXCEPT if the option or privilege is created and held by others without the knowledge or involvement of the reporting company.

## **5. Should company applicants be reported?**

The company was created **before January 1, 2024:** NOT required to report company applicants.

The company was created **on or after January 1, 2024:** Required to report company applicants.

## **6. Who are the company applicants?**

**Company Applicant One:** The individual who **directly filed** the creation or first registration document for the reporting company with the secretary of state or similar office.

*If more than one person was involved in the filing of the creation or first registration document:*

**Company Applicant Two:** The individual primarily responsible for **directing or controlling** the filing of the creation or first registration document.

## **7. What information is required?**

### **Reporting Company:**

- Full legal name
- Any trade name or DBA name
- Complete current U.S. address: the primary street address in the U.S. where the company conducts business. **P.O. Boxes are not permitted.**
- State, tribal, or foreign jurisdiction of formation
- IRS Taxpayer Identification Number

### **Each Beneficial Owner and Company Applicant (if applicable)**

- Full legal name
- Date of birth
- Complete current address: the residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the U.S.
- Unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents: (1) U.S. passport, (2) state driver's license, or (3) other identification document issued by a state, local government, or tribe.

## **8. When are subsequent reports due?**

There are no annual filing requirements after the initial BOI report is submitted. However, you must file an updated report with FinCEN **within 30 calendar days of any change** to the reported information for the company or its beneficial owners. This includes changes in ownership percentage, business name, residential addresses of beneficial owners, and expiration of identifying documents.

*While this Quick Guide is intended to help you navigate your Beneficial Ownership reporting, it is not a comprehensive manual. You should consider your specific circumstances and visit the FinCEN website at <https://www.fincen.gov/boi> for more detailed definitions of the terms included herein.*