

## Corporate Transparency Act Requires BOI Reporting to FinCEN

### Introduction

The Corporate Transparency Act (CTA) is upon us. It took effect on January 1, 2024, and imposes a new federal filing requirement for most corporations, limited liability companies (LLCs), and other business entities.

Corporations, LLCs, and other entities subject to the CTA are called “reporting companies.” People who form new reporting companies during 2024 must file a beneficial ownership information (BOI) report with the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) within 90 days of forming the company.

The owners of reporting companies created before 2024 must also file a BOI report, but they have until January 1, 2025 (but think December 31, 2024).

Some businesses are exempt from filing—for example, large operating companies, which the CTA defines as those with over 20 employees and \$5 million in income. There are other, narrower exemptions as well.

The BOI report must contain the name, the birth date, the address, and an ID number and image of that ID for each “beneficial owner” of the reporting company. These are the human beings who (1) own or control at least 25 percent of the company or (2) exercise “substantial control” over the company.

The BOI report is filed online at a new federal database called BOSS (an acronym for Beneficial Ownership Secure System). There is no filing fee.

Government law enforcement and security agencies will use the data from BOI reports to help combat money laundering, tax evasion, terrorism, and other crimes. It will not be available to the public.

Naturally, people have lots of questions about the BOI report filing requirements—for example:

- Do you have to file a BOI report if you own a single rental property in an LLC? (Yes.)
- Do you have to file 10 BOI reports if you own 10 LLCs? (Yes.)
- Can certified public accountants, enrolled agents, and other non-lawyers file BOI reports for clients without running afoul of unauthorized practice of law rules? (Unclear.)
- Are registered agents responsible for filing the BOI report? (No.)
- Do the self-employed have to file? (No.)
- Do I need to list a street address in the BOI report? (Yes.)
- Do I need to list my Social Security number in the BOI report? (No.)
- Do I need to list my attorney in the BOI report? (Maybe.)
- Must I file an updated BOI report if a beneficial owner leaves the company? (Yes.)
- Do I have to list my minor child in a BOI report? (No.)
- Will criminals file BOI reports? (Who knows?)

## New 1099-K Filing Rules Delayed Again

Do you sell goods or services and receive payment through a third-party settlement organization (TPSO)? If so, you must know the IRS's new Form 1099-K reporting rules.

TPSOs include:

- payment apps such as PayPal, Cash App, and Venmo;
- online auction or marketplace services such as eBay and Amazon;
- gig economy platforms such as Uber and Airbnb;
- some cryptocurrency processors such as BitPay;
- craft or maker marketplaces like Etsy;
- ticket exchange or resale sites like Ticketmaster; and
- some crowdfunding platforms.

For over a decade, TPSOs filed IRS Form 1099-K, Payment Card and Third Party Network Transactions, reporting certain payments the TPSOs processed for goods and services. But a TPSO had to file Form 1099-K only if the recipient had gross annual earnings over \$20,000, and more than 200 transactions in the calendar year.

With these thresholds, only frequent users of TPSOs exceeded both thresholds and had their payment information reported to the IRS. If you never received a 1099-K from a TPSO that processed payments on your behalf, this is why.

That is changing. Congress drastically reduced the 1099-K filing thresholds when it enacted the American Rescue Plan Act of 2021 to require TPSOs to file Form 1099-K for any recipient who is paid more than \$600 during the year with no minimum transaction requirement.

The new 1099-K filing rules were supposed to go into effect for the 2022 tax year. But the IRS delayed them until 2023. Now, the IRS has delayed them yet again, announcing that the old rules (\$20,000/200 transactions) remain in place for 2023.

For the 2024 tax year, the IRS is replacing the \$20,000/200 transaction threshold with a \$5,000 threshold and no minimum transaction requirement.

For the 2025 tax year and later, the IRS will apply the \$600 threshold, again with no minimum transaction requirement.

Why all the delays? Because the IRS fears that TPSOs will mistakenly file many of the expected 44 million 1099-Ks. For example, TPSOs might mistakenly file 1099-Ks for personal payments from family and friends.

### **Do You Qualify as a Tax Law–Defined Professional Gambler?**

When it comes to taxes, the tax code treats professional gamblers better than recreational gamblers. Unlike recreational gamblers, professionals get to deduct all their gambling expenses (including travel, lodging, and meal expenses) up to their annual winnings, without itemizing. This is a big advantage.

If you gamble a lot, you could benefit by qualifying as a professional and filing IRS form Schedule C to report your winnings, losses, and other expenses. But it's not easy to qualify as a professional gambler.

You must:

1. gamble regularly and continuously, and
2. gamble with the primary purpose of earning a profit.

Most professional gamblers gamble full-time. But qualifying as a professional and having another job is possible if you gamble regularly and continuously throughout the year.

For example, Linda Myers spent 25 to 35 hours per week running her trucking business and about 40 hours playing slot machines. She qualified as a professional gambler. But gambling sporadically won't cut it, even if you spend a lot of time gambling.

The IRS uses a nine-factor test to determine whether you gamble primarily for profit or for other reasons, such as having fun. The profit factors include whether you carry out the activity in a businesslike way, your history of winnings or losses, your financial status, your expertise at gambling, and the time and effort you spend gambling.

Court cases show that the single most important factor is keeping good gambling records. Don't rely on casino win/loss statements.

A Las Vegas couple won over \$19,000 at video poker but learned the hard way, when they tried to file as professional gamblers, that good records are essential. The fact that they never kept their own gambling records weighed heavily in the Tax Court's refusal to classify them as professional gamblers.

**Do this.** To prove you are a professional, create your own contemporaneous gambling log or diary showing your wins and losses by gambling session.

**Also do this.** Use a separate bank account for your gambling activity.

Other things you can do to help establish your professional gambler bona fides include creating a business plan, educating yourself about gambling, and changing games if you consistently lose. Remember, as a professional, you're gambling to make money, not to have fun.