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## “I’m Not Dead Yet!” Inactive Entities and the Corporate Transparency Act

by Richard Lieberman

The Corporate Transparency Act (the “CTA”) requires many companies (each, a “Reporting Company”) to file a beneficial ownership information report with the Financial Crimes Enforcement Network (“FinCEN”) listing information about the company, their beneficial owners and those who were active in the formation of the entity. This requirement applies to active Reporting Companies even if they were formed prior to January 1, 2024, the effective date of the CTA.

FinCEN recently indicated in its “frequently asked questions” (the “FAQs”) that companies that fully “ceased to exist” prior to January 1, 2024 do not need to file a report pursuant to the CTA. Whether a company has ceased to exist is a multi-factored analysis, though, as discussed below. Thus, a company that has shut down but has not fully completed its dissolution, liquidation and wind-up may still be subject to the CTA’s filing requirements, and thus is not “dead” for CTA purposes. That may surprise many company owners and managers.

The FAQs note that any entity subject to the CTA formed in 2024 or later must file a report under the CTA unless the entity is exempt, even if it ceased to exist before its initial reporting deadline. This would include any entity covered by the CTA that is formed for use in effecting a merger or company reorganization that ceased to exist upon consummation of that transaction. The FAQs clarify, however, that if these entities file their initial beneficial ownership report, they need not file an additional report to indicate that they cease to exist upon termination of their existence.

When the CTA was enacted, FinCEN exempted a number of entities from being Reporting Companies, including inactive entities formed prior to January 1, 2020 which meet certain stringent criteria (the “2020 Inactive Entity Exemption”). Although not discussed in detail in this article, in light of this new guidance, unless an entity is fully terminated prior to January 1, 2024, the sole means for a dissolved (or other inactive) entity to avoid the initial reporting requirements of the CTA may be pursuant to the 2020 Inactive Entity Exemption, unless another CTA exemption applies.

### Fully Ceasing To Exist

Whether a company has fully ceased to exist requires an analysis of a variety of factors. FinCEN stated in the FAQs that a company must have entirely completed the process of formally and irrevocably dissolving.

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Even if an entity has been dissolved under state law, the law of its state may provide that the entity continues in existence for the purposes of winding up its affairs, including resolution of claims and litigation, selling its assets, paying its debts and filing tax returns or making other governmental filings, among other items. When adopting the regulations issued under the CTA, FinCEN declined to create an exemption for companies that have been dissolved or decertified by their state of organization but which continue to exist to wind-up their affairs.

Although FinCEN used the term “dissolving,” in the FAQs it is clear that the entity must also have completed its liquidation and winding-up process to be considered to have terminated its existence. Thus, if the entity is still selling or distributing its assets (including any remaining funds), has not filed its final tax returns, or is otherwise active, it will be deemed by FinCEN to still exist.

Similarly, the company must have been finally dissolved and ceased to exist as an entity in its organizing jurisdiction on a permanent basis to have ceased to exist for CTA purposes. Thus, it must have filed its certificate of dissolution or similar instrument with its jurisdiction of organization and that filing must have become a permanent termination of the entity’s existence under the laws of that jurisdiction.

Some companies are administratively dissolved by their organizing jurisdictions because they fail to file annual reports, pay required fees or satisfy other requirements. While those entities may not exist for company law purposes, under the CTA they are considered to exist until the revocation of authority has become permanent. To determine whether the dissolution or revocation is permanent, state or tribal law should be checked to see if the entity can “cure” or reinstate its existence. If so, the status would not appear to be permanent.

### In Summary

FinCEN has clarified in the FAQs that if a company has fully completed its dissolution, liquidation and wind-up of affairs before January 1, 2024, it is outside the scope of the CTA and need not file a beneficial ownership report. FinCEN, however, casts a wide net to ascertain whether a company has fully completed that process. As a result, many companies that thought they were “dead” might be surprised to learn that they are considered to be alive for CTA purposes.

Unless they qualify for an exemption (including the 2020 Inactive Entity Exemption), entities not fully terminated before January 1, 2024 will need to file a beneficial ownership report under the CTA by their initial reporting deadline, even if they fully complete their dissolution, liquidation, and wind-up process before that deadline.

Kutak Rock is here to help clients navigate the CTA compliance process. If you have any questions about how the CTA will affect your business, please contact your Kutak Rock attorney or any member of the [CTA Client Service Team](#) listed on the left. You may also visit us at [www.kutakrock.com](http://www.kutakrock.com).

