

WHAT'S INSIDE

Corporate Transparency Act in Limbo

A recent appellate court decision held the Corporate Transparency Act is unconstitutional. What does this mean for the law, and how are you affected by the ruling?

The Pros and Cons of an Asset Purchase

Asset purchase agreements are a common way to purchase an existing business. What are considerations before entering into this type of contract?

Firm is nominated to Tulsa People's A-List for Full- Service Law Firm

The Firm was recently nominated as a top full-service law firm in Tulsa by TulsaPeople's Magazine.

Treble Damages in Oklahoma and the Application to Civil Law

Monetary civil remedies may include multiples of the actual compensatory damages, including 3x (treble) damages.

DID YOU KNOW?

The Council of Nicaea decided in 325 AD that Easter should fall on the 1st Sunday after the 1st full moon after the spring equinox (Mar. 21). This means Easter *must* fall on a Sunday between Mar. 22 and April 25. The last time Easter was on Mar. 22 was in the year 1818!

CONTACT US

WINTERS & KING, INC.
CityPlex Towers
2448 E. 81st St., #5900
Tulsa, OK 74137
Phone: 918.494.6868



Corporate Transparency Act in Limbo

By: Attorney James Rayment

As many business owners are now aware, in January 2024, a new Beneficial Ownership Information (BOI) report is required to be submitted to the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to remain in compliance with the Corporate Transparency Act (CTA). This BOI report is required for all existing and newly formed entities which do not qualify for a limited number of exemptions. But recent rulings may cast doubt on the validity of this new law.

On March 1, 2024, a federal court in Alabama ruled in *Nat'l Small Bus. United v. Yellen* that the CTA is unconstitutional. The purpose of the CTA is to help combat money laundering schemes, terrorist activity, tax fraud and other illegal activities. The CTA was set to go into effect on January 1, 2024, and would require all "reporting companies" (i.e. LLCs and corporations) to file a report with the FinCEN containing information pertaining to (i) the reporting company, (ii) the beneficial ownership of the reporting company, and (iii) the company applicants.

The Plaintiffs in *Nat'l Small Bus. United v. Yellen* sought an injunction against enforcement of the CTA arguing that the "CTA's mandatory disclosure requirements exceed Congress' authority under Article I of the Constitution and violate the First, Fourth, Fifth, Ninth, and Tenth Amendments." The Northern District of Alabama ultimately ruled in favor of the Plaintiffs finding that the "CTA exceeds the Constitution's limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress' policy goals..."

While business owners may have taken a collective sigh of relief in response to this ruling of unconstitutionality of the CTA, it is important to note that the injunction granted by the Court preventing enforcement of the CTA's requirements only applies to the named Plaintiffs. This is because only the U.S. Supreme Court can invalidate acts of Congress and findings by the District Courts as to constitutionality and any injunctive relief granted by District Courts on constitutional grounds are *only binding upon the parties to a particular lawsuit*. Further, District Court decisions in one Circuit (in this case the Eleventh Circuit comprising of the Federal courts in Florida, Georgia, and Alabama) are not binding on other Circuit courts. While the ruling may serve as strong precedent when other non-Eleventh Circuit Courts take up the issue, this is not guaranteed because it is possible for Circuits to differ on their interpretations.

Given the uncertainty of the legality of the CTA following *Nat'l Small Bus. United v. Yellen*, it is likely that there will be additional developments as other Circuit courts address similar challenges. Our Firm will continue to monitor litigation and other developments concerning the CTA and will provide updates as they occur. If you have any questions concerning your business and its obligations under the CTA, please do not hesitate to contact Attorney James Rayment at jrayment@wintersking.com.



The Pros and Cons of an Asset Purchase

By: Shareholder Spencer C. Pittman

The two primary ways to acquire a closely-held existing business include an asset or a stock purchase. An asset purchase means a buyer is acquiring only assets of the existing business and selected liabilities whereas a stock purchase generally means a buyer is acquiring outstanding shares (or units) of an existing business. Though both options result in the acquisition of a business, what are the pros and cons of specifically an asset purchase?

A primary advantage in an asset purchase is flexibility for the buyer who may allocate the purchase price to specific assets (such as increasing or decreasing the price paid for personal vs. real property), which can have tax advantages. In a stock purchase, liabilities associated with the company follow the stockholders. If a buyer purchases stock in an existing company, it is possible that buyer may be acquiring uncertain or unknown liabilities. Unlike a stock purchase, a buyer in an asset purchase is only buying assets and can elect to forego the acquisition of any and all liabilities of the seller.

Potential downsides to an asset purchase may include the fact the business being acquired may have existing contractual relations that would require separate consents and approvals, which can complicate or delay the transaction process. For example, if the existing business has a lease or a contract for VoIP services, that lease or contract will be in the name of the existing business and not the acquiring business. This may require the assignment of the lease or contract and possibly the lessor's or VoIP contractor's consent and approval to transfer the contractual rights. In addition, asset purchases may be more complex than a stock purchase because each and every asset must be individually considered before being transferred. This may result in more complex due diligence periods, higher transaction costs, and a longer time frame for closing.

The choice between an asset purchase and a stock purchase depends on a variety of factors, including the specific circumstances of the deal, the risk tolerance of the buyer, the preference of the seller, and the nature of the business. Many times, the asset purchase is a preferred route for business buyers due to the decreased risk of liability assumption, whether known or unknown.

Next quarter's newsletter will discuss the pros and cons of a stock purchase. If you want more information on asset purchase agreements, contact Shareholder Spencer C. Pittman at spencer@wintersking.com.

Firm is nominated to Tulsa People's A-List for Full-Service Law Firm

In March 2024, Winters & King was nominated to TulsaPeople's annual Reader's Choice A-List as a **top 5 full-service law firm** and has advanced to Round 2, the A-List Final Ballot. Voting on the A-List final ballot will be April 1-14.

Voters may be eligible for a prize! According to TulsaPeople (www.tulsapeople.com/a-list), the voting terms are "One nomination ballot per email address per day; must be 18 or older. 50% of the ballot must be completed to be eligible for a prize."

We appreciate your vote, and thank you for trusting our firm to handle your legal matters!

Treble Damages in Oklahoma and the Application to Civil Law

By: Shareholder Spencer Pittman

The term "treble damages" is a type of monetary damage awardable in certain civil cases to compensate an injured party and which permits a court to multiply (such as triple) the amount of the compensatory damages to the prevailing injured party in certain circumstances.

Treble damages are often considered punitive in nature since they are designed to provide additional compensation to the injured party. Treble damages can be awarded only if statutorily permitted.



Certain examples where treble damages may come into play include:

1. Wrongful injury to timber (damages to be awarded must be between 3-10x the actual damages)
2. Hit and run car collisions that result in damage to a vehicle;
3. Willful patent infringement; or,
4. Knowing violation of the U.S. False Claims Act (defrauding the U.S. Government)