

Small Business Notes

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Update on Corporate Transparency Act (CTA) Litigation

As noted in earlier editions of this publication (see editions of February 2024, March 2024, September 2024), the constitutionality of the Corporate Transparency Act (CTA) remains in federal litigation. The first of the challenges to the CTA was filed in November 2022 in the U.S. District Court for the Northern District of Alabama, Eastern Division: National Small Business United v. Janel Yellen. That Court found for the plaintiffs that the CTA was unconstitutional because Congress did not have the authority to enact such legislation. The government appealed in March of 2024 in the U.S. Court of Appeals for the Eleventh Circuit which on September 27, 2024, held oral arguments.

No time certain has been set for decision. The U.S. Treasury Financial Crimes Enforcement Network (FINCEN) continues to require covered businesses to issue reports. As noted earlier, there is no reporting exception for small businesses.

In another case also on the CTA the U.S. District Court for the District of Oregon released a decision in the case of Firestone v. Yellen on September 20, 2024 denying a preliminary injunction on the grounds that the plaintiffs were unlikely to prevail on the merits, demonstrate irreparable injury, or have the balance of hardships tip in their favor.

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IRS Continues Enforcement of 1099 Reporting Requirements to Reduce Under-reporting of Business Income

The IRS will continue its emphasis on compliance by business taxpayers with the requirements of Form 1099-NEC (Non-Employee Compensation) and Form 1099-MISC (Miscellaneous Payments).

Form 1099-NEC is used when payment is made to a non-employee, to include directors and advisors of the business; when the payment is for services to the payer business in the course of its trade or business, to include parts and materials used in provision of those services.

The payment can be to an individual, estate, or partnership and must be for at least \$600 over the tax year.

Form 1099-MISC is used for reporting payments for things like rents (when the payment is made directly to the property owner rather than to a rental agent or property manager) or payments for various elements of intellectual property like licenses for the use of patents, trademarks, and copyrights.

For both 1099-NEC and 1099-MISC the payments can be subject to backup withholding (for example when a payee has never provided the business payer with required information like its Taxpayer Identification Number (TIN)). In such a case the business payer would withhold 24% of the payment due to the vendor.

Note that the IRS updates each 1099 form and its instructions on an ongoing basis during the tax year.

IRS Suspends Processing of New Claims for Employee Retention Credit

Concerned that small businesses are being scammed by promoters into filing ineligible claims for the Coronavirus Employee Retention Credit (ERC), the IRS announced in September 15, 2023, that it was initiating a moratorium on processing of new claims until at least the end of 2023.

The IRS also indicated in its announcement that it will apply “increased scrutiny” to claims filed before the moratorium whose processing is still pending. Special settlement procedures are being developed to help businesses that have been misled into filing ineligible claims on have resulted in improper credit or payments to those businesses.

The IRS notes especially that businesses should be aware that there is no separate application for the credit, as some promoters claim, but that application must be done on the taxpayers return or amended return.

The IRS has developed a new FAQ on the credit available online at [Frequently asked questions about the Employee Retention Credit](#).

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