

UPDATES & OTHER TIDBITS

Author
Wooyoung Lee

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CORPORATE TRANSPARENCY ACT REMAINS ON HOLD

Will they or won't they? The end of 2024 and beginning of 2025 have seen continuous back and forth about the Corporate Transparency Act ("C.T.A."), a reporting law that requires many U.S. companies to disclose their beneficial owners to FinCEN, the financial-crimes regulator of the Treasury Department.

The C.T.A. went into effect in 2024, with existing companies (*i.e.*, those formed before 2024) having until the end of 2024 to submit their reports. However, on December 3, 2024, a U.S. Federal District Court in *McHenry v. Texas Top Cop Shop Inc.*¹ imposed a preliminary, nationwide injunction based on its finding that the C.T.A. was likely unconstitutional. The U.S. Federal Court of Appeals for the 5th Circuit then repealed the injunction on December 23, only for another panel of the 5th Circuit to reinstate the injunction three days later. More recently, the Supreme Court upheld the government's appeal and vacated the injunction.

But in a further twist to the tale, the C.T.A. remains unenforceable. This is because on January 7, a different judge in the same U.S. Federal District Court that decided *Texas Top Cop Shop* issued a separate injunction against the C.T.A. in *Smith v. U.S. Dept. of the Treas.*² The Supreme Court's order applies only to *Texas Top Cop Shop* and not *Smith*. Therefore, the C.T.A. continues to be enjoined, which was confirmed by FinCEN in an update to its website posted on January 24, 2025.

Given recent history, that could change again quickly. If the C.T.A. becomes enforceable again, FinCEN will likely post new deadlines for companies to submit reports, as it did when the 5th Circuit initially lifted the *Texas Top Cop Shop* injunction.

TRANSITION TAX NOT APPLICABLE IN NEW JERSEY

Last year saw a highly publicized tax case in *Moore v. U.S.*,³ where taxpayers unsuccessfully argued that the "transition tax" was unconstitutional. The transition tax, enacted in 2017, required U.S. shareholders of certain closely held foreign corporations to pay a one-time tax on accumulated but undistributed income earned by the foreign corporations between 1986 and 2017.

¹ No. 4:24-CV-478; the case was formerly *Garland v. Texas Top Cop Shop Inc.*

² No. 6:24-CV-336 (2025).

³ 602 U.S. 572 (2024).

The transition tax is part of a broader anti-deferral regime known as Subpart F, which requires U.S. Shareholders of controlled foreign corporations (“C.F.C.’s”) to include certain items of the C.F.C.’s income in their own income on a current basis, even if the income was not distributed.

In many ways, Subpart F Income resembles a deemed dividend from a C.F.C., although the law does not explicitly make the comparison. It was under this theory that New Jersey levied tax on the accumulated earnings attributable to Archit and Mona Amin, who paid the federal transition tax but did not do so for New Jersey. New Jersey argued that the transition tax amount was essentially a taxable dividend.

The taxpayers prevailed in court.⁴ Without a state-level equivalent of Subpart F, New Jersey relied on the dividend theory to bring its case. But the court noted that New Jersey’s definition of “dividend” required earnings to be actually distributed to shareholders. The Subpart F inclusion was found not to be a dividend. The court further pointed out that New Jersey never revised its definition of the term “dividend” to incorporate Subpart F. After the complex constitutional wrangles in *Moore*, this was a more straightforward sequel.



⁴ *Amin v. Dir.*, Div. of Tax’n, N.J. Tax Ct. No. 007430-2022 (2024).

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