Moore Financial Strategies
Tax-Saving Tips

December 2023

New FinCEN Filings Go into Effect on January 1

For existing businesses, the Corporate Transparency Act (CTA) goes into effect on January 1, 2024, and imposes a brand-new federal filing requirement on most corporations, limited liability companies, and limited partnerships and on certain other business entities.

No later than December 31, 2024, all non-exempt business entities must file a beneficial owner information report (BOI report) with the Financial Crimes Enforcement Network (FinCEN)—the Treasury Department's financial intelligence unit.

The BOI reports must disclose the identities and provide contact information for all of the entity's "beneficial owners": the humans who either (1) control 25 percent of the ownership interests in the entity or (2) exercise substantial control over the entity.

Your BOI report must contain all the following information for each beneficial owner:

- Full legal name
- Date of birth
- Complete current *residential* street address
- A unique identifying number from either a current U.S. passport, state or local ID document, or driver's license or, if the individual has none of those, a foreign passport
- An image of the document from which the unique identifying number was obtained

FinCEN will create a new database called BOSS (Beneficial Ownership Secure System) for the BOI data and will deploy the BOSS to help law enforcement agencies prevent the use of anonymous shell companies for money laundering, tax evasion, terrorism, and other illegal purposes. It will not make the BOI reports publicly available.

The CTA applies only to business entities such as corporations and LLCs that are formed by filing a document with a state secretary of state or similar official. It also applies to foreign business entities that register to do business in the United States.

Some businesses are exempt from the CTA, including

- larger businesses with 20 or more employees and $5 million in receipts, and
- businesses already heavily regulated by the government, such as publicly traded corporations, banks, insurance companies, non-profits, and others.

The CTA does not apply to sole proprietors or general partnerships in most states. But it does apply to single-member LLCs, even though the tax code disregards such entities and taxes them on Schedule C, E, or F of Form 1040.

The initial BOI report filing does not expire, and you don't need to renew it. But you have an ongoing duty to keep the BOI report up to date by reporting any changes to FinCEN within 30 days of occurrence.

Failure to comply can result in hefty monetary penalties and up to two years in prison.

Beat the Net Investment Income Tax

Here is some important information regarding the net investment income tax (NIIT), which may be relevant to your financial situation.

NIIT Overview

The NIIT is a 3.8 percent tax that could apply if your modified adjusted gross income (MAGI) exceeds $200,000 (single filers), $250,000 (married, filing jointly), or $125,000 (married, filing separately). It targets the lesser of your net investment income or the amount by which your MAGI exceeds the thresholds.

What Qualifies as Net Investment Income?

Net investment income includes income from investments (such as interest, dividends, and annuities), net rental income, and income from businesses in which you don't materially participate. It does not include wages, self-employment income, tax-exempt income, and distributions from qualified retirement plans.

Reducing or Avoiding the NIIT

To mitigate the NIIT, it's crucial to understand what's triggering it—your net investment income or your MAGI. Here are some strategies:

1. **Invest in municipal bonds.** Pick bonds that are exempt from the NIIT and from federal and state taxes.
2. **Donate appreciated assets.** The correct asset donation avoids the NIIT and provides a tax deduction.
3. **Avoid selling appreciated stock.** Buy growth stocks that don't pay dividends, and hold them.
4. **Utilize Section 1031.** It avoids MAGI and net investment income, and defers taxes.
5. **Invest in life insurance and annuities.** This typically defers tax until withdrawal.
6. **Harvest investment losses.** This can offset gains and reduce taxable income.
7. **Invest in rental real estate.** Structured correctly, this can minimize taxable income.

Other Strategies

- **Active participation in business.** It avoids classifying income as net investment income.
- **Short-term rentals and real estate professional status.** These also avoid classifying income as net investment income.

- **Alternative marital status.** Though this option may seem extreme, two single taxpayers have a higher MAGI threshold than a married couple.

- **Retirement plan investments.** These can reduce MAGI.

- **IRA conversions.** Converting traditional IRAs to Roth IRAs may trigger the NIIT but can have long-term tax benefits.

- **Installment sales.** They can level out MAGI over time.

The NIIT can be complex, but strategic planning can significantly reduce its impact.

Deducting Start-up Expenses for a Rental Property

Are you interested in becoming a commercial or residential landlord?

If so, you'll likely have to shell out plenty of money before ever collecting a dime in rent. The tax code treats some of those monies as start-up expenses.

Start-up expenses are some of the costs you incur before you offer a property for rent. There are two broad categories:

1. Investigatory

2. Pre-opening costs, such as advertising, office expenses, salaries, insurance, and maintenance costs

Your cost of purchasing a rental property is not a start-up expense. Rental property and other long-term assets, such as furniture, must be depreciated once the rental business begins.

On the day you start your rental business, you can elect to deduct your start-up expenses.

The deduction is equal to

- the lesser of your start-up expenditures or $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, plus

- amortization of the remaining start-up expenses over the 180-month period beginning with the month in which the rental property business begins.

When you file your tax return, you automatically elect to deduct your start-up expenses when you label and deduct them on your Schedule E (or other appropriate return).

Costs you pay to form a partnership, limited liability company, or corporation are not part of your start-up expenses. But under a different tax rule, you can deduct up to $5,000 of these costs the first year you're in business and amortize any remaining costs over the first 180 months you are in business.

Note that the cost of expanding an existing business is a business operating expense, *not* a start-up expense. As long as business expansion costs are ordinary, necessary, and within the compass of your existing rental business, they are deductible.

The IRS and tax court take the position that your rental business exists only in your property's geographic area. So, a landlord who buys (or seeks to buy) property in a different area is starting a new rental business, which means the expenses for expanding in the new location are start-up expenses.

You can't deduct start-up expenses if you're a mere investor in a rental business. You must be an active rental business owner to deduct them.