

Availability of Beneficial Ownership Information





Hidden business owners

State laws that shield identities of corporate officers may foster crimes like money laundering or tax evasion, law enforcement officials warn.

▶ **Law enforcement**

John Colledge, resident agent-in-charge, Reno office of Immigration and Customs Enforcement

▶ **Industry advocate**

Derek Rowley, Nevada Registered Agent Association president

▶ **Federal lawmaker**

Sen. Carl Levin, D-Mich., Senate Permanent Subcommittee on Investigations chairman

Corporate owners hide assets, identities

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Companies, People, Ideas

Shell Games

[Elizabeth MacDonald](#) 02.12.07

With no federal oversight, the states are helping to shelter crooks, money launderers and, possibly, terrorists.

110TH CONGRESS
1ST SESSION

S. 681

To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2007

Mr. LEVIN (for himself, Mr. COLEMAN, and Mr. OBAMA) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Stop Tax Haven Abuse Act”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 (1) in subparagraph (Y), by striking “or” at
2 the end;

3 (2) by redesignating subparagraph (Z) as sub-
4 paragraph (AA); and

5 (3) by inserting after subparagraph (Y) the fol-
6 lowing:

7 “(Z) persons involved in forming new cor-
8 porations, limited liability companies, partner-
9 ships, trusts, or other legal entities; or”.

10 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
11 RULE FOR FORMATION AGENTS.—Not later than 90 days
12 after the date of the enactment of this Act, after con-
13 sulting with the Attorney General of the United States,
14 the Commissioner of the Internal Revenue Service, and
15 Chairman of the Securities and Exchange Commission,
16 the Secretary of the Treasury shall publish a proposed rule
17 in the Federal Register requiring persons described in sec-
18 tion 5312(a)(2)(Z) of title 31, United States Code, as
19 added by this section, to establish anti-money laundering
20 programs under subsection (h) of section 5318 of that
21 title. The Secretary shall publish such rule in final form
22 in the Federal Register not later than 180 days after the
23 date of the enactment of this Act.

United States Government Accountability Office

GAO

Report to the Permanent Subcommittee
on Investigations, Committee on
Homeland Security and Governmental
Affairs, U.S. Senate

April 2006

COMPANY FORMATIONS

Minimal Ownership Information Is Collected and Available



GAO-06-376

What GAO Found

Most states do not require ownership information at the time a company is formed, and while most states require corporations and limited liability companies (LLC) to file annual or biennial reports, few states require ownership information on these reports. With respect to the formation of LLCs, four states require some information on members, who are owners of the LLC. Some states require companies to list the names and addresses of directors, officers or managers on filings, but these persons may not own the company. Nearly all states screen company filings for statutorily required information, but none verify the identities of company officials. Third-party agents may submit formation documents to the state on a company's behalf, usually collecting only billing and statutorily required information for formations. These agents generally do not collect any information on owners of the companies they represent, and instances where agents told us they verified some information were rare.

Federal law enforcement officials are concerned that criminals are increasingly using U.S. shell companies to conceal their identity and illicit activities. Though the magnitude of the problem is difficult to measure, officials said U.S. shell companies are appearing in more investigations in the United States and other countries. Officials told us that the information states collect has been helpful in some cases because names on the documents, such as names of directors, generated additional leads. However, some officials said that the information was limited and that cases had been closed because the owners could not be identified.

State officials and agents said that collecting company ownership information could be problematic. Some state officials and agents noted that collecting such information could increase the cost of company filings and the time needed to approve them. Some officials said that if they had additional requirements, companies would go to other states or jurisdictions. Finally, officials and agents expressed concerns about compromising individuals' privacy because owner information disclosed on company filings would be part of the public record, which has not historically been the case for private companies.

U.S. Money Laundering Threat Assessment



The competition among certain states to attract legal entities to their jurisdictions has created a “race to the bottom,” and a real money laundering threat. (See Figure 2) While they are often used for legitimate purposes, bearer shares, nominee shareholders, and trusts also provide money launderers with the tools to hide their identity from financial institutions and law enforcement.

As an example, a Delaware-registered company may be owned by a national of any jurisdiction, regardless of his or her place of residence. The company can be operated and managed worldwide, and is not required to report any assets. Eastern European and Russian law enforcement agencies have expressed concern that regional criminal organizations were abusing Delaware shell companies for money laundering.¹²⁴ And German prosecutors have reportedly complained that the secrecy inherent in Delaware’s regime for legal entities has hindered investigations into suspicious financial activity.¹²⁵ But, Delaware is not the most permissive jurisdiction in the United States with regard to company formation. Both Nevada and Wyoming permit companies to have bearer shares and nominee shareholders, which Delaware does not.



Financial Action Task Force

Groupe d'action financière

**THIRD MUTUAL EVALUATION REPORT ON
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM**

UNITED STATES OF AMERICA

23 JUNE 2006

33. Legal persons –
beneficial owners

NC

- While the investigative powers are generally sound and widely used, there are no measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.
- There are no measures taken by those jurisdictions which permit the issue of bearer shares to ensure that bearer shares are not misused for money laundering.



Financial Crimes Enforcement Network

The Role of Domestic Shell Companies in Financial Crime and Money Laundering:

Limited Liability Companies

November 2006

specifying that the companies be used only for lawful and allowable purposes.¹

- The use of domestic shell companies as parties in international wire transfers allows for the movement of billions of dollars internationally by unknown beneficial owners. This could facilitate money laundering or terrorist financing.
 - Company formation agents and similar service providers play a central role in the creation and ongoing maintenance and support of domestic shell companies, some of which appear to be used for illicit purposes domestically and abroad.
 - Based on our research, states do not appear to impose effective accountability safeguards on company formation agents and similar service providers to ensure that the business entities they create, buy, sell, and support are not violating state laws
- There is currently no requirement that these service providers report suspicious activity involving the shell companies they have created, bought, sold, or supported, nor are there requirements or procedures to identify beneficial owners in certain jurisdictions if illicit activity is suspected.
 - Certain domestic jurisdictions, especially when serviced by corrupt or unwitting service providers, are particularly appealing for the creation of shell companies to be used for illicit purposes.
 - The LLC, particularly when organized in a state which does not require reporting of information on ownership,² provides an attractive vehicle for a shell company because it can be owned or managed anonymously and is inherently vulnerable to abuse.

2007
NATIONAL MONEY
LAUNDERING
STRATEGY



- Offices of the Treasury, including FinCEN and OFAC, will develop and implement outreach programs with State authorities and relevant trade associations to explore legislative and administrative options to require the disclosure of ownership information in the company registration process. Outreach efforts will focus on those States with the most significant organization activity and those that are most often cited in Suspicious Activity Reports involving shell companies and other legal entities.

what do they want



Levin staff wish list



- list of beneficial owners maintained in the jurisdiction of organization

- list available without a subpoena



- person responsible for verifying beneficial owners are not on the watch list