STATE OF NEW YORK

8439

IN SENATE

March 1, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the limited liability company law, the tax law, the administrative code of the city of New York, and the executive law, in relation to the disclosure of beneficial owners of limited liability companies and certain other business entities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 102 of the limited liability company law is amended by adding a new subdivision (ii) to read as follows:

(ii) (1) "Beneficial owner" means a natural person who, directly or indirectly, (A) holds a membership interest in a limited liability company or a foreign limited liability company; (B) exercises substantial control over the decisions of a membership interest in a limited liability company or a foreign limited liability company; or (C) has been assigned a membership interest in a limited liability company or a foreign limited liability company.

(2) The term "beneficial owner" shall not include: (A) a minor child; (B) a person acting as a nominee, intermediary, custodian, or agent on behalf of another person; (C) a person acting solely as an employee of a limited liability company and whose control over or economic benefits from the limited liability company derives solely from the employment status of the person; (D) a person whose only interest in a limited liability company is through a right of inheritance, unless the person also meets the requirements of paragraph one of this subdivision; (E) a creditor of a limited liability company, unless the creditor also meets the requirements of paragraph one of this subdivision; or (F) any natural person whose membership interest in a limited liability company derives solely from his or her employment by such limited liability company and such limited liability company's organization as an employee-owned business or worker cooperative, as evidenced by such limited liability company's by-laws or articles of organization.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(3) If an entity other than a natural person meets the requirements of a beneficial owner as defined in paragraph one of this subdivision, the beneficial owners of such limited liability company or foreign limited liability company shall include the names and business addresses of all members, managers, shareholders, directors, officers, partners, and any other authorized persons, if any, of such entity. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person is itself a limited liability company or other business entity, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved. If such entity is publicly traded, a REIT, a UPREIT, or a mutual fund, the requirements of this paragraph shall only apply to shareholders possessing a controlling interest in such entity.

§ 2. Paragraphs 6 and 7 of subdivision (e) of section 203 of the limited liability company law, as added by chapter 470 of the laws of 1997, are amended to read as follows:

(6) if all or specified members are to be liable in their capacity as members for all or specified debts, obligations or liabilities of the limited liability company as authorized pursuant to section six hundred nine of this chapter, a statement that all or specified members are so liable for such debts, obligations or liabilities in their capacity as members of the limited liability company as authorized pursuant to section six hundred nine of this chapter; [~~and~~]

(7) a list of the beneficial owners of the limited liability company that identifies each beneficial owner by (A) name; (B) current residential or business street address; and (C) a unique identifying number from a non-expired passport issued by the United States or a non-expired driver's license or identification card issued by this or another state; and

(8) any other provisions, not inconsistent with law, that the members elect to include in the articles [~~or~~] of organization for the regulation of the internal affairs of the limited liability company, including, but not limited to, (A) the business purpose for which the limited liability company is formed, (B) a statement of whether there are limitations on the authority of members or managers or a class or classes thereof to bind the limited liability company and (C) any provisions that are required or permitted to be included in the operating agreement of the limited liability company pursuant to section four hundred seventeen of this chapter.

§ 3. Section 209 of the limited liability company law is amended to read as follows:

§ 209. Filing with the department of state. A signed articles of organization and any signed certificate of amendment or other certificates filed pursuant to this chapter or of any judicial decree of amendment or cancellation shall be delivered to the department of state. If the instrument that is delivered to the department of state for filing complies as to form with the requirements of law and the filing fee required by any statute of this state in connection therewith has been paid, the instrument shall be filed and indexed by the department of state. The department of state shall not review such articles or certificates for legal sufficiency, except that it may review such articles or certificates for legal sufficiency with regard to requirements pertaining to beneficial owners pursuant to sections two hundred three

and two hundred eleven of this article; its review shall be otherwise limited to determining that the form has been completed.

§ 4. The limited liability company law is amended by adding a new section 215 to read as follows:

§ 215. Beneficial ownership disclosure. (a) Beneficial ownership information relating to each limited liability company formed under the laws of this state is required to be maintained by the secretary of state until the end of the five year period beginning on the date that the limited liability company terminates pursuant to this chapter.

(b) Any person who: (1) knowingly provides false or fraudulent beneficial ownership information; or (2) willfully fails to provide complete or updated information shall be guilty of a misdemeanor and liable to the state for a civil penalty of not more than ten thousand dollars and shall be prohibited from organizing, forming, registering, or managing any limited liability company or partnership in the state of New York for a period not less than one year or greater than five years.

§ 5. Section 1418 of the tax law is amended by adding a new subdivision (j) to read as follows:

(j) Notwithstanding the provisions of subdivision (a) of this section, the commissioner or any officer or employee of the department of taxation and finance may furnish to the department of state information relating to beneficial ownership that is obtained or derived from returns filed pursuant to this article.

§ 6. Paragraphs 7 and 8 of subdivision (a) of section 802 of the limited liability company law are amended and a new paragraph 9 is added to read as follows:

(7) a statement that the foreign limited liability company is in existence in the jurisdiction of its formation at the time of the filing of such application; [~~and~~]

(8) the name and address of the authorized officer in the jurisdiction of its formation where a copy of its articles of organization is filed or, if no public filing of its articles of organization is required by the law of the jurisdiction of formation, a statement that the foreign limited liability company shall provide, on request, a copy thereof with all amendments thereto (if such documents are in a foreign language, a translation in English thereof under oath of the translator shall be attached thereto), and the name and post office address of the person responsible for providing such copies[~~.~~]; and

(9) a list of the beneficial owners of the foreign limited liability company that identifies each beneficial owner by (A) name; (B) current residential or business street address; and (C) a unique identifying number from a non-expired passport issued by the United States or a non-expired driver's license or identification card issued by this or another state.

§ 7. The limited liability company law is amended by adding a new section 810 to read as follows:

§ 810. Beneficial ownership disclosure. (a) Beneficial ownership information relating to each foreign limited liability company formed under the laws of this state is required to be maintained by the secretary of state until the end of the five year period beginning on the date that the foreign limited liability company terminates pursuant to this chapter.

(b) Any person who: (1) knowingly provides false or fraudulent beneficial ownership information or (2) willfully fails to provide complete or updated information shall be guilty of a misdemeanor and liable to the state for a civil penalty of not more than ten thousand dollars and

shall be prohibited from organizing, forming, registering, or managing any limited liability company or partnership in the state of New York for a period not less than one year or greater than five years.

§ 8. Paragraph 2 of subdivision (a) of section 1409 of the tax law, as amended by section 3 of part O of chapter 59 of the laws of 2021, is amended to read as follows:

(2) When the grantor or grantee of a deed for a building used as residential real property [~~containing up to four family dwelling units~~] is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the [~~names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any limited liability company or other business entity that are to be the members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity other than a publicly traded entity, a REIT, a UPREIT, or a mutual fund, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved~~] beneficial owners of such limited liability company. For purposes of this subdivision, the terms [~~"members", "managers", "authorized person",~~] "beneficial owners" and "limited liability company" [~~and "other business entity"~~] shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

§ 9. Subdivision h of section 11-2105 of the administrative code of the city of New York, as added by chapter 297 of the laws of 2019, is amended to read as follows:

h. When the grantor or grantee of a deed for residential real property [~~containing one- to four-family dwelling units~~] is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the [~~names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any limited liability company or other business entity that are to be the members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved~~] beneficial owners of such limited liability company. For purposes of this subdivision, the terms [~~"members", "managers", "authorized person",~~] "beneficial owners" and "limited liability company" [~~and "other business entity"~~] shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

§ 10. The tax law is amended by adding a new section 171-x to read as follows:

§ 171-x. Information sharing with the department of state regarding beneficial owners of limited liability companies. Notwithstanding any other law, the commissioner shall release to the department of state information regarding beneficial owners of limited liability companies which is reported to the department either on a form issued by the department or any other method of report to the department. For purposes of this section, the terms "beneficial owners" and "limited liability company" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

§ 11. The executive law is amended by adding a new section 100-b to read as follows:

§ 100-b. Corporation and business entity database; information on beneficial owners. 1. The secretary of state shall assign each beneficial owner of a limited liability company a unique identifying number and publish such number in relation to any affiliated limited liability companies in the corporation and business entity database or any subsequent database which is maintained by the division of corporations within the department of state. The identification of the names and business addresses of beneficial owners associated with a unique identifying number in the corporation and business entity database shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law; provided, however, that the department shall also establish, through regulations, procedures to allow beneficial owners with significant privacy interests to apply for a waiver to withhold their names and business addresses from disclosure pursuant to the freedom of information law. For purposes of this section, the terms "beneficial owners" and "limited liability company" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

2. The secretary of state, in cooperation with the commissioner of the department of taxation and finance, may verify the beneficial ownership information included in returns pursuant to subdivision two-b of section two hundred eleven of the tax law using beneficial ownership information submitted to the department of state pursuant to section two hundred two or eight hundred two of the limited liability company law in order to identify fraud or suspicious activities and may, at his or her own discretion, refer such fraud to appropriate authorities.

§ 12. Section 211 of the tax law is amended by adding a new subdivision 2-b to read as follows:

2-b. (a) The commissioner shall prescribe regulations and instructions requiring returns of information to be made and filed in conjunction with the reports required to be filed pursuant to this article, relating to beneficial owners of limited liability companies. For purposes of this section, the terms "beneficial owners" and "limited liability company" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

(b) No report shall be accepted by the department if the information required to be included in the return pursuant to paragraph (a) of this subdivision is not included in such report.

(c) The commissioner, in cooperation with the secretary of state, may verify the beneficial ownership information included in returns pursuant to this subdivision using beneficial ownership information submitted to the department of state pursuant to section two hundred two or eight hundred two of the limited liability company law in order to identify

fraud or suspicious activities and may at his or her own discretion refer such fraud to appropriate authorities. The information included in returns pertaining to the names and business addresses of beneficial owners shall be transmitted to the secretary of state to keep beneficial ownership information up to date, including with respect to the business entity database or any subsequent database maintained by the division of corporations within the department of state pursuant to section one hundred-b of the executive law.

(d) The information required to be included with returns pursuant to this subdivision shall be filed and shall be in such form as the commissioner may prescribe.

§ 13. This act shall take effect on the three hundred sixty-fifth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.