



PILLA TALKS TAXES

DAN PILLA'S MONTHLY TAX AND FINANCIAL BULLETIN



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The Corporate Transparency Act *Beneficial Ownership Information Reporting Requirements*

The Corporate Transparency Act (CTA) was enacted in 2021. Its broad reporting requirements, and the stiff penalties for failure to report, took effect on January 1, 2024. See: 31 U.S.C. § 5336. This Special Report will help you understand what these reporting requirements consist of and how to meet the obligation imposed by law. Note that this is an entirely separate requirement from that of tax return filing. Merely filing a corporate tax return does not meet the requirements of the CTA, and the filing of a fully accurate tax return is not a defense to the CTA's penalties (explained below).

As explained more fully below, the CTA requires corporations (and other legal entities) to disclose to the federal government, among other things, the names and contact information of its beneficial owners. Ostensibly, the act was passed to combat money laundering, tax fraud, drug traffickers, oligarchs, and to quell the funneling of financial aid to terrorists.

Generally speaking, the "party line" is that the CTA will aid federal and state officials in discovering the assets of bad actors who seek to launder or hide money in the U.S. The stated purpose is to protect U.S. national security, and in particular, protect the U.S. financial system from illicit use, and to provide essential information to national security, intelligence, and law enforcement agencies to better aid the battle against criminal activity.

The Financial Crimes Enforcement Network (FinCEN) Fact Sheet on the law states, in part, as follows:

Recent geopolitical events have reinforced the point that abuse of corporate entities, including shell or front companies, by illicit actors and corrupt officials presents a direct threat to the U.S. national security and the U.S. and international financial systems. For example, Russia's illegal invasion of Ukraine in February 2022 further underscored that Russian elites, state-owned enterprises, and organized crime, as well as Russian government proxies have attempted

IN THIS ISSUE

THE CORPORATE TRANSPARENCY ACT – Beneficial Ownership Information Reporting Requirements	1-8
2023 TAXPAYERS DEFENSE CONFERENCE	10
LOOKING FOR A TAX PROFESSIONALS	2
HOW TO WIN YOUR AUDIT	9

to use U.S. and non-U.S. shell companies to evade sanctions imposed on Russia. This rule will enhance U.S. national security by making it more difficult for criminals to exploit opaque legal structures to launder money, traffic humans and drugs, and commit serious tax fraud and other crimes that harm the American taxpayer. See: FinCEN Fact Statement, September 29, 2022, <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>.

Whether you believe that or not depends on your perspective. As for me, it seems that the U.S. Government increasingly believes that it is God. And one of the attributes of God is omniscience. See: I Chronicles 28:9; Psalm 147:5; I John 3:20. But the government doesn't just *know* everything as does our Creator. It must *learn* everything, so for it to be omniscient, it must physically gather information about everybody and everything, and it must do so on an *ongoing* basis. The CTA is just another in the long train of federal laws intended to achieve that goal.

According to the Small Business Administration, there are about 27 million small businesses in the United States, and about 2 million new business entities are formed every year. Most of these businesses have

no employees. It is argued that this makes it difficult for the government to know who the beneficial owners of the company in fact are (though I'm not sure why income tax returns don't reveal that information).

Moreover, I'm not sure it matters who owns a particular business organization unless that specific business falls under suspicion of wrongdoing. On the other hand, if a particular individual falls under suspicion of wrongdoing, bank records are readily available to investigators from which one can determine the target's business interests. In the case of the IRS, it is not even necessary that a warrant be issued for such records, or even that investigators have probable cause to believe the individual is involved in criminal activity. See my discussion of the IRS's broad summons power in my book, ***How to Win Your Tax Audit***.

Regardless, the CTA requires certain business entities (discussed below) to file a report with FinCEN to disclose two categories of data: (1) the beneficial owners of the entity; and (2) the applicant of the entity.

The report is known as the "beneficial ownership information" (BOI) report. Details on the required report are found in federal regulations, at 31 C.F.R. § 1010.380. See also: 31 U.S.C. § 5336. I discuss the details below.

Taxpayers Defense Institute Consulting Members

Name	Ability Level	Territory (City located)	Phone	Email
Donald MacPherson	Attorney	AZ (Glendale)	800-BEAT IRS	mac@beatirs.com
Donald MacPherson	Attorney	S California	800-BEAT IRS	mac@beatirs.com
Lawrence Stephens	CPA	CA:Northern (Modesto)	(209) 543-0490	lhs@saccon.com
James Olson	CPA	Colorado (Golden)	(720) 328-8624	Financial.Forensics.LLC@comcast.net
Julius Janusz	Enrolled Agent	CT (New Britain)	(860) 225-2867	tax@jjtax.com
Steven Klitzner	Attorney	FL (Miami)	(305) 682-1118	Steve@FloridaTaxSolvers.com
Darrin Mish	Attorney	FL (Tampa)	(813) 229-7100	dmishesq@getirshelp.com
Patricia Gentile	Attorney, CPA	MA, NH (Nashua, NH)	(800) 880-8388	PGentileCPA@comcast.net
Charles Markham	Enrolled Agent	MA (Norwell)	(781) 659-6600	charles@markhamandcompany.com
Manuel Mendoza	Enrolled Agent	MD (Bethesda)	(301) 962-1700	mendoza@mendozaco.com
Daniel J Pilla	EA, US Tax Court	MN (Stillwater)	(800) 553-6458	support@taxhelponline.com
Chris Churchwell	CPA	MO (Joplin)	(417) 781-1829	chris@chtaxgroup.com
Tom Zeiders	Attorney	OK, Tulsa	(918) 743-2000	tom@tax-amnesty.com
Robyn McQuown	CPA	OK, Norman	(702) 265-1159	mcquown@cox.net
Mitchell Gerstein	CPA	PA (Bala Cynwyd))	(484) 434-2041	mgerstein@isdanerllc.com
Kenneth Eichner	CPA	TX (Houston)	(713) 781-8892	kde@kdepc.com
Dionne Cheshier	Enrolled Agent	TX (Dallas)	(972) 514-1424	dionne@cheshiertaxresolution.com
Frank Rooney	Attorney	VA (Arlington), MD & DC	(703) 527-2660	rooneyf@irsequalizer.com

COMPANIES REQUIRED TO REPORT

A “reporting company” is required to report its BOI data to FinCEN. The regulation identifies two types of “**reporting companies**,” domestic and foreign.

A domestic reporting company is a corporation, limited liability company (LLC), or any other entity created by the filing of a document with a secretary of state (or similar office) under the law of any state or Indian tribe. A foreign reporting company is a corporation, LLC, or any other entity formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state (or similar office).

Per FinCEN guidance, these definitions mean that reporting companies will include (subject to specific exemptions discussed below) limited liability partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs. The key to ascertaining whether a company is a “reporting company” is whether the entity was created by the act of filing an organizational document with a secretary of state or similar office. If so, it is considered a “reporting company,” unless otherwise exempt per the regulation.

Other types of legal entities, including most trusts, are excluded from the definition of a “reporting company” because they are not created by the filing of a document with a secretary of state. This would include sole proprietorship enterprises and qualified joint venture enterprises operated by married citizens filing jointly.

ENTITIES EXEMPT FROM REPORTING

Under the regulation, 23 types of entities are exempt from the definition of a “reporting company.” In FinCEN’s BOI *Small Entity Compliance Guide*, pg 4, the agency provides the following chart of entities exempt from reporting under 31 C.F.R. §1010.380(c)(2).

Chart 2 – Reporting company exemptions

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

The booklet is available here:

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

INFORMATION THAT MUST BE REPORTED

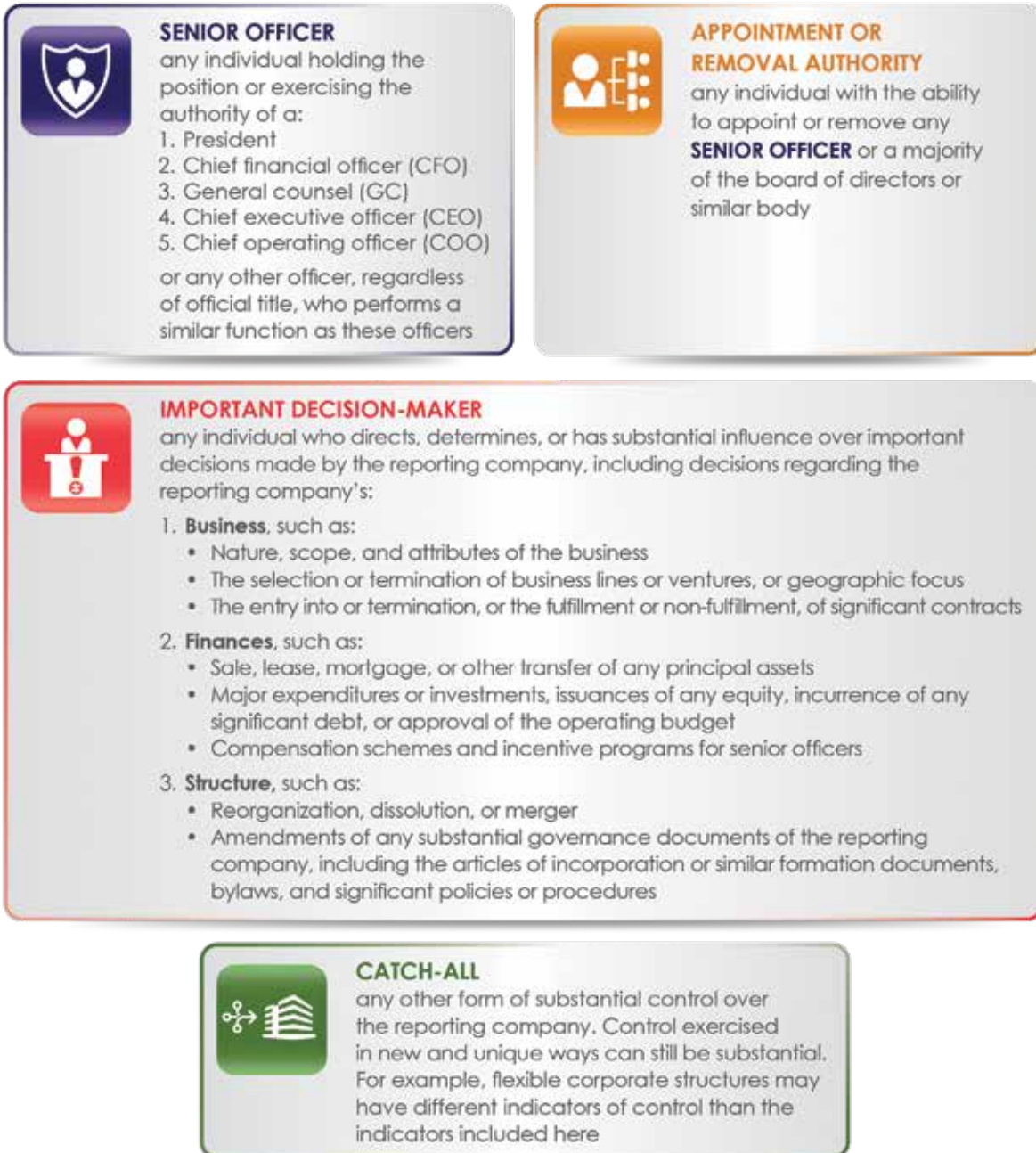
The regulation requires that the reporting company provide a statement to FinCEN showing every person who is considered to be a “beneficial owner” of the company.

Beneficial owners include two categories of individuals. They are individuals who, directly or indirectly, either (1) exercise substantial control over the company, **or** (2) own or control at least 25 percent of the ownership interests of the company. An individual might be a beneficial owner through substantial control, or because of his ownership interest, or both.

What is “substantial control”? A person is considered to have “substantial control” over a company if the person: (1) is a senior officer, (2) has authority to appoint or remove

certain officers or a majority of the directors, (3) is an important decisionmaker, or (4) has any other form of substantial control over the company. See: FinCEN, *Small Entity Compliance Guide*, Chart 3, pg 17, shown below.

Chart 3 – Substantial control indicators



As you can see, the idea of “substantial control” is quite broad. It includes anyone with the power to make critical decisions on behalf of the entity. The idea is to eliminate the capacity to avoid the disclosure of true owners by masking them as mere employees. The *Small Entity Compliance Guide* provides an “if/then” checklist to help determine whether an individual has “substantial control” of the business such as would require reporting. See page 20 thereof.

What is an “ownership interest”? An “ownership interest” exists when any person owns or controls at least 25 percent of the company. Such interest includes equity, stock or other voting rights, a capital or profits interest, convertible instruments, options or other non-binding privileges to buy or sell any of the above, and “any other instrument, contract, or other means used to establish ownership.” See: FinCEN, *Small Entity Compliance Guide*, Chart 4, pg 18, shown below.

Chart 4 – Ownership interests



This definition is likewise quite broad, as seen from the “catch-all” section at the bottom of the chart. The examples on page 25 of the *Small Entity Compliance Guide* provide illustrations to show what constitutes an “ownership interest” in the reporting company.

There are five exceptions to the requirement to report beneficial owners. See: 31 C.F.R. §1010.380(d) (3)(i)-(v). The five exemptions are:

1. A minor child, as defined under the law of the State or Indian tribe in which a domestic company is created or a foreign company is first registered, provided the company reports the required information of a parent or legal guardian of the minor child;
2. An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
3. An employee of a reporting company, acting solely as an employee, whose substantial control over or economic benefits from such entity are derived solely from the employment status of the employee, provided that such person is not a senior officer of the company;
4. An individual whose only interest in a reporting company is a future interest through a right of inheritance; and
5. A creditor of a reporting company.

WHO IS THE COMPANY APPLICANT?

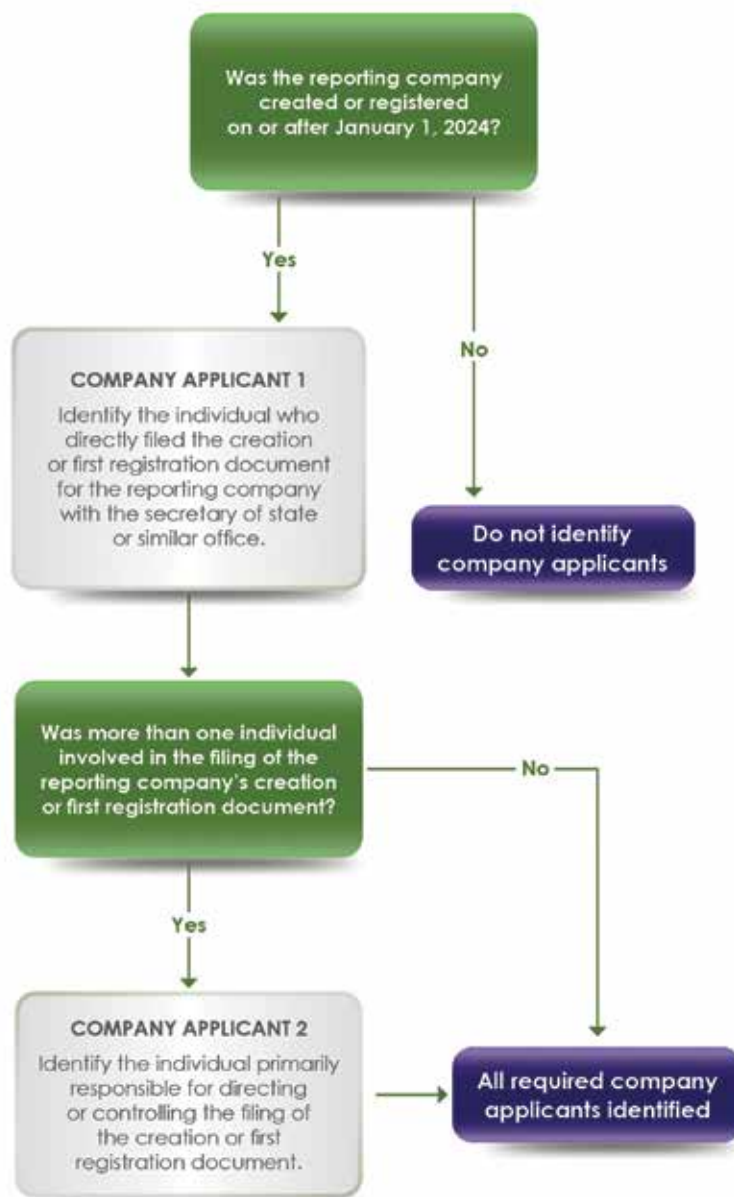
The regulation defines a “company applicant” to be only one of three persons. See: 31 C.F.R. §1010.380(e). They are:

1. For a domestic company, the individual who directly files the document with the Secretary of State that creates the entity;
2. In the case of a foreign reporting company, the person who files the document that first registers the entity to do business in the United States; and

3. For either type of company, the individual who is “primarily responsible for directing or controlling such filing,” if more than one person is involved in the filing.

This rule does not require reporting companies existing or registered as of January 1, 2024, to identify and report on their company applicants. See: *Small Entity Compliance Guide*, pg 33. Company applicants must be reported for domestic companies formed, or foreign companies registered, on or after January 1, 2024. See Chart 6, *Small Entity Compliance Guide*, pg 35.

Chart 6 – Company application definition



BENEFICIAL OWNERSHIP INFORMATION REPORTS

The BOI report filed with FinCEN must divulge the specific information outlined above. See: 31 C.F.R. §1010.380(b). Chart 7 from the *Small Entity Compliance Guide*, pg 38, shows the information that is required in the report.

EFFECTIVE DATE

This reporting rule is effective as of January 1, 2024. See: 31 C.F.R. §1010.380(a)(1).

Reporting companies created or registered *before* January 1, 2024 have one year (until January 1, 2025) to file their initial reports. Reporting companies

Chart 7 – Required information checklists

Reporting Company

- ☐ Full legal name
- ☐ Any trade name or "doing business as" (DBA) name
 - » Report all trade names or DBAs.
- ☐ Complete current U.S. address
 - » Report the address of the principal place of business in United States, or, if the reporting company's principal place of business is not in the United States, the primary location in the United States where the company conducts business.
- ☐ State, Tribal, or foreign jurisdiction of formation
- ☐ **For a foreign reporting company only**, State or Tribal jurisdiction of first registration
- ☐ Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))
 - » **If a foreign reporting company has not been issued a TIN**, report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

Each Beneficial Owner and Company Applicant

Not all reporting companies are required to report information about company applicants. See Chapter 3 for assistance in identifying whether your company is required to report company applicant information.

- ☐ Full legal name
- ☐ Date of birth
- ☐ Complete current address
 - » Report the individual's residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the United States.
- ☐ Unique identifying number and issuing jurisdiction from, and image of, **one** of the following non-expired documents:
 - » U.S. passport
 - » State driver's license
 - » Identification document issued by a state, local government, or tribe
 - » **If an individual does not have any of the previous documents**, foreign passport

created or registered *on or after* January 1, 2024, and *before* January 1, 2025, have 90 days to file a BOI report. Companies created or registered *on or after* January 1, 2025, have 30 days to file their reports. The 90- and 30-day periods begin after receiving notice of creation or registration from the Secretary of State (or similar office).

Reporting companies have 30 days to report changes to the information in their previously filed reports, and must correct inaccurate information in previously filed reports, within 30 days of when they become aware of, or have reason to know of, the inaccuracy of earlier reports. See: 31 C.F.R. §1010.380(b)(3).

HOW TO FILE A BOI REPORT

The BOI report must be filed electronically through FinCEN's secure online filing system. Reports are being accepted as of January 1, 2024. Instructions on how to complete and file the BOI report online are

published at www.fincen.gov/boi.

IF IN DOUBT, GET HELP

Section 5336(h)(1) of Title 31 provides substantial penalties for non-compliance with these disclosure provisions. First, it's deemed unlawful for any person to willfully provide false or fraudulent information to FinCEN regarding a BOI report, or to fail to file any required report. There are both civil and criminal penalties for such actions.

The civil penalty for failure to report is a fine of up to \$500 per day *for each day* the failure to report continues. The criminal penalty for willful violation of the law is a fine of up to \$10,000, or imprisonment of up to 2 years, *or both*. See: 31 U.S.C. § 5336(h)(3).

For these reasons, do not mess around with BOI reporting. If you're not sure what to do or how to do it, get help from a financial professional.

How You Can Ask Dan Pilla a Question

If you have questions or problems you'd like Dan Pilla to address, please write to Dan at:

215 W. Myrtle Street
Stillwater, MN 55082

or e-mail to:

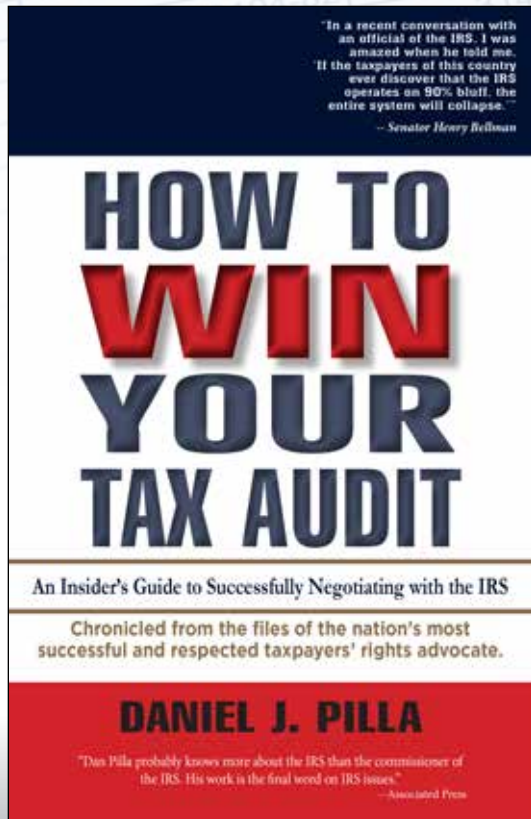
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Write the word "newsletter" in the subject line.

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2023 Taxpayers Defense Conference

The 2023 Taxpayers Defense Conference is now in the books. It was our 29th consecutive annual conference and it was a great success. We had about forty people in the room with us in Tampa, FL, and another fifteen streaming live online. Online attendees were able to participate by asking questions through the chat function on our platform.

Our presenters (besides myself) included Scott MacPherson, who did a two-hour ethics session; Steve Klitzner, who did a session on how to challenge underlying assessments in CDP appeals; and for the first time, my daughter MacKenzie Hesselroth (Pilla), who presented a session on how to meet the burden of proof in CDP cases. That session is an outstanding supplement to the above Special Report on releasing levies. All agree that she did a great job with her first-ever presentation of this kind. We will see more of her in the future.



2023 Defense Conference Speakers
left to right: Dan Pilla, Steve Klitzner,
MacKenzieHesselroth, Scott MacPherson



MacKenzie discusses the burden of Proof

If you missed the Conference, we are working to have the self-study materials available soon.

Check out PillaTaxAcademy.com for the latest courses and webinars available.



Dan Answers Questions

Jean takes questions from online attendees

