State of California **Board of Equalization**

M e m o r a n d u m

To: Ms. Deborah Pellegrini, Chief
Board Proceedings Division MIC: 81

Date: November 22, 2002

From: Ani Kindall
Senior Tax Counsel MIC: 82

Subject: **Contribution Disclosure Opinion 02-1**
Reallocation Hearings Are Not Subject to the Disclosure and Disqualification Requirements of the Kopp Act

Question Presented:

Should the Board Proceedings Division send out contribution disclosure forms for reallocation hearings held pursuant to Regulation 1807?

Conclusion:

The Board Proceedings Division should not send out contribution disclosure forms for reallocation hearings held pursuant to Regulation 1807 because such hearings are not subject to the disclosure and disqualification requirements of the Kopp Act (Government Code section 15626).

Analysis:

The Kopp Act provides that a Board Member is disqualified from participating in an adjudicatory proceeding pending before the State Board of Equalization if the Member has received from a party, participant, or an agent of either, any contribution(s) equaling $250 or more within the preceding twelve months. The Kopp Act also provides that Board staff must inquire and report to the Board whether any such contributions have been made. The Board obtains this information on contribution disclosure forms sent out by the Board Proceedings Division.

We have previously advised (and subsequently added to regulation) that certain proceedings are not considered "adjudicatory proceedings" and therefore are not subject to the disclosure and disqualification requirements of the Kopp Act. For example, assessments pursuant to Section 19 of Article XIII of the California Constitution (state-assessed property) are not considered adjudicatory proceedings, nor are the Board's rate setting functions. Such proceedings are termed "not subject to statute" and the Board Proceedings Division does not obtain contribution disclosure information from persons involved in such proceedings.

We are of the opinion that reallocation hearings also fall into the category of proceedings that are not subject to statute. We base our opinion on the definition of "adjudicatory proceeding pending before the board" found in 18 California Code of Regulations, section 7003(a), which, in pertinent part, provides:

> For purposes of Government Code Section 15626, an "adjudicatory proceeding pending before the board" means any matter pertaining to an issued assessment of tax or fee or refund of tax or fee to a taxpayer or feepayer ….

Under this definition, a reallocation hearing is not an adjudicatory proceeding because it does not pertain to an issued assessment or refund of a tax or fee to a taxpayer or feepayer. Rather, a reallocation hearing determines whether taxes under the Bradley-Burns Uniform Local Sales and Use Tax have been allocated to the correct local jurisdiction.

Although local jurisdictions and any participating taxpayers will be regarded as parties for purposes of Regulation 1807 and sections 5070 to 5087 of the Rules of Practice, they will not be parties for purposes of the Kopp Act. A party for purposes of the Kopp Act is a "person who is the subject of an adjudicatory proceeding pending before the board." Since reallocation hearings are not adjudicatory proceedings, local jurisdiction and participating taxpayers are not parties for purposes of the Kopp Act.

We also note that subdivision (a) of Government Code section 54964, in pertinent part, provides that: "An officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any of the funds of the local agency to support or oppose … the elections or defeat of a candidate, by the voters."[1] Given this prohibition, it is unlikely that a local jurisdiction would have made a campaign contribution to a Board Member; therefore, any request for contribution disclosure forms from local jurisdiction would be a futile exercise for both the Board and the local jurisdiction being asked to the complete forms.

Based on the above analysis, the Board Proceedings Division should not send out contribution disclosure forms for reallocation hearings. [2]

If you have any further questions regarding this matter, please call me at 324-2195.

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[1] Prohibitions against the expenditure of public funds are also found in Government Code section 85300 and Penal Code section 424.

[2] The only other Contribution Disclosure Opinion (CDO) on local tax reallocation, CDO 94-6, also determined that contribution disclosure forms were not required, however, this new opinion is necessary because 94-6 was written before any of the above discussed regulations were adopted.

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