

Memorandum

To: Mr. Dan Tokutomi, Manager
Offers in Compromise Section MIC: 52

Date: November 27, 2002

From: Ani Kindall
Senior Tax Counsel MIC: 82

Subject: **Contribution Disclosure Opinion 02-2**
Offers in Compromise Brought before the Board for Approval Are Not Subject to the Disclosure and Disqualification Requirements of the Kopp Act

Question Presented:

Are offers in compromise brought before the Board for approval subject to the disclosure and disqualification requirements of the Kopp Act (Government Code section 15626)?

Conclusion:

Offers in compromise brought before the Board for approval are not subject to the disclosure and disqualification requirements of the Kopp Act.

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.

As discussed in Contribution Disclosure Opinion 02-1, certain proceedings before the Board of Equalization are not considered "adjudicatory proceedings" and therefore are not subject to the disclosure and disqualification requirements of the Kopp Act. Such proceedings are termed "not subject to statute."

Government Code section 15626 defines "adjudicatory proceeding pending before the board" as:

a matter for adjudication that has been scheduled and appears as an item on a meeting notice ... as a contested matter for administrative hearing before the board members.

Mr. Dan Tokutomi
November 27, 2002
Page 2

To the above definition, 18 California Code of Regulations, section 7003(a), adds that the matter must pertain "to an issued assessment of tax or fee or refund of tax or fee to a taxpayer or fee payer."

The Offers in Compromise (OIC) program is available to taxpayers and fee payers who do not have, and will not have in the foreseeable future, the means to pay their tax or fee liabilities in full within a reasonable number of years.¹ The OIC program does not accept offers on active accounts, non-final liabilities or disputed tax liabilities. We are of the opinion that an offer in compromise is not an adjudicatory proceeding as defined above because it is not a "contested matter for administrative hearing before the board members." (Emphasis added.) Rather, those offers in compromise above the amount that may be compromised by the Chief Counsel and Executive Director will be presented to the Board for approval or disapproval of the agreement reached by staff and the tax or fee payer regarding the amount that can be reasonably collected on the established liability. In addition, the vote taken by the Board does not pertain to the "issued assessment" as provided in Regulation 7003(a), but rather the Board's ability to reasonably collect on an otherwise final and undisputed tax or fee liability.

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

Ani Am Lindali

cc: Mr. James Speed
Mr. Timothy Boyer
Ms. Deborah Pellegrini
Ms. Jennifer Willis
Ms. Jean Ogrod
Ms. Karen Anderson
Contribution Disclosure Binder Distribution List

The specific criteria for a final tax or fee liability to be eligible for the OIC program is set forth in statute.