



STATE BOARD OF EQUALIZATION

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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

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Controller, Sacramento

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Executive Director

December 20, 1990

Mr. Jay Rappaport  
DeCastro, West, Chodorow & Burns, Inc.  
10960 Wilshire Boulevard, 18th Floor  
Los Angeles, California 90024-3804

Dear Mr. Rappaport:

Your letter of December 13, 1990 to Mrs. Janice Masterton has been referred to the undersigned for reply. You have requested our opinion regarding the correct application of the requirements of Government Code section 15626 as it relates to the following hypothetical situation:

Question

Assume that an Attorney is representing a client in a State Board of Equalization proceeding. Attorney is a member of a law firm, which is a professional corporation. Attorney, and three other members of the law firm, have each contributed to the same state board member amounts which are less than \$250.00. However, when the four contributions are aggregated, they total an amount in excess of \$250. The professional corporation itself has made no contributions. Finally, of the four donors, only Attorney is actively representing the client before the State Board of Equalization.

Based on the above facts, must a client disclose the four contributions made by the attorneys, even though each contribution was less than \$250.00 within the preceding twelve months?

Answer

Under the provisions of Government Code section 15626(h)(4), the term "agent" is defined as "any person who represents a party to or participant in an adjudicatory proceeding pending before the board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents."

The circumstances under which contributions by agents representing parties or participants are to be aggregated with contributions made by other members or employees of their firms are not completely free from doubt.

One approach would be to treat all non-reimbursed contributions made by firm members or employees who do not "represent a party to or participant in an adjudicatory proceeding pending before the board," as that term is used in section 15626(h)(4), as contributions from the individual contributor which should not be aggregated with those of agents or firms representing participants. The Fair Political Practices Commission (FPPC) has taken this approach in its construction of the parallel disqualification provision in Government Code section 84308.

Government Code section 84308, like section 15626, disqualifies members of government boards from voting on matters involving parties, agents, or participants from which they have received contributions of \$250 or more during the preceding 12 months from any of these entities. FPPC Regulation 2, California Code of Regulations section 18438.3(b), provides that contributions of "persons" (presumably meaning parties or participants) "shall be aggregated with those made by his or her agent within the preceding 12 months or the period of the agency relationship, whichever is shorter."

In advice letter I-89-696, the FPPC determined that "where the agent is an employee or member of a law, architectural, engineering or consulting firm, the firm's contributions will also be aggregated with those of the agent or party or participant." However, this same FPPC advice letter advises that "individual contributions by employees of the firm, such as secretaries or clerks, will not be aggregated unless the firm reimburses the secretary or clerk." The same logic can easily apply to professionals employed by the firm, or professionals who are members of the firm.

Obviously, where the firm reimburses a contributor, the contribution should be treated as coming from the firm, and should be attributed to the agent. However, where the firm does not reimburse the contributor, the contributor is making the contribution entirely of his or her own free will. Unless the contributor is directly participating or has participated with the agent in representing a party in a Board adjudicatory proceeding, there is no need to aggregate his or her contributions with those made by the agent or firm.

Conclusion

In light of the parallel opinion by the FPPC, we are of the opinion that in a situation where the professional corporation has made no contributions and only one attorney is actively representing the client before the State Board of Equalization contributions from other members of the firm will not be aggregated provided the other contributors have not represented the client on the same matter.

Question

Would the answer change if 1) one of the four attorneys previously worked on the matter currently before the State Board, but is no longer actively involved; 2) another of the four never worked on the matter currently before the State Board but is responsible for bringing the client to the law firm; and 3) the fourth attorney has never worked on the matter?

Answer

We are of the opinion that the contributions made by the attorney in questions 1 and 2 would have to be aggregated in order to determine the entire amount of the contribution required to be disclosed under section 15626. The amount contributed by the fourth attorney would not have to be included in determining the aggregate amount.

We trust this addresses your concerns on this matter. If you have further questions, please write this office again.

Very truly yours,



Mary C. Armstrong  
Senior Staff Counsel

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2683C

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December 13, 1990

OUR FILE NUMBER

5224-1a

VIA TELECOPIER - (916) 324-3984

Ms. Janice Masterton  
State Board of Equalization  
1020 North Street  
Sacramento, California 94279

Re: Disclosure of Contributions to Members of the  
State Board of Equalization

Dear Janice:

As I stated in our phone conversation this morning, I have a question regarding the new laws pertaining to the disclosure of contributions to a member of the State Board of Equalization in excess of \$250.00 within the preceding twelve months. My question is best set forth by using a hypothetical.

For this hypothetical, assume that Attorney is representing a client in a State Board of Equalization proceeding. Attorney is a member of a law firm, which is a professional corporation. Attorney, and three other members of the law firm, have each contributed to the same state board member amounts which are less than \$250.00. However, when the four contributions are aggregated, they total an amount in excess of \$250. The professional corporation itself has made no contributions. Finally, of the four donors, only Attorney is actively representing the client before the State Board of Equalization.

Based on the above facts, must a client disclose the four contributions made by the attorneys, even though each

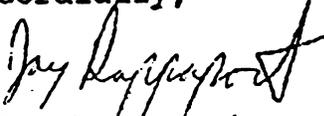
Ms. Janice Masterton  
December 13, 1990  
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contribution was less than \$250.00 within the preceding twelve months? Also, would the answer change if:

- (1) One of the four attorneys previously worked on the matter currently before the State Board, but is no longer actively involved;
- (2) Another of the four never worked on the matter currently before the State Board but is responsible for bringing the client to the law firm; and
- (3) The fourth attorney has never worked on the matter?

I appreciate your time and effort in this matter, and should you have any questions please feel free to call me.

Cordially,



Jay Rappaport

JR:cac