

Memorandum

To : Mrs. Janice Masterton
Assistant to the Executive Director

Date: January 7, 1992

From : Larry Augusta
Assistant Chief Counsel
Special Taxes and Administration

Subject: Campaign Contribution Disclosure - Toshiba America, Inc.
Item 3; 1/9/92 Board Agenda

Given the practical impossibility of securing a campaign contribution disclosure statement from the parent corporation in Japan, it is my recommendation that the Board Members proceed with the hearing on Toshiba America, Inc. if they are individually satisfied that they have not received any contributions from Toshiba Corporation of Japan.

I spoke with Mr. John Cronin, Tax Partner of Deloitte & Touche, the representative for the taxpayer. He advised me that Toshiba America, Inc. is a wholly owned subsidiary of Toshiba Corporation of Japan, a Japanese corporation whose stock is publicly traded in Japan. Ordinarily we would require a campaign contribution disclosure statement from the parent corporation on the grounds that the parent is a participant. However, I am advised by Mr. Cronin that it is a practical impossibility for him to secure such a disclosure statement. Given the facts and my reading of the law, I am recommending that the Board proceed.

While the law requires that a party or participant provide notice of any contributions on a form prescribed by the Board, there is nothing in the law which prohibits the Board from proceeding if the disclosure statements are not filed. Rather, the law prohibits participation of a Member who has received a disqualifying contribution over \$250 in the preceding 12 months. Accordingly, there is nothing to prohibit a Board Member from participating if the Member knows he or she has not received such a contribution.

With respect to the "close corporation" question, Toshiba America, Inc. is most likely not a "close corporation" as defined in the Corporations Code. Section 158 of that code provides that a close corporation is ". . . a corporation whose articles contain . . . a provision that all of the corporation's issued shares of all classes shall be held of record by not more than a specified number of person, not exceeding 35, and a statement 'this corporation is a close

corporation.'" I doubt if this publicly traded Japanese corporation has such a clause. While the Board's practice has been to consider the term "close corporation" to include any corporation where one shareholder owns more than 50% of the shares, that is not strictly the definition of a close corporation as found in the code.

Further, the proposed Regulations which are on the Board's Agenda for consideration at this meeting propose to define a close corporation as a corporation in which a natural person, together with his or her spouse, owns or controls 50% of the voting stock of the corporation. Thus, petitioner Toshiba America, Inc. would not be a close corporation within the meaning of this proposed regulation because all its shares are owned by a corporate parent.

LAA:cb
20106

cc: Mr. Burton W. Oliver
Mr. E. L. Sorensen, Jr.
Ms. Mary C. Armstrong

CONTRIBUTION DISCLOSURE OPINION 92-1

bc: Contribution Disclosure Binder Distribution List