State of California

Board of Equalization
Legal Division

Memorandum

To : Ms. Janice Masterton
Assistant Executive Director

Date: February 8, 1993

From : Ms. Ani Kindall
Staff Counsel

Subject: **Contribution Disclosure Opinion 93-1**
Effect of a Previous Contact on Whether a Unscheduled Matter or a Consent Calendar Matter is an "Adjudicatory Proceeding Pending Before The Board."

Introduction

This memorandum is in response to your January 25, 1993, memorandum to Larry Augusta regarding petitioner Paramount Pictures Corporation dba Paramount Studios Commissary SR AA 11-706917-010, 001. In that memorandum, you stated that John Davies informed our office that he has had direct contact with the above mentioned petitioner. Mr. Davies further informed you that the issues of this petition have been the same in several audits of this company. You have asked "whether this contact would make other Board agenda items affecting the same taxpayer and the same issue, but different audit periods, adjudicatory."

Analysis

Government Code section 15626(h)(5) defines "adjudicatory proceedings pending before the board" as:

> a matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board as required by Section 11125 as a contested matter for administrative hearing before the board members. A consent calendar matter is not included unless the matter has previously appeared on the calendar as a nonconsent item, or has been removed from the consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party.

If a matter is neither scheduled as a contested matter for administrative hearing before the board, nor as a consent

calendar matter which falls within the factors set forth in section 15626(h)(5), then it is not an adjudicatory proceeding.

Mr. Davies informed our office that he has had direct contact with the above mentioned petitioner. If the subject of the contact was the petition cited above and the petition was a consent calendar matter, then such contact would cause the matter to become an adjudicatory proceeding. Based on the language of section 15626(h)(5), which says that a consent calendar matter is not adjudicatory unless "the item is one about which the member has previously contacted staff or a party" (emphasis added), Mr. Davies' contact with the petitioner on the above cited matter would not cause any other agenda items which were not discussed or any unscheduled matters involving either the same taxpayer or the same issues to become adjudicatory.

Conclusion

If Mr. Davies' only contact with the petitioner was regarding the petition cited above, then other matters not currently pending before the Board would not become adjudicatory. Mr. Davies' previous contact with the petitioner on the above cited matter will not make future Board agenda items affecting the same taxpayer and the same issue, but involving different audit periods, an adjudicatory proceeding pending before the board.

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Ani Armen Kindall

cc: Contribution Disclosure Binder Distribution List