

## Memorandum

To : Janice Masterton  
Chief, Board Proceedings

Date: February 22, 1993

From : Ani Armen Kindall  
Staff Counsel

Subject: **Contribution Disclosure Opinion 93-2  
Settlement Agreements Are Not Subject to Contribution Disclosure**

### Question Presented:

This opinion is in response to your January 22, 1993, memorandum to Larry Augusta regarding whether settlement agreements scheduled for State Board of Equalization (Board) consideration will be subject to the contribution disclosure provisions of Government Code section 15626.

### Answer:

For the reasons stated in the analysis below, we are of the opinion that settlement agreements, which are required by statute to be scheduled for closed session, are not subject to contribution disclosure because closed session matters are not adjudicatory proceedings pending before the Board within the meaning of section 15626.

### Analysis:

Revenue and Taxation Code section 7093.5 sets forth the procedure for settlement of tax disputes over five thousand dollars (\$5,000). Section 7093.5(a)(3) prohibits Board Members from participating in the settlement process, except to approve or disapprove the settlement. Section 7093.5(e) provides that any proceedings undertaken by the Board pursuant to settlement shall be conducted in a closed session.

Section 15626 is only applicable to an adjudicatory proceeding pending before the Board. Section 15626(h)(5) 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 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."

Section 7093.5(e) provides that any proceedings undertaken by the Board pursuant to settlement shall be conducted in a closed session. Matters considered in a closed session of the Board are not administrative hearings. A settlement matter is not an adjudicatory proceeding pending before the Board because it is required by statute to be approved or disapproved only in a closed session of the Board; and therefore, it is not a matter for adjudication that has been scheduled for an administrative hearing before the Board.

Based on the above analysis, we are of the opinion that the Board's authority to approve or disapprove a settlement is not an adjudicatory proceeding under section 15626, and therefore, does not require contribution disclosure.

*Ani Armen Kindall*

cc: Contribution Disclosure Binder Distribution List