State of California

Board of Equalization
Legal Division

Memorandum

To : Mrs. Janice Masterton
Chief, Board Proceedings Division

Date: April 27, 1994

From : E. L. Sorensen, Jr.
Chief Counsel

Subject: **CONTRIBUTION DISCLOSURE OPINION 94-5**
Memorandum Opinions Presented to the Board for Action Are Adjudicatory if Hearing Was Adjudicatory

This is in response to your memorandum of April 20, 1994 in which you requested our opinion regarding whether or not memorandum opinions scheduled for adoption by the Board would be considered to be adjudicatory, and thus subject to the disclosure/disqualification requirements of Government Code section 15626, or whether they are non-contested matters which can be placed on a non-appearance (consent) calendar.

A memorandum opinion is scheduled for consideration/adoption by the Board on May 3, 1994. The matter was a claim for refund which was granted by the Board in October 1993. The entire claim was allowed and the refund check is scheduled to be mailed on May 2 by the Controller's Office. Until the refund check is mailed, the Board has the power, and the right, to stop the refund. However, once the check is mailed, the recovery of erroneous refunds is by court action by the Controller's Office. We would, therefore, conclude that under the facts presented, this particular claim for refund is final and there is, therefore, no longer an adjudicatory proceeding pending before the Board.

The provisions of Government Code section 15626 apply whenever the Board is rendering any kind of a decision in an adjudicatory proceeding pending before the Board. The term "adjudicatory proceeding" is defined in section 15626(h)(5) as any "matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board...as a contested matter for administrative hearing before the board members." If a matter is originally heard as an adjudicatory proceeding before the Board, it will remain adjudicatory until the matter is final.

If you have further questions concerning this matter, we will be happy to discuss them with you.

E. L. Lorenz Jr.

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