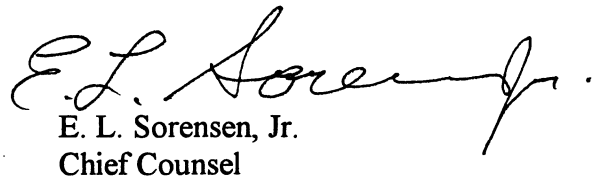
State of California

Board of Equalization
Legal Division-MIC: 82

`emorandum

To : Mr. Steven Kamp
Legal Counsel to Board Member Brad Sherman

Date: June 6, 1995



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

Subject: **CONTRIBUTION DISCLOSURE OPINION 95-7**
Appeal from the Franchise Tax Board becomes adjudicatory when the appeal is filed with the Board of Equalization

QUESTION PRESENTED:

Does an appeal from the Franchise Tax Board become adjudicatory when: (1) the appeal is filed with the Board of Equalization; or (2) the taxpayer requests reconsideration of the matter by filing a protest with the Franchise Tax Board.

ANSWER:

An appeal from the Franchise Tax Board can only become adjudicatory when an appeal is filed with the Board of Equalization and the matter is scheduled for a hearing before the Board Members or is a consent calendar matter which has previously appeared on the calendar as a non-consent item or which has been removed for separate discussion and vote or about which a Member has previously contacted the staff or a party.

ANALYSIS:

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

(l) 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;

(2) a consent calendar matter which has previously appeared on the calendar has a non-consent item;

(3) a consent calendar matter which has been removed from the consent calendar for separate discussion and vote;

(4) a consent calendar matter about which the member has previously contacted the staff or a party.

None of the circumstances listed above occur when the taxpayer requests reconsideration of a matter by filing a protest with the Franchise Tax Board. We have previously opined that Government Code section 15626 (the Kopp Act) is expressly directed and limited to proceedings pending before the State Board of Equalization and to members of the Board involved in those proceedings (see generally CDO 92-14). As such, we are of the opinion a taxpayer's actions with respect to a matter before the Franchise Tax Board have no effect on whether or not the matter is considered adjudicatory or a consent matter when it is pending before the Board of Equalization.

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cc: Mr. Burton W. Oliver
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