December 16, 2015

Mr. Ryan Tuck, Editor-in-Charge
Bloomberg BNA
1801 South Bell Street
Arlington, VA 22202

Dear Mr. Tuck:

In BNA’s article “California Scheming?” (December 9, 2015), your reporter, Laura Mahoney, distorted several facts and made multiple errors which misled your readers and disparaged some very caring and charitable individuals and entities.

She opened her article with a blatant misrepresentation, stating that I helped “nonprofits raise $731,835 in contributions for nonprofit activities” from 2009 to the present. She then used this data to make comparisons to the Governor, State Superintendent, and Members of the Board of Equalization (Board), who also helped nonprofits raise money for nonprofit activities, knowing that the data cannot be practically compared because of the obvious differences in the way the data was reported and compiled.

The total amount of contributions I encouraged companies to give to nonprofits was significantly less than the amount that Ms. Mahoney stated, because she knowingly included in her sum:

- Expenses that were not contributions, but were paid by a nonprofit with donations received - thereby incorrectly double counting the amount.
- The $48,218 in vendor expenses by the Los County Angeles Bar Association (LACBA) for its Annual Tax Policy Conference was not a monetary contribution that I solicited; but as Form 803 indicates, the LACBA made the payment to its conference vendors, and I only reported it for transparency purposes and because my name was on the program; and
- In-kind contributions of trinkets that companies gave away at the events which benefitted attendees and the companies’ marketing efforts, not the nonprofits.
Further, she compared this erroneous amount to the total contributions raised by other Members of the Board and statewide elected officials, knowing that they only report the actual cash contributions that they directly raise for nonprofits – and not the expenses of the nonprofits or amounts related to the simple inclusion of their names on a notice or trinkets.

In addition, the statement that “Horton's behested [sic] payments… place him third among statewide and constitutional officers behind Gov. Jerry Brown (D) and State Superintendent of Public Instruction Tom Torlakson (D)” was a mischaracterized comparison and completely false because the amounts are drastically different and the statistical and numerical relationship is erroneous. The behest amounts for the constitutional officers are as follows: Governor, $23.2 million, State Superintendent, $3.3 million, Attorney General, $1.2 million, Lt. Governor $845,900, and myself, $731,835 (using Mahoney’s incorrect number); placing me last in comparison to constitutional officers who were in office for the same period, excluding the Members of the Board. My amount is only .025% of this total.

Ms. Mahoney then claimed that I helped California Educational Solutions (CES) raise $267,764 in the years 2014 and 2015 alone. This allegation and amount was also significantly wrong in that it improperly included over $75,000 in expenses as monetary donations. For example, Ms. Mahoney knowingly included conference vendor expenses of $20,928.22, as indicated on the FPPC filing, that were paid by California State University, Dominguez Hills (CSUDH.)

In the case of her comparison of behest donations by all Board Members, she used inconsistent periods that distorted the results, comparing apples to oranges. For example, in her comparison of Board Members Betty Yee, George Runner, and me, she used the period 2009 - 2015 and then compared those amounts to recently elected Members Fiona Ma and Diane Harkey for periods 2014 – 2015; and Member John Chiang for 2009 – 2015, excluding the $95,000 in donations raised during the 2015 period by then State Treasurer Chiang.

I understand that the dates coincide with their time in office; however the point of the statement is about amounts solicited by these Members for the periods 2009 - 2015. These errors made her subsequent comparisons to the other elected officials and Board Members and corresponding presumptions inaccurate. Using inaccurate and dissimilar data and inconsistent periods to assume similarity and to compare monies raised by others is misleading to your readers and statistically and ethically wrong.

Further, Ms. Mahoney used the terms “business before the Board” and “business pending before the Board” as if they meant the same thing. On the contrary, “business before the Board” really means every business (approximately 1 million) making sales of tangible personal property in California; while “business pending before the Board” means businesses that actually have a case before the Board, which is less than 1% of the businesses in California. These terms are not interchangeable – and must be distinguished – otherwise, they are totally misleading and distort the information she is trying to present.
Then, in her attempt to imply that encouraging businesses to contribute to nonprofits somehow influenced my vote regarding businesses pending before the Board, she failed to mention or advise your readers that all of the voting Board Members cast their decision the same as I did, and in every case the Board’s Legal Department recommended these affirmative votes, and that my vote would not have changed the outcome.

Ms. Mahoney seriously misrepresented the action taken by the five-member Board to amend Property Tax Rule 133. In reference to my vote on Rule 133 and a donation to a nonprofit by one of the many companies in this industry, Ms. Mahoney wrote “Two days earlier, the SBOE approved regulatory changes that relieved the company from property tax assessments on rocket parts, equipment and fuel used to transport cargo to outer space.”

This statement is false and does not represent reality. Ms. Mahoney knew - that Assembly Bill 777, which mandated the property tax exemption for specified equipment used in outer space, was signed into law by the Governor on April 29, 2014, well before the Board took any definitive action. She also knew that the Board is mandated by law and the California Constitution to adopt regulations to interpret and apply property tax law that is promulgated and enacted by the Governor and the Legislature – and she knew that the Board’s actions to amend Rule 133 were a direct function of AB 777, which passed prior to the Board's action. She knew, based on her regular coverage of our meetings, that the rule-making actions taken by the Board were pursuant to the affirmative advice of the Board’s Legal Department and were unanimously supported by every Board Member – and my single vote was not the deciding vote.

In reference to donations made by companies to nonprofits for nonprofit activities due in part to my request, she misquoted me stating, “He denied that they present a conflict or appearance of a conflict, or that they influence his treatment of the companies making the donations when they come before him at the Board.” First, her question to me was about my personal perception, not the perception of others, which caused her to take my written response out of context. Second, she knew from our past conversations, as I have repeatedly told her, that I never denied that in the minds of some people there may be an appearance of a conflict. But I emphasized that I must be guided by the law, and while the perception of a few is informative, it does not determine my actions.

Then, knowing that there are experts on both sides of the issue, she only interviewed “experts” who supported her personal perspective on behest donations, one of whom is not intimately knowledgeable of the Board, its equalization districts, or the concerns of taxpayers in my district in particular.

These are just a few of examples where Ms. Mahoney used suggestive questions in order to elicit a certain predetermined answer, or falsely presented a presupposition in the question as an accepted fact, indicating that her approach, including the “experts” she quoted, was not balanced.

In addition, Ms. Mahoney distorted and disparaged the work of CES, implying that they are not fulfilling their mission when she stated “According to federal tax returns going back to 2005, CES
was founded as a charitable organization ‘to help disadvantaged students attend college and gain access to educational tools and resources to enhance their educational experience.’ The nonprofit's 2014 federal tax return, however, is inconsistent with its original mission and Jerome Horton's behested [sic] payment reports.”

She used the CES Connecting Women to Power (CWP) Conferences as an example, providing your readers a distorted description of conference activities, by omitting key facts: that the recent conferences (2014) were held in partnership with the California State University, Dominguez Hills and their students are always involved; that the event included a State job recruitment and training component, which over 500 young people attended; and that CES administers other much-needed charitable programs, such as Career Pathway for Students, Youth Scholarship, Cancer Intervention, Poverty Prevention, College Preparation Assistance, and the like. Even though Ms. Mahoney had access to such facts and information on these activities from past articles she wrote, she chose to omit them.

In this regard, her statement that only one out of the 30 sessions in the conference was related to taxation was also misleading, and misrepresented the event, implying that it had little to do with taxation, which is incorrect. Here are the facts:

- There were sales and use tax classes throughout the conference;
- The majority of the sessions dealt with small business development, business preservation, and business challenges, handling business risks and regulations, business growth, taxation, etc.
- All participants are BOE, FTB, EDD and IRS taxpayers from whom we seek compliance and concerning whom we seek to protect – and help stay in business so that tax revenues continue to stream into the State of California;
- The CWP conference is exactly the type of governmental event that is consistent with the FTB, IRS, and BOE Taxpayer Bill of Rights mandates; and
- BOE, FTB, EDD, and IRS representatives hosted booths and offered individual assistance at the event and provided services to these taxpayers throughout the day.

Further, Ms. Mahoney misquoted me by weaving together a compilation of several statements about the Volunteer Income Tax and Family Resource Fairs hosted by CES and over 38 other nonprofits and community-based organizations, when she wrote that I allegedly said, “Through our VITA program we helped recaptured [sic] over 1 million, feeding over 300 volunteers and an extensive advertising program.” As she knows, I did not make this statement in that manner or context. Based on the public records, my statement to her and others was “Our Volunteer Income Tax and Family Resources Fairs help thousands of California’s working poor recapture millions in state and federal tax EITC refunds, saving them thousands in tax preparation expenses, and providing them access to many free family services.”
Then, most unfortunately, and for purposes that I can only attribute as personal disparagement, Ms. Mahoney falsely stated that “…Yvonne Horton also served on its board (Bridges Community Development Corporation, a nonprofit)... in 2009 and 2010, according to tax returns filed by the nonprofit” - which is untrue. Yvonne has never served on the board of Bridges Community Development Corporation, and if the filings are incorrect, the organization will be advised to revise them accordingly. Ms. Mahoney certainly could have asked me in order to obtain the correct information.

She apparently made this statement in order to support her premise that my wife has ties to all of the nonprofits that I assist in fundraising for their nonprofit activities. With over 37 years of public service, my wife and I have helped to empower hundreds of nonprofits (though we have nothing to do with their governance) that help to combat poverty – including assisting them financially and academically. Charitable work and involvement to help those in our densely populated community is who we are – regardless of whether we are elected to any office. As irrelevant as the election is, it is evident based on the most recent results (as stated in the article), that we have the support of the vast majority of our community, in that I received 99.5% of the vote in the primary (well before the expenditures in question by Ms. Mahoney); and five months later, Yvonne received 89.8% of the vote for her re-election.

Further, Ms. Mahoney failed to mention that, as indicated in the CES tax return, CES has always been an entirely volunteer-based entity with no compensated board members. CES, like all other nonprofits, requests donations from many individuals and entities (public and private) pursuant to a competitive process that requires consistency with the predetermined mission and goals of the foundations granting the donation; and many of these requests are denied. As individuals and company representatives told Ms. Mahoney (indicated in the article), they participate in the nonprofit events because their activities are consistent with that charitable purpose. The fact is that my request for donations to CES and other nonprofits for their nonprofit activities only serves – at best – to initiate a competitive process, and has no bearing on whether it will be granted.

In her solicitation of "reforms," she then failed to mention that I support the more holistic approach of publicly financing campaigns as a way to deal with the “appearance” concerns she mentions. She also neglected to mention that in meetings during 2011 and 2012, I advocated for tighter rules and more transparency on BOE-sponsored events, as well as public/private partnerships in events, and that the Board directed staff to codify the thoughts and directions of the all Members in developing a new policy that has been in place since then.

The distortions, sensationalism, and exaggerations in Ms. Mahoney’s article were not only misleading, but seem contrary to your readers’ best interests and purpose. They call into question whether the comments by creditable experts were elicited using assumptions and presuppositions in order to exclude any sense of balance thereby.

If, as I understand, Ms. Mahoney truly believes that the Board of Equalization should be eliminated and replaced with a tax court, and the foundation of her philosophy is that elected officials should not
be adjudicating tax matters – then let’s talk about it. Making disparaging assumptions about me, my wife, other Board Members, or the agency is not a positive or productive way to make changes or improvements. She does the public an injustice by not openly and honestly advancing this debate and presenting accurate, balanced information including all the facts – without omission, biased distortions, or unfair characterizations. Allowing for an honest debate of this philosophy and perspective would be helpful to all, and who knows? In some aspects we may share a few commonalities.

In closing, thank you for at least sharing with your readers that all the activities mentioned in Ms. Mahoney’s article were legal, had a legitimate government purpose, and were approved by the Legal Department of the Board of Equalization and/or the Fair Political Practices Commission.

With the exception of the opinionated and distorted statements (disclosed by Ms. Mahoney as factual) discussed herein, I respect BNA and believe that it is generally a credible source of financial news, and I regret that this was not one of those articles.

Sincerely,

JEROME E. HORTON, Chairman
3rd District, Board Member

cc: Mr. Paul Albergo, Bureau Chief, Bloomberg BNA