



California Fair Political Practices Commission

July 1, 1992

P. Lawrence Klose
City Attorney
500 Castro Street
P. O. Box 7540
Mountain View, CA 94039-7540

Re: Your Request for Advice
Our File No. A-92-178a

Dear Mr. Klose:

This letter is in response to your request for reconsideration of the advice provided to you¹ regarding the duties and responsibilities of City of Mountain View Councilmember Dena Bonnell under the conflict-of-interest provisions of the Political Reform Act (the "Act").²

QUESTION

A business entity pays fuel taxes at the time of delivery of the taxed product and prior to the time when the customer actually pays for the delivered product. Are these fuel taxes included in gross revenues for purposes of Regulation 18702.2?

CONCLUSION

Fuel taxes which are paid at the time of delivery of the taxed product and prior to the time when the customer actually pays for the delivered product are included in gross revenues for purposes of Regulation 18702.2.

¹ Klose Advice Letter, No. A-92-178.

² Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

The facts as stated in our previous advice to you regarding this matter are incorporated herein by reference. You have provided additional facts as follows.

Councilmember Bonnell's employer shows unpaid taxes as liabilities in the company's books. This is so because the taxes are due and payable at the time of delivery of the taxed product. The customer actually pays for the delivered product some time after delivery. The business neither controls or derives economic benefit from the eventual collection of tax payments. Upon collection, the company reimburses itself for funds it was required to advance by virtue of the tax collectors' mandate. If a customer defaults, the business is entitled to a refund of taxes paid on the defaulted account, after reasonable efforts to collect the amounts due from the customer have failed.

ANALYSIS

As we have previously advised you, Regulation 18702.2 sets forth the test for determining materiality when a business entity will be affected indirectly by a governmental decision. This regulation states, in pertinent part, that the effect of a decision is material if the decision will result in an increase or decrease of \$10,000 or more in the gross revenues of the business entity during a fiscal year. (Regulation 18702.2(g)(1).)³

Taking into consideration the additional facts you have provided, we now reiterate our previous advice. You have stated that taxes accrue and are payable at the time of delivery of a product. While it is possible that at the time the tax is paid the company has not received payment for the product delivered, undoubtedly upon payment by the client the tax funds become a part of the company's revenue. Just as we do not consider depreciation in determining the increase or decrease of a company's assets, we do not consider the cost of producing revenues, which includes expenditures to pay taxes, when determining the effect of a decision on a company's gross revenues. (Atiqh Advice Letter, No. I-86-270.) Accordingly, even when a business entity makes tax payments at the time of delivery of a product and collects payment for the product at a later date, at which time the company

³ Under separate cover, you have also posed this question to Commission Chairman Davidian and have requested that the Commission adjust upward the dollar amounts in Regulation 18702.2 to be more congruent with current business revenues. Enclosed for your convenience is a copy of Chairman Davidian's response to your letter which states that the Commission's current level of staffing and budgetary constraints prevent the Commission from revising the provisions of Regulation 18702.2 at this time.

reimburses itself for the taxes it has paid, the taxes are paid by the purchaser and result in revenue to the business. Consequently, the term "gross revenue" includes taxes.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.⁴

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

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Enclosure

⁴ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.