

Political Law Alert

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New York State Bill to Close 'LLC Loophole' Awaits Governor's Signature

On January 14, 2019, the New York state legislature passed A. 776 (the bill), which is designed to close the "LLC loophole" in state campaign contribution laws that treats LLCs as individuals, rather than corporations. New York Gov. Andrew Cuomo has long signaled that he supports closing the loophole. If he signs the bill, it will become effective seven days later and the loophole will be closed.

Under a long-standing interpretation, the New York State Board of Elections has treated LLCs as individuals, for purposes of state contribution limits, allowing for a significantly elevated limit on campaign donations. Under the current rules, LLCs are not subject to New York's aggregate limit on corporate campaign contributions, under which a corporation may only contribute up to \$5,000 in the aggregate per calendar year to all state and local candidates, PACs and political parties combined. Rather, an LLC can make campaign contributions subject to the state's significantly higher limits for individuals. For example, during the 2018 elections, an LLC was allowed to contribute up to \$21,100 to the primary (depending on the candidate's party) and \$44,000 to the general election campaign of New York gubernatorial candidates.

If the bill is signed and takes effect, LLCs would be subject to the \$5,000 per-calendar year aggregate limit described above. Moreover, New York would attribute any campaign contribution made by an LLC to each of the LLC's members in proportion to the member's ownership interest. Also, if the contributing LLC has a member that also is classified as an LLC, the contribution would be attributed to that LLC's members. The law would not affect corporate contributions, which are not attributed to their shareholders, as well as attribution by partnerships, which will continue to attribute the partnership's contributions exceeding \$2,500 to their partners, and will only attribute contributions to any particular partner if that partner's share of the contribution exceeds \$99.

In addition, the bill would require each LLC that makes a campaign contribution in the state to file a report by December 31 of that year disclosing (i) the identity of each direct and indirect owner of the LLC and (ii) the proportion of the LLC that each such owner owns. The Board of Elections would publish a form to use for this report and would enact regulations implementing the bill's provisions. The bill would not impose new reporting requirements on corporations or partnerships.

Political Law Alert

If the bill is signed the prevailing thought is that contributions by LLCs in the state would sharply decline. Moreover, New York already imposes burdensome requirements that effectively prohibit many federal PACs from giving in the state. For example, a New York Department of Labor regulation prohibits a company from funding a PAC that makes political contributions in the state through

payroll deductions from New York employees. As a result, it may become impractical for many LLCs to contribute in New York without forming a state PAC. We can assist in forming a separate New York state PAC and recommend other practical measures to comply with the state's election laws going forward.

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