

A Trap for the Unwary: Corporate Aggregation Rules in the States for Political Contributions

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Where permitted by state law, direct corporate contributions are often a simpler means of contributing to candidates and political parties than political action committee (PAC) contributions. Although there may be certain reporting rules that apply (e.g., California's "major donor committee" requirements), these rules are typically less burdensome than the more stringent PAC requirements and, in many cases, these laws do not require disclosure of the corporation's donors. Of course, if a company has the budget, making corporate contributions avoids the necessity of raising funds from employees, stockholders, and the like.

One often overlooked aspect of direct corporate contributions, however, is each state's aggregation rules. Typically, these rules come into play when one or more corporations that are part of the same family make a contribution to the same candidate or state committee. Different states treat contributions by related entities differently, and it is important to know these rules in advance to avoid making an excessive contribution. Excessive contributions can lead to civil penalties, fines, and bad press, harming the company and the candidates equally.

Generally speaking, the 30 jurisdictions that permit corporate contributions fall into one of four groups. The first category, which includes the District of Columbia and states such as Georgia and Washington, explicitly aggregates contributions by corporations in a parent-subsidary relationship. (In some cases, such as in Washington, D.C., the aggregation principles apply not just to families of corporations, but also to any PACs financed or controlled by those corporations.)

Other states, like New York, do not aggregate contributions by related entities provided that each corporation is a separate legal entity and is not established or operated to circumvent the campaign finance laws. This means that funds may not be transferred from one corporation to another for purposes of making contributions. Often, as in the case of New York, there is a clear statement in the law to that effect. See N.Y. State Bd. of Elec., Contribution and Receipt Limitations, available at <http://www.elections.state.ny.us/Contributions.html#Limits> ("Each affiliated or subsidiary corporation, if a separate legal entity, has its own limit."). In other instances, like Mississippi, state elections officials have informally advised interested parties that contributions by related corporate entities will not be aggregated.

In between these two ends of the spectrum, there are a number of states - including California, Delaware and Louisiana - that aggregate the contributions depending on the degree of control one corporation has over another. Importantly, control does not necessarily mean 100% ownership of a particular company; in some states, the threshold is as low as 30% of actual ownership or may hinge on other factors like the composition of the board of directors. Since these tests are often fact-specific, it is important to periodically re-evaluate the relationships between the different corporate entities to make sure that the aggregation rules are not inadvertently triggered by run-of-the-mill changes in the structure of large, multi-level corporations. Such rules also may affect the application of a jurisdiction's pay-to-play contribution limits or reporting requirements.

In the final group, which includes states such as Oregon and Virginia, corporate contributions are permissible without limit. Thus, any aggregation issues are irrelevant.

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