

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-003

Contribution Limits for Individuals and Associated LLCs and Partnerships

QUESTION

Tenn. Code Ann. § 2-10-302 limits a person to a contribution of \$2,500 for a statewide election and \$1,000 for other offices. An individual is a principal in multiple partnerships and/or limited liability companies, which were formed for legitimate business purposes. What is the effect of contributions by the partnerships or limited liability companies to a candidate on the associated individual's limit for the same candidate?

OPINION

A contribution from a limited liability company or a partnership may be attributed to an individual member or partner for purposes of the contribution limits if particular facts and circumstances show the member directed the contribution through the company as a conduit or intermediary. The Registry of Election Finance may also, as a policy matter, reattribute these contributions in the manner provided by rules of the Federal Election Commission. If the Registry wishes to reattribute contributions in this way, it should promulgate regulations that so provide.

ANALYSIS

This opinion concerns state limits on campaign contributions. Under Tenn. Code Ann. § 2-10-302, no person may make contributions to any candidate with respect to any election that, in the aggregate, exceed \$2,500 for an office elected by statewide election and \$1,000 for any other state or local public office. The question concerns an individual who is a principal in many different partnerships and/or limited liability companies. These companies and partnerships were not formed primarily for the purpose of receiving contributions or making expenditures to support or oppose any candidate for public office or measure, but, instead, were formed for other legitimate business purposes. Therefore, these partnerships and limited liability companies are not "political campaign committees" subject to the reporting and other campaign finance law requirements. The request assumes that several of these partnerships and limited liability companies make campaign contributions to the same candidate. The question concerns the effect of these contributions on the contribution limit applicable to the individual.

The statute defines "person" as follows:

(A) “Person” means an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons;

(B) Any limited liability company or limited liability partnership created under title 48 shall be considered a person for the purpose of this subdivision (10) and subdivision (1).

Tenn. Code Ann. § 2-10-102(10). Limited liability companies and partnerships, therefore, are persons subject to separate campaign contribution limits.

But the Campaign Contribution Limits Act authorizes the Registry of Election Finance to treat campaign contributions made indirectly by the same person as contributions by that person. The statute provides:

All contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the registry of election finance and to the intended recipient.

Tenn. Code Ann. § 2-10-303(3).

This Office has concluded that, under this statute, a contribution from a limited liability company may be attributed to an individual member for purposes of the contribution limits if facts and circumstances show the member directed the contribution through the company as a conduit or intermediary. *Op. Tenn. Att’y Gen. 99-086 (April 8, 1999)*. Similarly, a contribution from a partnership may be attributed to some other person if the particular facts and circumstances show that the partnership is an intermediary or conduit for contributions by that person. *Op. Tenn. Att’y Gen. 04-050 (March 23, 2004)*. Under Tenn. Code Ann. § 2-10-309, in determining issues arising in regard to the Campaign Contribution Limits Act, the Registry of Election Finance may rely on the precedents established under the federal law.

As our Office noted in the 2004 opinion, Federal Election Commission rules provide that a partnership contribution is attributed to the partners in proportion to their right to partnership distributions or as the partners agree. 11 C.F.R. § 110.1(e). The same rules provide that a contribution by a limited liability company may be attributed to the partners, or to a single member, or may be treated as a generally illegal corporate contribution, depending on how that entity has elected to be treated under federal tax law. 11 C.F.R. § 110.1(g). The Registry of Election Finance has not promulgated similar rules with regard to contributions under state law. But the Registry would be authorized to attribute partnership and limited liability company contributions in this manner. If, as a policy matter, the Registry wishes to reattribute contributions in this way, it should promulgate rules to do so. Tenn. Code Ann. § 4-5-102(10).

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