



January 2008

## Client Advisory

### NONPROFITS EXEMPTED FROM POLITICAL CONTRIBUTION REPORTS

This past Sunday, January 13, 2008, Governor Corzine signed into law, legislation which was pushed by State Senators Lesniak and Kyrillos and Assemblypersons Quigley and Cryan, through both the New Jersey Senate and the New Jersey Assembly on January 7th (S3025), in one of the last legislative acts of the 2006-2007 Legislative Session, and was designed to give the long-awaited relief to nonprofit organizations from the pay-to-play disclosure laws. The new law, P.L. 2007, c. 304, takes effect immediately.

Under this new law, nonprofits who have contracts with government agencies of more than \$ 50,000 per calendar year are no longer required to file annual disclosure statements with the New Jersey Election Law Enforcement Commission ("NJELEC") listing the amount of political contributions made by the nonprofit and their officers and directors.

Last Spring, the New Jersey Election Law Enforcement Commission promulgated regulations pursuant to Section 3 of P.L. 2005, No. 271, part of the pay-to-play legislation, which required all "business entities" with contracts with New Jersey public entities to report on all such political contributions in an amount over \$300 made by the business entity and its directors, officers, principals, and partners, and their respective spouses. The new law, which amends P.L. 2005, No. 271, narrows the definition of business entities to cover only "for-profit entities."

The new law also amended Section 2 of P.L. 2005, No. 271, which requires any "business entity" bidding or negotiating on a contract with a State agency, county, municipality, independent authority, board of education or fire district with an anticipated value in excess of \$ 17,500 which is not publicly advertised for bids, to submit no later than 10 days prior to entering into the contract, a list of the amount and date of political contributions made by the business entity, a person and other business entity with an "interest" in the business entity, including all principals, partners, directors, officers, and their respective spouses, and all subsidiaries controlled directly or indirectly by the business entity, during the preceding twelve months. Again, the new law narrows the definition of "business entity" to a "for-profit entity."

The nonprofit community has issued a collective sigh of relief over the new law after a long 2007 in which the deadline for complying with the NJELEC annual disclosure regulations was extended three times while nonprofit leadership tried to get the NJELEC to change its own regulations to exempt them, and then resorted to this special legislation to remedy the problem, arguing that federal tax law prohibited Section 501(c)(3) nonprofits from making political contributions and that the disclosure of director contributions may seriously "chill" the ability of nonprofits to attract qualified directors.

A nonprofit which already filed the NJELEC annual disclosure can rescind its filing, so that information previously provided is not public, by submitting a written request by fax to Special Programs at NJELEC at 609-292-4238 to have its "business entity" information withdrawn.

Any questions regarding the new law, can be directed to Fran McElhill or Dave Weinstein at 856-795-2121.

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