

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.

One often overlooked aspect of direct corporate contributions, however, is each state's aggregation rule. 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.

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. 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. In between these two ends of the spectrum, there are a number of states-including California, Delaware and Louisiana-that aggregate the contributions

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

Wiley Rein has a large degree of expertise in this area and can advise on each state's corporate aggregation rules or provide a comprehensive overview of the rules applicable to those states where direct corporate contributions are permissible.