



As IRS Eases Reporting Burden, States Including Montana & Maine Focus on "Dark Money" Reforms

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At the same time that the IRS is making it easier for nonprofits to shield their donors from inadvertent disclosure, states continue to adopt new laws designed to shed light on who is funding politically active nonprofits. Montana and Maine are two of the latest states to target so called dark money in politics with reforms set to go into effect before the November 2018 elections.

Last month, Montana Governor Steve Bullock signed Executive Order No. 15-2018 (EO 15-2018), largely characterized in the media as an effort to disclose dark money spent by state contractors to influence state elections. EO 15-2018 imposes a broad requirement on state contractors to disclose all covered expenditures of \$2,500 or more made in the 24 months prior to submitting a bid or offer. The types of covered expenditures that must be disclosed include direct campaign contributions to Montana candidates, political parties or party committees, and donations to other entities, regardless of tax status, that disseminate certain types of communications featuring Montana candidates in the 60 days before an election. When calculating whether it has met the \$2,500 threshold triggering reporting, a bidder must include covered expenditures made by affiliated entities such as a parent or subsidiary within its control.

Prospective state contractors will now need to monitor the political activity of nonprofit entities to which they and their parent and affiliates or subsidiaries make donations. A prospective state contractor is prohibited from submitting an offer or bid without this disclosure. A contribution to a candidate is considered a covered expenditure regardless of whether the receiving candidate has the ability to influence the donor's state contract award, but gifts by the state contractor to an official (e.g. a meal) are not included and do not count towards the \$2,500 threshold. EO 15-2018 goes into effect immediately, and its disclosure provisions shall apply to contracts resulting from solicitations and applications received on or after October 1, 2018.

In Maine, LD 1865 will go into effect on or about October 8, 2018, and will require that certain major contributors to ballot initiatives disclose their purpose and their largest funding sources. LD 1865 aims to disclose the top sources of funds to organizations that make large contributions to ballot question committees or political action committees for the purpose of supporting a ballot measure. Specifically, organizations that make more than \$100,000 in contributions to a ballot question committee or political action committee for the purpose of supporting a ballot measure must disclose:

1. The name of and relevant contact information for the major contributor and the name of a responsible officer of the major contributor;
2. The form of organization and purpose of the major contributor;
3. The amount and date of each contribution from the major contributor to the recipient committee;
4. A certification that the major contributor has not received contributions, in whole or in part, for the purpose of initiating or influencing a people's veto referendum or direct initiative campaign in the State or, if the major contributor has received such contributions, the dates, sources and amounts of any such contributions;
5. The names of the 5 largest sources of funds received by the major contributor during the period beginning 6 months prior to the first contribution made to the recipient committee and ending on the date of the filing of the report. This paragraph does not apply to funds received by the major contributor that are restricted to purposes that are unrelated to a people's veto referendum or direct initiative campaign in the State; and
6. A statement indicating whether the major contributor is exempt from taxation under the United States Internal Revenue Code of 1986 and a list of any governmental jurisdictions within the United States in which the major contributor has filed campaign finance reports during the previous 12 months.

An organization that makes \$100,000 or more in contributions to ballot measure efforts in Maine will now be required to disclose its top sources of funds received in the six months prior to making a contribution to a Maine ballot question committee or political action committee influencing a ballot measure, notwithstanding that no funds were raised for that particular purpose. The bill requires the Maine Governmental Ethics and Elections Commission to create the forms for this reporting and authorizes the Commission to require electronic filing, so there are still some details to be sorted out between now and when the reporting obligation goes into effect. Noncompliance is subject to a 10% penalty on the total amount of contributions not disclosed, with a maximum penalty of \$50,000.

Most nonprofits are required to file an annual tax return with the Internal Revenue Service (IRS) that discloses the nonprofit's financials. On July 16, the IRS announced that tax-exempt organizations, other than 501(c)(3) charitable organizations, no longer need to disclose their donors on Schedule B of their Form 990 annual informational return. Although Schedule B of the Form 990 is not publicly disclosed, this move reduces the chance that a nonprofit's donors are inadvertently disclosed. However, tax-exempt organizations are cautioned that the IRS' ruling does not impact their disclosure requirements under any state's campaign finance or lobbying disclosure laws, including these new provisions in Montana and Maine.

Nossaman continually monitors states for new compliance requirements or changes to existing ones. Nossaman is available to assist clients with all of their compliance needs on the local, state and federal levels.