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State Contribution Strategies: With or Without State PACs

Public Affairs Council

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State and Local Campaign Contributions Generally

- When giving to state or local candidates, party committees or PACs, applicable federal, state, and/or local laws may come into play
  - Consider both campaign finance laws and pay-to-play laws
- These laws may prohibit or limit contributions or impose reporting requirements

Road Map for Multi-State Giving Strategies

- Corporate vs PAC
  - Corporate Contributions: Make corporate contributions where permissible
    - Consider corporate budgetary concerns
    - Administrative burden of processing corporate check vs PAC registration/reporting
    - Possible disclosure of corporate contributions on company website; corporate reporting requirements
    - Pay-to-play law implications
  - PAC contributions: Make PAC contributions where corporate contributions are prohibited or otherwise impractical
    - May also choose to give both corporate & PAC in states where there is no aggregation
    - Pay-to-play laws may apply to PACs

Road Map for Multi-State Giving Strategies

- Federal PAC: Use federal PAC to give in states where permitted and no burdensome requirements
- Form State PAC(s):
  - Where necessary because of burdensome state requirements
  - To take advantage of state's higher or no individual limits to PAC – "high cap PAC" (e.g., Florida, Georgia, Indiana)
- Benefit: Regional buy-in for using Federal or State PAC in a state
- Aggregation
  - In states where there is no aggregation, can maximize contributions by giving both corporate & PAC
  - In states that do aggregate, no benefit to do both since corporate & PAC share the same limits

PAC Governance Considerations

- Governance for federal/state or state PAC:
  - Centralized governance (cohesive strategy) vs local representation (more buy-in from region)
  - Budgeting/fundraising decisions
    - Providing Board or Contribution Advisory Committee positions to execs in diverse geographical areas helps with "local" fundraising
    - Can apply "eat what you kill" philosophy for regional areas- amount raised for PAC in that area can be contributed in that area
  - Separate state PACs for more regional control over PAC

Corporate Contributions

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- 28 states plus D.C. permit corporate contributions:

Alabama	Nebraska
California	Nevada
Delaware	New Hampshire
Florida	New Jersey
Georgia	New Mexico
Hawaii	New York
Idaho	Oregon
Illinois	South Carolina
Indiana	South Dakota
Kansas	Tennessee
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Mississippi	Washington

Corporate Contributions

- Five states currently permit unlimited corporate contributions (*i.e.*, Alabama, Nebraska, Oregon, Utah and Virginia).
  - Illinois limits for a particular elected office are lifted if IE or self-funding threshold is reached for that particular office.
- The remaining 23 states plus D.C. allow corporate contributions but impose limits.
- Partnerships: each state has different rules on pass-through

Corporate Contributions

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- Reporting Requirements
  - 17 states require corporations to file reports if they make contributions.

Alaska	Maryland	Ohio
California	Massachusetts	Pennsylvania
Georgia	Minnesota	Rhode Island
Hawaii	Montana	Tennessee
Iowa	Nebraska	Utah
	New Hampshire	Washington

  - Some of these states are corporate ban states, where the reporting requirement is triggered by ballot measure contributions (*e.g.*, Ohio and Massachusetts).
  - Emerging issue: contributions to non-profits, mostly 501(c)(4) organizations, engaging in political spending. This is sometimes referred to as "dark money" because (c)(4)s generally do not disclose political activity. CA passed legislation requiring certain non-profits to disclose activity. In addition, NY, CT, WV, NM, MD have attempted to require 501(c)(4) donor disclosure in certain instances.

Corporate Contributions- Aggregation

- Aggregation among affiliate companies
  - Most states aggregate among affiliates, *e.g.*, Georgia and Maryland.
  - New York does not aggregate among corporate affiliates for purposes of the $5,000 per corporation limit.
    - » Starting 1/31/19, LLC contributions are also subject to the $5,000 per entity limit, and LLC contributions are attributed to its corporate members.
  - California and New Jersey aggregate only if companies do not act independently.

Aggregation

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- Aggregation among affiliated PACs
  - Most states aggregate affiliated PACs, *e.g.*, Kentucky and Maine.
- Aggregation among company and its PACs
  - Washington state and D.C. aggregate between company and its PAC.
  - California aggregates if decisions regarding company and PAC contributions are made by the same people.
  - Kansas is an example of a state that does not aggregate between a PAC and a corporation donation made by a connected corporation to the same candidate.

Corporate Contributions

- 22 states generally prohibit corporate contributions:

Alaska	Michigan	Oklahoma
Arizona*	Minnesota	Pennsylvania
Arkansas*	Missouri*	Rhode Island
Colorado*	Montana*	Texas
Connecticut	North Carolina	West Virginia
Iowa	North Dakota	Wisconsin
Kentucky	Ohio	Wyoming
Massachusetts		

  – *Some of the above states permit corporate contributions to PACs and/or party committees.
  – Some states that prohibit corporate contributions to political committees permit contributions to administrative accounts of political party committees (*e.g.*, Texas, Ohio).
  – Ballot measure contributions are permitted, even if corporate contributions are prohibited in that state.

Operating a Multi-State PAC

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- If a PAC (including a federal PAC) contributes at the state or local level, it must comply with that state's or locality's law.
- Some states make it easy for federal PACs to give (Ohio and Texas).
- Some states make it difficult or illegal to use a federal PAC (Alaska, Connecticut, Massachusetts, New York, and Rhode Island).
- New York Department of Labor payroll deduction statement and regulation.
- New Jersey payroll deduction restriction.
- Many states do not exempt administrative expenses or certain solicitation expenses.
  - For example, Texas imposes restrictions on PAC match and New Hampshire treats administrative expenses as contributions subject to the $5,000 per election corporate limit.

Operating a Multi-State PAC

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- Some states impose burdensome restrictions on PACs.
  - Michigan used to require annual authorization on payroll deductions – repealed January 2016
  - New York treats administrative expenses as contributions that count against the contribution limit, and requires in-state bank account. Transfers exceeding $1,000 from out-of-state accounts are not permitted.
  - North Carolina requires in-state assistant treasurer.
  - Vermont requires compliance with state limit on what a PAC can receive to $4,080 per two-year cycle.
- Most states require registration and reporting by the PAC.
  - Some require greater itemization in reports than required under federal law.
- Some PAC aggregate limits struck down in wake of *McCutcheon*

Pay-to-Play Implications

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- For government contractors, beware of state and local pay-to-play laws, which may apply to PAC donations
- These laws can prohibit a company from doing business or entering into a contract with a governmental entity if a covered donor makes or solicits political contributions in that jurisdiction to officeholders, candidates, political parties, or other political committees (*e.g.*, PACs)
  - Some states, like New Jersey and Illinois, and localities, like Philadelphia, expressly cover contributions from a PAC of a covered contractor.
  - Even if PAC is not expressly covered, generally treat contractor's PAC as covered unless specific authority otherwise
  - These laws may apply even to a federal PAC giving in a state where it is not required to register or report (*e.g.*, NJ)
- Importance of pre-clearance system for PAC contributions

Special Restrictions on Certain Industries

- New Jersey – Prohibits insurance companies, banks, utilities and their affiliates, doing business in the state from making contributions "for any political purpose whatsoever."
  - PAC of regulated entity can give as long as administrative expenses reimbursed
- Delaware has a ban on insurers, or banks acting as an insurer, contributing to an Insurance Commissioner candidate.
  - PAC of insurer should be treated as covered
- Several states impose restrictions on lottery or gaming contractors.

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