Mark Lamb replied

To:"'PDC Support'" <pdc@pdc.wa.gov>

Cc:sharonrayebrown@gmail.com
+1 more

Jennifer,

Thanks for your message and the opportunity to expand and clarify.

After review of Exhibit G it is still not clear to me that Senator Brown had any reporting obligation associated with the undated guarantee of a 2007 debt for a business she no longer has any interest in. Contrary to the assertions in the complaint, Senator Brown was totally divested by early 2018 well before she spoke on the 2019 legislation referenced.

Moreover, Exhibit G contains no dollar amount, interest rate nor terms of repayment -- all of which would be required if the complainant's interpretation of the law were to control. Even if the Commission were to conclude that such a personal guarantee for a business line of credit should have been disclosed, it is not clear what information would be disclosed. Senator Brown would have shared this obligation with every other guarantor in the business (of which she was always minority owner) none of whom would be responsible for anything absent default.

The term "guarantee" is defined as:

"a formal pledge to ***pay another person's debt*** or to perform another person's obligation ***in the case of default***.

- a thing serving as security for a formal pledge to ***pay another person's debt***.
- less common term for guarantor." [Emphasis added].

The legal term of art "guarantee" is conspicuously absent from both 42.17A.710 (1)(c) and WAC 390-24-110.

RCW **42.17A.710** (1)(c) states "The name and address of each creditor to whom the value of *two thousand dollars or more was owed; the original amount of each debt to each creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each debt; ***and the security given***, if any, for each such debt. Debts arising from a "retail installment transaction" as defined in chapter **63.14** RCW (retail installment sales act) need not be reported" [Emphasis added].

The language of RCW 42.17A.710 (1)(c) is consistent with the common understanding that there is distinction between a "debt" and "security" given for a debt, which in this case is in the form of a guarantee.

The definitions in WAC 390-24-110 also support the distinction between a personal debt and a guarantee of a business obligation.

WAC 390-24-110 states, "Definition—Debt. (1) For the purpose of RCW 42.17A.710 (1)(c), the term "debt" means and includes ***a personal obligation or liability to pay or return something of value***. (2) The term "debt" as used in RCW 42.17A.710 (1)(c) ***shall not be deemed to include an account payable of a business entity in the ordinary course of such entity's business***."

By analogy, an elected official would not need to report a business credit line they had personally guaranteed (and very few business lines of credit do not require such a guarantee) because such a debt is in the ordinary course of business and also because revolving credit accounts are not defined as debt for purposes of the statute. It would further be misleading in amount to report such a guarantee as the full debt when (as here) there are multiple other guarantors who owned more of the busines and had larger interest in the underlying enterprise.

It should also be noted that if the Commission determines that a 2007 guarantee of a business credit is defined as a "debt" that determination will retroactively apply to all elected officials in the State of Washington for any and all guarantees (personal or business) they have given and will make any F-1 filings that did not include them non-compliant.

In conclusion, Senator Brown does not believe that any amendments to her F-1 are required, however should the Commission disagree and create a new standard for reporting guarantees of business debt she was obviously cooperate in good faith and amend prior reports as best she can.

Best,

Mark

Mark Lamb
The North Creek Law Firm
A Professional Corporation

12900 NE 180th Street
Suite #235
Bothell, WA 98011

(425) 368-4238
(425) 489-2824 (FAX)

www.northcreeklaw.com