



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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DECLARATORY ORDER NO. 7

REPORTING COMMODITY FUTURES CONTRACT ON THE FINANCIAL AFFAIRS STATEMENT (RCW 42.17.241): Trading in commodity futures is reportable pursuant to RCW 42.17.241(1)(b) and should be listed in Section 3.C on the F-1. Separate accounts from which interest is earned is reportable pursuant to RCW 42.17.241(1)(b) and should be listed in Section 3.A on the F-1. (August 27, 1991)

Sandra Buran
30613 J. Place
Ocean Park, Washington 98640

Dear Ms. Buran:

You petitioned for a declaratory ruling as to how to report gains made from trading in commodities when filing your F-1 Financial Affairs Statement pursuant to RCW 42.17.241. We have agreed to issue this binding declaratory ruling.

Your question concerns the interpretation and application of RCW 42.17.241(1)(b) and (f) which provide:

(1) The statement of financial affairs required by RCW 42.17.240 shall disclose for the reporting individual and each member of his immediate family:

(b) Each bank or savings account or insurance policy in which any such person or persons owned a direct financial interest that exceeded five thousand dollars at any time during the reporting period; each other item of intangible personal property in which any such person or persons owned a direct financial interest, the value of which exceeded five hundred dollars during the reporting period; the name, address, and nature of the entity; and the nature and highest value of each such direct financial interest during the reporting period; ...

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

RCW 42.17.010 (10)

(f) The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of five hundred dollars or more; the value of the compensation; and the consideration given or performed in exchange for the compensation; ...

FACTUAL BACKGROUND

You are a candidate in your local school board election. As such, pursuant to RCW 42.17.240, you must file a financial affairs statement ("F-1").

You and your husband make your living by trading in commodity futures. Commodity futures or futures contracts are an obligation by the holder of that contract to deliver or take delivery of the commodity at a certain price at some point in the future. To buy a futures contract, you need only put up a certain percentage of the total contract value in cash or margin as a good faith gesture to honor the futures contract.

In purchasing a futures contract you don't actually purchase the commodity or have the actual commodity to sell. You retain the contract approximately two to three days, after which you sell your contract. This completed transaction is called a round term trade. In a given year, you may complete close to a thousand round term trades in the following commodities: Silver, Cotton, Heating Oil, Copper, U.S. Treasury Bonds, Crude Oil, Coffee, World Sugar, Soybean and Pork Bellies.

Each month you receive a Monthly Commodity Statement from the broker through whom you conduct these transactions. You also have a cash account from which you earn T-Bill interest.

Although you earn your living through these transactions, you assert that this is not a business. Further, you do not provide any services to other persons or entities. You are considered unemployed and the income from these transactions are reported to the Internal Revenue Service as capital gains.

ISSUES

You have asked two specific questions in your request for a declaratory order. The two questions are:

1. How do you report the commodity trading activities which provide you with your source of income? and

2. If you declare the commodity trading activity in Section 3.C. on the F-1, do you also need to declare those cash accounts from which you earn T-Bill interest in Section 3.A. on the F-1?

ANALYSIS

1. General Background

Pursuant to RCW 42.17.240(2), every candidate shall file with the commission a statement of financial affairs for the preceding twelve months. This statement must be filed within two weeks of becoming a candidate.

The contents of the statement of financial affairs is specified in RCW 42.17.241. This section specifies the type of financial information which must be reported. Subsection (b) specifies that bank accounts and other items of intangible personal property in which the filer or a member of his immediate family owns a direct financial interest must be reported. Further, subsection (f) specifies that the value of a filer's or immediate family member's compensation and the source of this compensation must be reported.¹

The official form for the statement of financial affairs is the "F-1" form. WAC 390-24-010. Section 1 of the F-1 provides for the reporting of income. Listed in this section is the source of compensation, how the compensation was earned and the value of the compensation. This section corresponds with the information required in RCW 42.17.241(1)(f).

Section 3 of the F-1 provides for the reporting of investments. This section is broken down into three subsections:

A. Reporting of the name and address of the bank or institution in which an account is maintained, the type of account, the value of the account and the income earned from the account,

B. Reporting of the name and address of the insurance company where a policy with a cash or loan value is maintained, the type of account, the value of the account and the income earned from the account,

¹ The items under RCW 42.17.241(1)(b) and (f) are only reportable if their value exceeds the statutory thresholds.

C. Reporting the name and address of the entity with which intangible property is maintained, the type of account or property, the value of the account or property, and the income earned from the account or property.

This section corresponds with the information required in RCW 42.17.241(1)(b).

2. Trading in Commodity Futures is Reportable Pursuant to RCW 42.17.241(1)(b) and Should Be Listed In Section 3.C. on the F-1.

"Compensation" under RCW 42.17.241(1)(f) is defined in RCW 42.17.020(8). That section provides:

"Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: *Provided*, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

In trading in commodity futures, the trader is purchasing a contract to buy or deliver a certain commodity for a certain price at some time in the future. The trader does not actually buy the commodity at the time he purchases the contract. Further, the trader does not actually own a commodity to sell at the time he purchases or sells the contract. Therefore, when the trader sells his commodity futures contract and earns a profit, the money earned is not payment for any particular piece of real or personal property. Also, the trader is not providing a service to another. From this, it can be concluded, that the money earned from the sale of a commodity futures contract is not compensation under the definition in RCW 42.17.020(8).² It is then not reportable under RCW 42.17.241(f) in Section 1 of the F-1.

Intangible personal property is property which has no intrinsic or marketable value, but is merely representative or evidence of value. (Blacks Law Dictionary) A commodity futures contract, like a stock or bond, is intangible personal property. The trader of the contract, at least during the period of time he

² This is further substantiated by the Internal Revenue Code. Pursuant to 26 USC § 1221 and § 1256, Commodity Futures Contracts are not income. It is reportable as capital gains earned by the sale of a capital asset.

owns the contract, has a "direct financial interest" in the contract as that phrase is defined in WAC 390-24-100. Since no commodity is actually owned by the trader, the item the trader owns is the contract or obligation incurred under that contract. This is intangible property. Since the owner of the contract maintains the obligation incurred until that contract is sold, he has a direct financial or ownership interest in that contract. Therefore, it is reportable as intangible personal property under RCW 42.17.241(1)(b) and is reportable under Section 3.C. on the F-1.

The information placed on the F-1 represents the filer's financial interests for the preceding twelve months. To complete the F-1, the name of the market in which the filer is trading should be listed in the section which requests the name and address of the entity in which the intangible property is owned. It would be sufficient to list, for example, Cotton, Pork Bellies and Crude Oil, if those are the markets in which the contracts were made. The description of the asset could be listed as "commodity futures contract". Whether the filer owned the contract on the last date covering the period for which the F-1 is being filed or the filer has sold the contract prior to the last date covering the period for which the F-1 is filed, the "asset value is the asset's highest market value during the time the filer owned the contract. The "income amount" of the futures contract seems to only apply if the contract has already been sold. Then, the "income amount" is the profit made from the sale of the contract.

If the number of contracts in which the filer has traded in a given year is too numerous to list, then the filer should attach a commodity statement given by the broker which shows each transaction. By attaching the commodity statement, the filer can leave the "asset value" section and the "income amount" section, blank. This would be more convenient for the filer and still provide the public with the information it is entitled to know.

3. The Cash Accounts From Which Interest on T-Bills Is Earned Is Reportable Pursuant To RCW 42.17.241(1)(b) and Should Be Listed In Section 3.A. on the F-1.

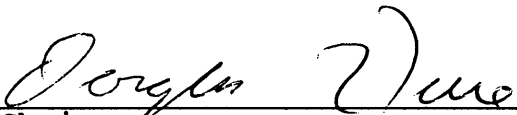
In addition to the profit made from the trading in the commodities market, you own a cash account from which you earn interest from T-Bills. This account is held in a financial institution. Therefore it is reportable under RCW 42.17.241(1)(b).


This account seems to be separate from the futures contract. It is an existing account which has a specific value on any specified date. Further, it is an account from which interest is earned. Therefore, it should be listed in Section 3.A. on the

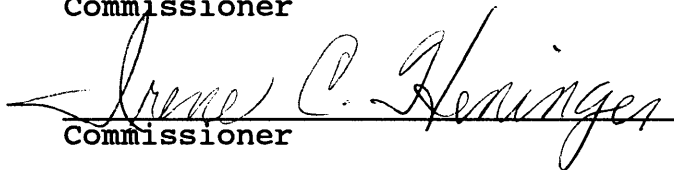
F-1. In the first column of Section 3.A., the filer should list the name and address of the financial institution where the account is maintained. The type of account should be listed in the next column. The value of the account on the date of filing should be in the column entitled Asset Value and finally, the cumulative total of the interest earned from that account during the filing period should be listed in the column entitled Income Amount.

CONCLUSION

We therefore hold that the money earned from the trading in commodity futures is reportable pursuant to RCW 42.17.241(1)(b) and should be listed in Section 3.C. on the F-1. We further hold that separate cash accounts from which interest is earned is reportable pursuant to RCW 42.17.241(1)(b) and should be listed in Section 3.A. on the F-1.


Chairman


Commissioner


Commissioner

Commissioner

Commissioner

Attest:



ADMINISTRATIVE OFFICER
Title