

Reporting Requirements for Section 527 Organizations

Announcement 2000-72

The Internal Revenue Service is considering the issuance of a revenue ruling addressing questions concerning the reporting requirements for political organizations described in § 527 of the Internal Revenue Code.

BACKGROUND

On July 1, 2000, Pub. L. 106-230 was enacted, amending § 527 of the Code. The new law imposes three reporting and disclosure requirements on political organizations described in § 527: (1) an initial notice of status, (2) periodic reports of contributions and expenditures, and (3) annual returns.

The following proposed revenue ruling provides questions and answers relating to the reporting and disclosure requirements for political organizations described in § 527. Because the new law was effective upon enactment, § 527 organizations may rely upon this proposed revenue ruling until the revenue ruling is finalized and issued.

The Service is soliciting public comment on the proposed revenue ruling. The Service asks for comments not only on the questions and answers posed in the proposed revenue ruling, but also on other questions concerning the reporting requirements for § 527 organizations.

Public comments should be submitted in writing on or before September 8, 2000. The Service plans to finalize the revenue ruling as soon as possible after this date. Comments should be sent to the following address:

Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224
Attn: Judith E. Kindell
T:EO:RA:T:P, Room 6033

Comments may also be sent electronically via the Internet to *TE/GE-Exempt-1@irs.gov.

DRAFTING INFORMATION

The principal author of this announcement is Judith E. Kindell of the Exempt Organizations Technical Division. For

further information regarding this announcement contact Judith E. Kindell on (202) 622-6494 (not a toll-free call).

PROPOSED REVENUE RULING ISSUES

On July 1, 2000, Pub. L. 106-230 was enacted, amending § 527 of the Code. The new law imposes three reporting and disclosure requirements on political organizations described in § 527: (1) an initial notice of status, (2) periodic reports of contributions and expenditures, and (3) annual returns. This revenue ruling provides questions and answers relating to the reporting and disclosure requirements for political organizations described in § 527.

QUESTIONS AND ANSWERS

I. Notice of Status

1. Q. What is the notice of status requirement for an organization described in § 527?

A. Under § 527(i)(1)(A), a political organization is required to give notice both electronically and in writing to the Service that it is a political organization described in § 527.

2. Q. What is the required notice form?

A. The required notice form is Form 8871, Political Organization Notice of Section 527 Status.

3. Q. Are all political organizations required to file the Form 8871 notice?

A. No. Under § 527(i)(5) and § 527(i)(6), three types of organizations are not required to file the Form 8871 notice:

- (a) Persons required to report under the Federal Election Campaign Act of 1971 (FECA) as a political committee (see 2 U.S.C. § 431(4));
- (b) Organizations that reasonably anticipate that their annual gross receipts will always be less than \$25,000; and
- (c) Organizations described in § 501(c) that are subject to § 527(f)(1) because they have made an “exempt function” expenditure.

All other political organizations, including state and local candidate committees, are required to file the notice.

4. Q. Is an organization that finances both federal and non-federal election activity required to file the Form 8871 notice?

A. As a general rule, any political organization (whether or not separately incorporated) that is organized and operated for an exempt function under § 527(e)(2) (see Q&A-15) must file Form 8871 unless it meets one of the exceptions discussed above (see Q&A-3), one of which is being required to report under FECA as a political committee. An organization that finances election activity (within the meaning of FECA) for both federal and non-federal elections may establish a political committee to receive contributions and make expenditures for both federal and non-federal election activity. In that case, the organization must register as a political committee and comply with the FECA contribution limitations and reporting requirements. 11 C.F.R. 102.5(a)(1)(ii). Such an organization is, therefore, not required to file Form 8871.

If, however, the organization sets up separate accounts to conduct its federal election activity and its non-federal election activity, the federal account is treated as a separate political committee that is required to register and report under FECA. 11 C.F.R. 102.5(a)(1)(i). The treatment of the federal account as a separate committee is consistent with the organizational requirements for political organizations under § 527, as discussed below in Q&A-10. Accordingly, the separate federal account is not required to file Form 8871. However, a separate non-federal account is not required to register and report under FECA as a political committee. Therefore, a separate non-federal account that is described in § 527(e)(1) is required to file Form 8871.

5. Q. Are political organizations that are required to report to state or local election agencies excepted from the notice requirement?

A. Section 527(i) does not except political organizations that file reports with state or local election agencies from the notice of status requirement. Therefore, unless the political organization meets one of the exceptions discussed above in Q&A-3, it must file Form 8871 with the Service.

6. Q. When must the organization file Form 8871?

A. Form 8871 must be filed within 24 hours after the date on which the organization was established. See Notice 2000–36, 2000–33 I.R.B. 173, for information about filing requirements for organizations in existence before July 30, 2000.

7. Q. What are the methods of filing Form 8871?

A. Section 527(i)(1)(A) requires that the organization file Form 8871 both electronically and in writing. Therefore, the methods for filing Form 8871 are as follows:

- (a) Electronically via the Internal Revenue Service Internet Web Site (IRS Web Site) at www.irs.gov/bus_info/eo/pol-file.html, and
- (b) In writing by sending a signed copy of Form 8871 to the Internal Revenue Service Center, Ogden, UT 84201. An organization can fill in and print out the form from the IRS Web Site.

8. Q. Must an organization take any additional steps before filing Form 8871?

A. Before filing Form 8871, the political organization must have its own employer identification number (EIN) even if it has no employees. To obtain an EIN, an organization must file Form SS-4, Application for Employer Identification Number, with the Service. The organization may obtain the EIN either by telephone or by mail. If the organization applies by telephone, it can obtain the EIN immediately.

9. Q. What information must be provided in the Form 8871 notice?

A. Under § 527(i)(3), an organization must provide in its Form 8871 notice its name and address (including any business address, if different) and electronic mailing address; its purpose; the names and addresses of its officers, highly compensated employees, contact person, custodian of records, and members of its Board of Directors; and the name and address of, and relationship to, any related entities (within the meaning of § 168(h)(4)).

10. Q. Does § 527(i) change the organizational requirements for § 527 organizations?

A. No. Section 527 does not require an organization to have formal organizational documents, such as articles of incorporation. Under § 1.527–2(a)(2) of the Income

Tax Regulations, a political organization meets the organizational test if it is organized for the primary purpose of carrying on exempt function activities as defined in § 527. The regulation specifically states that the organization need not be formally chartered or established as a corporation, trust, or association. For example, a separate bank account in which political campaign funds are deposited and disbursed only for political campaign expenses can qualify as a political organization. See Rev. Rul. 79–11, 1979–1 C.B. 207.

The requirement that a § 527 organization include the names and addresses of its officers, highly compensated employees, and members of its Board of Directors does not change the organizational test for § 527. Section 527(i) does not require political organizations to be organized with Boards of Directors, officers and highly compensated employees. It merely requires the organization to provide their names and addresses if it is so organized.

11. Q. What is a “related entity” for this purpose?

A. An entity is a “related entity” within the meaning of § 168(h)(4), which provides that an organization is related to another entity as follows:

- (a) The two entities have (i) significant common purposes and substantial common membership or (ii) directly or indirectly substantial common direction or control; or
- (b) Either entity owns (directly or through one or more entities) a 50 percent or greater interest in the capital or profits of the other. For this purpose, entities treated as related entities under (a) above shall be treated as one entity.

12. Q. What are “highly compensated employees” for this purpose?

A. Highly compensated employees for this purpose are the five employees (other than officers and directors) who are expected to have the highest annual compensation over \$50,000. Compensation includes both cash and noncash amounts, whether paid currently or deferred, for the 12-month period that began with the date the organization was formed (if the organization was formed after June 30, 2000). If the organization was already in existence on June 30, 2000, it must use the accounting period that includes July 1,

2000.

13. Q. What if an organization described in § 527(e)(1) does not file the Form 8871 notice?

A. An organization described in § 527(e)(1) must file Form 8871 unless it is an organization described in § 527(i)(5) or § 527(i)(6) (see Q&A-3). If the organization fails to file Form 8871 on a timely basis, § 527(i)(4) provides that, for any period during which the organization fails to satisfy the notice requirement, the taxable income of the organization includes its exempt function income (including contributions received, membership dues, and political fundraising receipts), minus any deductions directly connected with the production of that income. For purposes of computing its taxable income, the organization may not deduct its exempt function expenditures because § 162(e) denies a deduction for political campaign expenditures.

Under § 527(b), the tax is computed by multiplying the organization’s taxable income (including its net investment income) by the highest corporate tax rate, currently 35 percent. The organization must file a Form 1120-POL to report the income and pay the tax.

14. Q. When is an organization described in § 527(e)(1)?

A. An organization is described in § 527(e)(1) if it meets both the organizational and operational tests, that is, it must be organized and operated primarily for the purpose of accepting contributions or making expenditures for an exempt function under § 527(e)(2). See § 1.527–2(a).

15. Q. What is an “exempt function” under § 527(e)(2)?

A. “Exempt function” means, under § 527(e)(2), influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

16. Q. Is the Form 8871 notice publicly available?

A. Yes. Under § 6104(d), Form 8871 (including any supporting papers), and any letter or other document the Service issues with regard to Form 8871, will be open to public inspection. Copies of

Form 8871 that have been filed are currently available at the IRS Web Site. In addition, the organization is required to make a copy of these materials available for public inspection during regular business hours at the organization's principal office and at each of its regional or district offices having at least three paid employees in the same manner as applications for exemption of § 501(c) organizations are made available.

17. Q. What is the penalty on the organization for failure to comply with the public inspection requirement?

A. Under § 6652(c)(1)(D), a penalty of \$20 per day will be imposed on any person with a duty to comply with the public inspection requirement for each day a failure to comply continues.

II. Periodic Reporting Requirements

18. Q. What are the periodic reporting requirements imposed upon political organizations?

A. Under § 527(j), a political organization is required to periodically report contributions to the organization and expenditures made by the organization.

19. Q. What is the required periodic reporting form?

A. The required periodic reporting form is Form 8872, Political Organization Report of Contributions and Expenditures.

20. Q. When are political organizations required to file periodic reports on Form 8872?

A. Under § 527(j)(2), political organizations that accept contributions or make expenditures for an exempt function under § 527 (see Q&A-15) during a calendar year are required to file periodic reports on Form 8872, beginning with the first month or quarter in which they accept contributions or make expenditures. In addition, organizations that make contributions or expenditures with respect to an election for federal office (as defined in § 527(j)(6)) may be required to file pre-election reports for that election.

21. Q. Are all political organizations required to file periodic reports on Form 8872?

A. No, § 527(j)(5) provides that some organizations are not subject to this requirement. The organizations excepted from the filing requirements are as follows:

a) Organizations excepted from the requirement to file a Form 8871 (see Q&A-3);

b) Political committees of a state or local candidate; and

c) State and local committees of political parties.

All other political organizations, including other state and local political organizations, are subject to the reporting requirements of § 527(j), even if they file reports with state or local election agencies.

22. Q. How often must the Form 8872 be filed?

A. Political organizations subject to the periodic reporting requirement may choose to file Form 8872 on a monthly basis or on a quarterly/semi-annual basis, but it must file on the same basis for the entire calendar year.

23. Q. When is Form 8872 due in a non-election year when organizations elect to file on a monthly basis?

A. Pursuant to § 527(j)(2)(B), political organizations that choose to file monthly must file Form 8872 reports not later than the 20th day after the end of the month, which must be complete as of the last day of the month. The monthly report for the December activity is included in the year-end report due not later than January 31 of the following year. If any due date falls on a Saturday, Sunday or legal holiday, the organization may file the report on the next business day.

24. Q. When is Form 8872 due during an election year when organizations elect to file on a monthly basis?

A. Pursuant to § 527(j)(2)(B), in any year in which a regularly scheduled general election is held, the organization shall not file the reports regularly due in November and December (i.e., the monthly reports for activity in October and November). Instead, the organization must file a Form 8872 report not later than 12 days before the general election (or 15 days before the general election if posted by registered or certified mail) that contains information through the 20th day before the general election. The organization must also file a report no more than 30 days after the general election which shall contain information through the 20th day after the election. The monthly report for the December activity is included in the year-end report due not later than Jan-

uary 31 of the following year. If any due date falls on a Saturday, Sunday or legal holiday, the organization may file the report on the next business day.

25. Q. When is Form 8872 due in a non-election year when organizations elect to file on a quarterly/semi-annual basis?

A. Pursuant to § 527(j)(2)(A), political organizations that choose not to file monthly must file semi-annual reports in non-election years. These reports are due not later than July 31 for the first half of the year and, for the second half of the year, not later than January 31 of the following year. If any due date falls on a Saturday, Sunday or legal holiday, the organization may file the report on the next business day.

26. Q. When is Form 8872 due during an election year when organizations elect to file on a quarterly/semi-annual basis?

A. Pursuant to § 527(j)(2)(A), in an election year, these organizations must file quarterly reports due not later than the 15th day after the last day of the quarter, except that the return for the final quarter shall be due not later than January 31 of the following year. In addition, the organization must file pre-election reports for any election for federal office with respect to which the organization makes a contribution or expenditure. These reports shall be filed not later than 12 days before the election (15 days before if posted by registered or certified mail) and must contain information through the 20th day before the election. The organizations must also file a post-general election report due not later than 30 days after the general election and containing information through the 20th day after the election. If any due date falls on a Saturday, Sunday or legal holiday, the organization may file the report on the next business day.

27. Q. What is an election for purposes of the reporting deadlines under § 527(j)?

A. For purposes of determining what is an election year and what elections trigger the pre-election and post-general election reports, § 527(j)(6) provides that an "election" is a general, special, primary, or runoff election for a federal office; a convention or caucus of a political party with authority to nominate a candidate for

federal office; a primary election to select delegates to a national nominating convention of a political party; or a primary election to express a preference for the nomination of individuals for election to the office of President. Thus, an election for purpose of these reporting deadlines does not include elections that are purely state or local elections. When an election involves both candidates for federal office and candidates for state or local offices, it is an election for purposes of the reporting deadlines, but only those organizations that make contributions or expenditures with respect to the candidates for federal office are required to file the pre-election reports for those elections under § 527(j)(2)(A)(i)(II). However, all reports filed under § 527(j) must contain information about the contributions and expenditures within the reporting period, regardless of whether they were accepted or made with respect to candidates for federal, state or local office.

28. Q. What is a general election?

A. A general election is either one of the following:

- a) an election for federal office held in even numbered years on the Tuesday following the first Monday in November or
- b) an election held to fill a vacancy in a federal office (i.e., a special election) that is intended to result in the final selection of a single individual to the office at stake. See 11 C.F.R. 100.2(b).

29. Q. How will “election” under § 527(j)(6) be interpreted?

A. The definition of “election” under § 527(j)(6) is virtually identical to the definition of “election” under FECA (2 U.S.C. § 431(1)). Organizations may rely on FEC interpretation of the FECA definition in the absence of further guidance from the Service. The FEC publishes reporting dates for pre-election reports on its Web Site at <http://www.fec.gov/pages/refer.htm>.

30. Q. What must the Form 8872 reports contain?

A. The reports must include the name, address, and (if an individual) the occupation and employer, of any person to whom expenditures are made that aggregate \$500 or more in a calendar year and the amount of such expenditure. The reports must also include the name, address, and (if an individual) the occupation and em-

ployer, of any person that contributes in the aggregate \$200 or more in a calendar year and the amount of such contribution. However, organizations are not required to report independent expenditures as defined in § 301 of FECA. Only expenditures made or contributions received after July 1, 2000, that are not made or received pursuant to binding contracts entered into before July 2, 2000, must be reported.

31. Q. What is an independent expenditure under § 301 of FECA?

A. An independent expenditure is an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate for federal office which is made without cooperation or consultation with any candidate for federal office, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate for federal office, or authorized committee or agent of such candidate. See 2 U.S.C. § 431(17).

32. Q. Where is the Form 8872 filed?

A. The report is filed by sending a signed copy of Form 8872 to the Internal Revenue Service Center, Ogden, UT 84201. The form must be signed by an official authorized by the organization to sign the report.

33. Q. What if a political organization does not file the required Form 8872?

A. Under § 527(j)(1), a political organization that does not file the required Form 8872 or which fails to include the information required on the Form 8872 is subject to a tax equal to the amount not disclosed multiplied by the highest corporate tax rate, currently 35 percent.

34. A. Is the Form 8872 filed by political organizations publicly available?

A. Yes. Under § 6104(b) and § 6104(d)(6), Form 8872 will be made available for public inspection by the Service. In addition, under § 6104(d)(1)(A), the organization is required to make a copy of these reports available for public inspection during regular business hours at the organization’s principal office and at each of its regional or district offices having at least three paid employees in the same manner as applications for exemption of § 501(c) organizations are made available. Pursuant to § 6104(b) and § 6104(d)(3)(A), contributor informa-

tion must be disclosed to the public.

35. Q. What if the political organization does not make its Form 8872 publicly available?

A. Under § 6652(c)(1)(C), a penalty of \$20 per day will be imposed on any person with a duty to comply with the public inspection requirement for each day a failure to comply continues. The maximum penalty that may be incurred for any failure to disclose any one report is \$10,000.

III. Annual Return Requirements

36. Q. What political organizations are required to file annual income tax returns?

A. Political organizations that have taxable income in excess of the \$100 specific deduction allowed under § 527 are required to file an annual income tax return, the Form 1120-POL. In addition, for taxable years beginning after June 30, 2000, political organizations that have \$25,000 or more in gross receipts for the taxable year are also required to file the Form 1120-POL, without regard to whether they have taxable income.

37. Q. When is the Form 1120-POL due?

A. The Form 1120-POL is due on or before the 15th day of the third month after the close of the organization’s taxable year. § 6072(b). Thus, for a calendar year taxpayer, Form 1120-POL is due on March 15 of the following year. If any due date falls on a Saturday, Sunday or legal holiday, the organization may file the return on the next business day.

38. Q. What political organizations are required to file an annual information return?

A. Political organizations that are required under § 6012(a)(6) to file an income tax return are also required to file Form 990 for taxable years beginning after June 30, 2000. § 6033(g). Organizations with gross receipts less than \$100,000 and assets of less than \$250,000 may file Form 990-EZ. Organizations with gross receipts of less than \$25,000 are not required to file Form 990 or Form 990-EZ.

39. Q. When is the Form 990 due?

A. The Form 990 (or Form 990-EZ) is due on or before the 15th day of the fifth month after the close of the organization’s taxable year. Thus, for a calendar year

taxpayer, Form 990 is due on May 15 of the following year. If any due date falls on a Saturday, Sunday or legal holiday, the organization may file the return on the next business day.

40. Q. What if the political organization fails to file Form 1120-POL or Form 990?

A. A political organization that fails to file a required Form 1120-POL or Form 990 or fails to include required information on those returns is subject to a penalty of \$20 per day for every day such failure continues. The maximum penalty imposed regarding any one return is the lesser of \$10,000 or 5 percent of the gross receipts of the organization for the year. In the case of an organization having gross receipts exceeding \$1,000,000 for any year, the penalty is increased to \$100 per day with a maximum penalty of \$50,000. § 6652(c)(1)(A).

41. Q. Are the Form 1120-POL and Form 990 filed by political organizations publicly available?

A. Yes, the Form 1120-POL and the Form 990 filed for taxable years beginning after June 30, 2000 will be made available for public inspection by the Service. § 6104(b). The political organization must make a copy of its returns available for public inspection during regular business hours at its principal office and any regional or district offices having three employees or more in the same manner as annual information returns of § 501(c) organizations are made available. It must also provide a copy of the returns to any person requesting a copy in person or in writing without charge other than a reasonable charge for reproduction and postage in the same manner that § 501(c) organizations provide copies of their annual returns. § 6104(d)(1). If an organization's returns are widely available under § 301.6104(d)-3 of the Procedure and Administration Regulations (such as on the Internet), the organization need not respond to requests for copies. Returns only need to be made available for three years after filing. § 6104(d)(2). Contributor information must be disclosed to the public. § 6104(d)(3)(A).

42. Q. What if the political organization does not make its Form 1120-POL and Form 990 publicly available?

A. A penalty of \$20 per day will be imposed on any person with a duty to

comply with the public inspection requirement for each day a failure to comply continues. The maximum penalty that may be incurred for any failure to disclose any one report is \$10,000. § 6652(c)(1)(C).

IV. General

43. Q. Where can organizations get copies of the various forms?

A. The various forms (Form 8871, Form 8872, Form 1120-POL, and Form 990) and their instructions are available by calling 1-800-TAX-FORM (1-800-829-3676) or via the Internet at the IRS Web Site at www.irs.gov in the "Forms and Publications" section. For more information, organizations may call the Customer Service Center at 1-877-829-5500.