

SPECIAL REPORTS

Political Organization Reporting Requirements Continue to Evolve: Recent Amendments to Internal Revenue Code Section 527

by Gregory L. Colvin and David A. Levitt
Silk, Adler & Colvin, San Francisco

I. Introduction

Congress recently passed HR 5596, signed into law on November 2, 2002 as Public Law 107-276, amending Internal Revenue Code section 527. The amendments reduce or eliminate most IRS filing obligations for many political entities operating solely at the state or local level. These changes may dramatically affect a political organization's IRS filings in the very near future.

This article identifies the filing requirements for the various types of candidate-related political entities that exist under federal, state, and local laws, after the new amendments. The IRS is in the process of implementing the revised requirements of section 527 and may produce additional guidance at any moment, with or without a formal announcement. Political organizations therefore should consult frequently the IRS Web site at www.irs.gov/charities/political for further updates, as the IRS continues to incorporate the new changes. The necessary forms and filing instructions also can be located on the Web site. Several key points regarding the most recent amendments:

- The elimination of most filing requirements for political committees having no federal activity is *retroactive* to July 1, 2000. So if a political organization is now exempt, it is relieved from all current and future filings and any past late or incomplete filings — in fact, if an organization never filed Forms 8871, 8872, or 990 under the 2000 amendments to section 527, it probably has nothing to file now. Review the table in Figure 1 to see where your organization stands.
- All section 527 entities should still obtain their own federal employer identification number (FEIN) using IRS Form SS-4, and still must report (and pay tax) if, but only if, the entity has taxable income over \$100 in a year, using IRS Form 1120-POL.
- Political entities still required to file Form 8871 have a *new filing obligation*, to file an amended Form 8871 within 30 days after a material change in the informa-

tion previously reported on Form 8871. No amended Form 8871 is required for changes occurring prior to November 2, 2002.

- For various filing deadlines, which range all over the calendar, especially for Form 8872, consult the IRS Web site. However, be aware that the principal IRS guidance document, Rev. Rul. 2000-49, does not reflect the recent amendments.

II. Qualified State or Local Political Organizations

As the table in figure I indicates, state or local political organizations that are not committees of candidates or political parties must still file the Form 8871 Notice of Status, but are relieved from filing the Form 8872 disclosure reports if they are "qualified." To be "qualified," a state or local political organization must meet all of the following four requirements:

- Sole Purpose.* It must function solely for the purpose of influencing the selection, nomination, election, or appointment of individual(s) to state or local public office or party office.
- Comparable State Law Reporting.* It must be subject to and comply with state law requiring it to report information on contributions (and donors) and expenditures (and recipients).
- Public Disclosure.* Such information is made public by the agency to which the organization reports, and the organization itself makes the reports publicly available for inspection in the same manner as required for Form 8872.
- Limitation on Role of Federal Candidates and Electeds.* No federal candidate or federal elected official controls or materially participates in the organization's direction, solicits contributions to the organization, or directs disbursements by the organization.

A political organization may still qualify, even if

Figure 1. Table of Affected Organizations

	Obtain FEIN by filing SS-4	File 8871	File 8872	File 1120-POL if more than \$100 taxable income ¹	File 990 or 990EZ
Section 501(c) organization with investment income and political expenditures; e.g., union	Yes	No ²	No ³	Yes ⁴	Yes ⁵
Organization reasonably anticipating gross receipts of less than \$25,000/year	Yes	No ⁶	No ⁷	Yes	No ⁸
Political committee reporting under Federal Election Campaign Act	Yes	No ⁹	No ¹⁰	Yes	No ¹¹
Political committee of a state candidate	Yes	No ¹²	No ¹³	Yes	No ¹⁴
State committee of a political party	Yes	No ¹²	No ¹³	Yes	No ¹⁴
Political committee of a local candidate	Yes	No ¹²	No ¹³	Yes	No ¹⁴
Local committee of a political party	Yes	No ¹²	No ¹³	Yes	No ¹⁴
Caucus or association of state or local officials	Yes	Yes	Yes ¹⁵	Yes	No ¹⁶
"Qualified" state or local political organization	Yes	Yes ¹⁷	No ¹⁸	Yes	Yes, unless gross receipts < \$100,000 ¹⁹
All other political entities, such as:					
— Those involved with federal elections, not reporting under FECA.	Yes	Yes	Yes	Yes	Yes
— State or local PACs, not qualified.	Yes	Yes	Yes	Yes	Yes
Organizations granted discretionary exception by Secretary of Treasury	Yes	Yes	Yes	Yes	No ²⁰

¹Section 527(c) and 6012(a)(b) as amended. The prior requirement, that entities with \$100 or less in taxable income, but more than \$25,000 in gross receipts, file Form 990 was eliminated.

²Section 527(i)(5)(A).

³Section 527(j)(5)(E) as amended.

⁴Section 527(f)(1).

⁵Section 6033(a).

⁶But see Rev. Rul. 2000-49, Q&A #4, setting a 6-year measuring period, and requiring Form 8871 to be filed within 30 days of actually receiving \$25,000.

⁷See Rev. Rul. 2000-49, Q&A #27, requiring Forms 8872 to be filed within 30 days of receiving \$25,000.

⁸Section 6033(g)(1) as amended.

⁹Section 527(i)(6).

¹⁰Section 527(j)(5)(A).

¹¹Section 6033(g)(3)(C), (D), (E), and (F) as amended, which define FECA-reporting entities differently than sections 527(i)(6) and (j)(5)(A).

¹²Section 527(i)(5)(C) as amended.

¹³Section 527(j)(5)(B).

¹⁴Section 6033(g)(3)(A) as amended.

¹⁵Unless a "qualified" state or local political organization under section 527(j)(5)(C) and section 527(e)(5) as amended.

¹⁶Section 6033(g)(3)(B) as amended.

¹⁷Section 527(i) has no exception for this category.

¹⁸Section 527(j)(5)(c) and 527(e)(5); see Part II of this article for definition of "qualified" entities.

¹⁹Section 6033(g)(1) as amended.

²⁰Section 6033(g)(4) as amended.

- applicable state law does not require one or more of the following to be reported: contributions less than \$500; expenditures less than \$800; occupation and employer information regarding contributors and expenditure recipients; the purpose of any expenditure; or the date of any contribution or expenditure; or
- it makes *de minimis* errors in complying with the state reporting or public inspection requirements, provided that the organization corrects such errors within a reasonable period of time.

The statutory amendments are silent as to the required frequency of state reporting obligations necessary to meet qualification (ii) above. For now, it seems safe to assume that a difference between the state and federal reporting schedules is irrelevant. The IRS has focused only on the content of the required disclosure. A state or local political entity should confirm that the state reporting requirements to which it is subject meet qualification (ii).

Claiming QSLPO status. The new Form 8871 has a Line 9 on which an entity claims (or declines to claim) that it is a qualified state or local political organization (a QSLPO). How an organization should complete the Form 8871 depends upon the effective date from which the organization is claiming QSLPO status. Based on what we know from the IRS at this time, we advise as follows:

- Although the statute does not technically require an organization to file an amended Form 8871 if it *always* has met the requirements to be considered “qualified,” or met the requirements prior to November 2, the best practice is to file an amended Form 8871 in order to inform the IRS that the entity is claiming QSLPO status. In this case, the entity should *not* report its claim of QSLPO status as a material change in Line 4b, because the change occurred prior to November 2.
- If an organization was not a QSLPO before November 2 but met all of the requirements to be considered “qualified” *on or after* November 2, it should file an amended Form 8871, claim the exemption in Line 9, and report the date upon which it became qualified as a material change on Line 4b.

The current Form does not provide a specific entry for reporting the date upon which the organization’s claim of exemption began (other than Line 4b, if the claim amounts to a material change occurring on or after November 2). However, an organization may explain its claim of QSLPO status elsewhere on Form 8871, such as Part III, Line 11, which allows for a narrative description of the purpose of the organization. For instance, the organization may include in this section the following statement:

As of [date], [name of entity] met the definition of a “qualified state or local political organization” under Internal Revenue Code section 527(e)(5) and therefore claims the benefits of that status for all reporting periods beginning on or after such date.

An organization that has always met the definition may report the above date as July 1, 2000 and, as a result, has no

Form 8872 filing obligations and no Form 990 return to file for years in which its gross receipts are below \$100,000. An organization that meets this definition at any later time may claim the filing exemption beginning with the reporting period that starts on or after the date on which the organization becomes “qualified.”

III. Other Disclosure Requirements Changed

- Effective retroactively to July 1, 2000, Form 8871 need only be filed electronically; a duplicate filing in writing is no longer required by statute. However, the IRS does require in practice that a filer print out, sign, and mail in a “Declaration of Electronic Filing.” The IRS requires this step in order to provide a “jurat” as evidence of the identity of the filer; therefore, until further notice, the filer must submit this Declaration in order to complete the electronic filing.
- QSLPOs and other entities required to file Form 8871 must file an amended Form 8871, reporting any material change in the information previously reported, such as a new address, no later than 30 days after such material change. Terminating a committee and claiming QSLPO status are also events that must be reported. See the hypothetical example in Part V below.
- As mentioned above, no amended Form 8871 is required for changes occurring prior to November 2, 2002. For changes that first occurred prior to November 2 but continue thereafter (such as an address change), an organization is not required to file an amended Form 8871. However, the organization should include current and correct information on all lines at such time as it is required to file an amended Form 8871 in the future (e.g., upon a material change occurring on or after November 2).
- Effective for filings due after December 2, 2002, a political organization must include on its Form 8872 the date and purpose of each expenditure and the date of each contribution, in addition to the amount of such expenditures and contributions.
- Beginning June 30, 2003, organizations that have, or reasonably expect to have, contributions or expenditures exceeding \$50,000 in a calendar year must file electronically any Form 8872 pertaining to that year.
- Form 1120-POL income tax returns are no longer subject to public disclosure or inspection, effective retroactively to July 1, 2000.

IV. Miscellaneous But Interesting

- The IRS now has power to waive any tax or amount imposed on an organization after June 30, 2000, for failing to comply with Form 8871 and Form 8872 filing requirements, if the organization can demonstrate that such failure was due to reasonable cause and not willful neglect.
- Effective for reports due on or after June 30, 2003, the IRS must post all Form 8871 and electronic Form 8872 filings on the Internet within 48 hours after filing. In

addition, such filings must be searchable by certain criteria, such as the name and location of the organization, directors, purposes, contributors, employers of such contributors, expenditure recipients, amounts of such contributions and expenditures, and time periods.

- Organizations that file Form 8871 or Form 8872 are now subject to fraud penalties for willfully filing false information.

V. Hypothetical Example

Suppose that the Irate Citizens PAC, a recipient committee operating under its respective state disclosure rules, is not a political committee of a state or local candidate or party entity. It filed Form 8871 in 2000, and filed Forms 8872 until it heard the news about HR 5596, whereupon it skipped filing the post-election Form 8872 due December 5, 2002. The PAC had also neglected to file the Form 8872 pre-election report due October 24. The PAC believes that it now is a “qualified” state or local political organization, although it did engage in some federal activity (made contributions to federal candidates) in September 2002, before the fourth quarter began. The PAC’s address and officers changed in 2001, but no material changes occurred after November 2, 2002. What are the PAC’s IRS filing obligations? Based on what we know from the IRS at this time:

1. The PAC was entitled not to file the pre- and post-election *Forms 8872*. If its last disqualifying activity was in September, before the reporting period that began October 1, then it was “qualified” during the entire periods covered by the pre-election (October 1-16) and post-election (October 17- November 25) reports. The PAC can

continue to avoid the filing of Form 8872 so long as it remains “qualified.” To be qualified, of course, the PAC must have filed comparable state disclosure reports covering these periods.

2. As to *Form 8871*, the new law requires filers to amend Form 8871 within 30 days after a material change occurs. Our recommendations for Irate Citizens PAC are:

- The PAC should file an amended Form 8871.
- On Line 9, the PAC should indicate that it is claiming to be “qualified.” The PAC should then explain its claim of exemption in Part III, Section 11 and report an effective date on or before October 1, so that its basis for not filing the pre- and post-election Forms 8872 is established.
- Because it is filing Form 8871 to record its claim to be “qualified,” the PAC should review the entire form and update any other items that may have changed — address, officers, etc. — even though the changes occurred before November 2, 2002.

3. As for *Form 990*, assuming the PAC’s fiscal year is a calendar year, it was not “qualified” for the entire year due to the federal activity in September, so it must file Form 990 for 2002 unless its gross receipts are under \$25,000. For 2003, if it remains “qualified” for the whole year, its Form 990 filing threshold is raised to \$100,000.

4. The PAC must file *Form 1120-POL* if its taxable income is more than \$100 in any year.