**IRS Rules Governing Political Activity**

Local Associations that are otherwise tax-exempt might be subject to federal income tax if they make expenditures designed to influence the outcome of a federal, state, or local election from their general treasury fund.

Under Section 527(f) of the Internal Revenue Code (“Code”), a § 501(c) organization is subject to tax at the highest corporate rateon the lesser of the organization’s (1) “exempt function” expenditures or its (2) net investment income for the year.

“Exempt function” is the function of 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.

The IRS definition of exempt function is broader than the FEC (Federal Election Committee) definition of “express advocacy,” and might include publishing voter guides or voting records that are not sufficiently nonpartisan, even though they do not expressly advocate the election or defeat of a clearly identified candidate(s).

Exempt function expenditures could take the form of direct monetary expenditures or indirect in-kind services provided by your Association’s staff or through the use of your Association’s facilities or equipment free of charge.

***Certain expenditures are not treated as being made for an “exempt function”.***

IRS Regulations issued in 1980:

Expenditures of a section 501(c) organization which are otherwise allowable under the Federal Election Campaign Act or similar State statute are for an exempt function only to the extent provided in paragraph (b)(3) of this section.

Treas. Reg. § 1.527-6(b)(1). Paragraph (b)(3) of the regulation expressly reserves the issue of how such expenditures are treated, so an affiliate that is tax-exempt under § 501(c)(5) or (c)(6) will not be subject to tax on expenditures permitted under FECA and similar state election laws. Such expenditures would, at the very least, include:

Payment for partisan communications to Association members;

Payment for nonpartisan voter registration and get-out-the-vote;

Payment for costs of establishing, administering, and soliciting contributions to affiliate’s separate segregated fund (PAC).

Also Section 527(f)(3) of Code permits a 501(c) tax-exempt organization to establish and maintain a tax-exempt separate segregated fund (SSF) through which exempt function expenditures (or expenditures for activities necessary to fulfill an exempt function) may be made and thereby not treated as expenditures of the 501(c) organization itself. Political action committees, or PACs, established by NEA and its affiliates can qualify as separate segregated funds.

A PAC, not the union, is taxed at the highest corporate rate only to the extent of the PAC’s net investment income, although fundraising primarily used for non-exempt activity also may result in taxable income (see below).

Establishing an SSF is easy:

Pass a resolution authorizing the establishment of an SSF to make political expenditures

Apply to IRS for a separate Employer ID # (EIN)

Open a bank account

To be considered truly separate and segregated from the organization’s general treasury fund, transfers of contributions to the PAC must be made promptly and directly.

They must be made in accordance with applicable federal or state campaign finance law (*e.g.,* under FECA, contributions over $50 must be received by the PAC within 10 days after they are made; contributions of $50 or less must be received by the PAC within 30 days after they are made);

Your Local Association must keep records showing the money transferred consisting only of contributions or dues, and not investment income (*e.g.,* after being held in a non-interest bearing transmittal account, or if held in union’s interest-bearing account and union can show no interest was earned by the amount transferred); and

Contributions or dues cannot have been used by union to earn investment income.

Failure to meet any one of the transfer requirements results in a loss of the separate segregated nature of fund -- *i*.*e*., a finding of commingling -- and therefore, exempt function expenditures are attributed to the union itself and are subject to taxation under Section 527.

*What constitutes exempt function income?*

* 1. Contributions of money or other property;
  2. Membership dues, fees, or assessments from members of the political organization; or
  3. Proceeds from a political fundraising or entertainment event or from the sale of political campaign materials, which are not received in the ordinary course of business.

*Are contributions raised through raffles considered exempt function income?*

Only if they are raised in connection with a political fundraising event, meaning that the raffle must be an event related to a political activity that is outside the organization’s need for funds. Because of these IRS rules, your Local Association should not hold raffles to raise voluntary contributions for The NEA Fund.

* + - 1. To avoid violating the IRS rules, hold a giveaway in which participants in the drawing for a prize are not required to buy a ticket for a chance to win and indicate on the tickets that the funds raised will be used for a specific political activity.
      2. This also avoids risk that a raffle violates state law.

To become tax-exempt under Section 527, PACs and other political organizations -- with limited exceptions -- must register with IRS by filing Form 8871 (Political Organization Notice of Section 527 Status).

Exceptions are political organizations that do not report to the Federal Election Commission as political committees, that reasonably anticipate having less than $25,000 during any taxable year, and that are nonfederal candidate or party committees.

Failure to file Form 8871 as required will result in treatment of the organization’s exempt function income as taxable income (less any deductions directly connected with the production of that income).

Prior to November 2002, PACs and other Section 527 organizations also had to file periodic reports on IRS Form 8872, disclosing all contributions of $200 or more received by, and all expenditures of $500 or more made by, such organization. In November 2002, a new law was enacted which exempted certain state and local PACs from reporting requirements, and made the exemption retroactive to July 1, 2000.

In order to be exempt from reporting requirements on Form 8872, your state or local PAC must meet the following definition of “qualified state or local political organization” (“QSLPO”):

The PAC must be established and used solely for the purpose of making contributions and expenditures to influence state and local elections, including contributions to state and local candidates, state and local political committees, and for the nomination or appointment of any individual to state or local party office;

The PAC must be subject to a state campaign finance law that requires it to report the information that would otherwise be reported on IRS Form 8872, except the new law states that a PAC will still satisfy the requirements for “qualified state or local political organization” even if the state law it is reporting under does not require reporting of contributions of $500 or less and expenditures of $800 or less. The state campaign finance law also does not have to require the PAC to report (a) the occupation or employer of its contributors; (b) the occupation or employer of any person to whom the PAC makes expenditures; (c) the purpose of its expenditures; or (d) the dates of its contributions or expenditures;

The PAC must actually file the required campaign finance reports with the state (de minimis reporting errors are okay as long as they are ultimately corrected).

The state board or commission with which the PAC’s reports are filed must make those reports available for public inspection; and

No federal candidate or officeholder may control or materially participate in the direction of the PAC, solicit contributions for the PAC, or direct or control expenditures of the PAC.

The new law also requires PACs to file a new IRS Form 8871 within 30 days of any material change to the information in the original Form 8871.

Use of more than an insubstantial amount of PAC funds for non-exempt function activity such as lobbying, ballot initiatives, or other activities unrelated to nomination, election, or appointment of an individual to a federal or nonfederal public office could result in the PAC being subject to taxation at the highest corporate rate under Section 527 of the Code on all its receipts, including the money it spent on exempt function activities. Moreover, if more than an insubstantial amount of PAC funds is spent for non-exempt function activities in more than one year, the PAC could lose its status as a separate segregated fund, thereby causing the connected organization to be subject to taxation at the highest corporate rate on all exempt function activities for the current and prior years.

**Filing Categories & Requirements of Political Organizations**

[Political organizations](http://www.irs.gov/charities/political/index.html) are organized and operated primarily to accept contributions and make expenditures for the purpose of influencing the “selection, nomination, election, or appointment of any individual to Federal, State, or local public office or office in a political organization, or the election of Presidential electors.   Political organizations include political party committees, federal, state and local candidate committees, and other political committees such as political action committees (PACs). The law also creates a new sub-category of political organization -- the QSLPO (see above).

Federal tax law divides political organizations into several different categories, and provides different filing requirements for each category.  The chart below lists the filing requirements for each category.

Federal organizations:

FEC political committee: A political organization (including federal candidate committees, political party committees, and PACs) that is required to report as a political committee under the Federal Election Campaign Act.

Other federal political organization: A political organization attempting to influence federal elections that is not required to report as a political committee under the Federal Election Campaign Act. This is commonly known as a “527 organization.”

State and Local organizations:

Candidate committee: A campaign committee of a state or local candidate.

Party committee: A state or local committee of a political party.

QSLPO: See definition above.

Caucus or association: A group of state or local officials attempting to influence elections.

Other political organization: Any other state or local political organization.

The filing requirements in the chart below apply to those political organizations that:

Wish to be a tax-exempt political organization, and

Receive or expect to receive $50,000 or more in gross receipts in any taxable year.

| **If You Are A** | **You May Be Required To File** |
| --- | --- |
| FEC political committee, state or local candidate committee or state or local committee of a political party | Form 1120-POL |
| Qualified state or local political organization (QSLPO)\* | Form 8871;  Form 1120-POL; and  Form 990 |
| Caucus or association of state or local officials\* | Form 8871;  Form 8872; and  Form 1120‑POL |
| Any other political organization, including other federal political organizations and other state or local political organizations | Form 8871;  Form 8872;  Form 1120-POL; and  Form 990 or Form 990-EZ |
| \*An organization may be both a QSLPO and a caucus or association of state or local officials.   If so, it is not required to file Form 8872 and Form 990. | |

**NOTE:**  If you are:

* A political organization that is not tax-exempt, or
* A tax-exempt political organization that does not have gross receipts of at least $50,000,

Then you must file Form 1120‑POL if you have taxable income after taking the $100 specific deduction for any taxable year.

**Description of Form Filing Requirements:**

**1.  Form 8871 – Notice of 527 Status** <http://www.irs.gov/instructions/i8871/ch01.html> Unless excepted (see chart below), a political organization must file Form 8871, *Political Organization Notice of 527 Status*, with the IRS to be tax-exempt.  Until it files the form, its income (including contributions) is subject to taxation.  Form 8871 must be filed electronically, within 24 hours of the political organization’s establishment.  An amended Form 8871 must be filed within 30 days of any material change (including termination), or any income (including contributions) it receives after the material change will be subject to taxation.

**2.  Form 8872 -- Report of Contributions and Expenditures** <http://www.irs.gov/instructions/i8872/index.html>

Tax-exempt political organizations, other than QSLPOs, that file Form 8871 must file Form 8872, *Political Organization Report of Contributions and Expenditures,* to disclose information concerning:

* expenditures that aggregate $500 or more per person, per calendar year; and
* contributions that aggregate $200 or more per person, per calendar year.

A tax-exempt political organization that does not disclose this information must pay an amount equal to the highest corporate tax rate (39 percent) multiplied by the amount of contributions and expenditures not disclosed.

The filing due dates are available on the IRS web site at [www.irs.gov/polorgs](http://www.irs.gov/polorgs)

A political organization is not required to file Form 8872 for any period of time that it is subject to tax on its income because it did not file or amend a Form 8871.

**3.  Form 1120-POL – U.S. Income Tax Return for Certain Political Organizations**Political organizations, whether or not tax-exempt, that have taxable income in excess of the $100 specific deduction in a taxable year must file Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations.* Form 1120-POL is due by the 15th day of the 3rd month after the end of the organization’s taxable year.  Political organizations may request a six-month extension of the filing deadline by filing Form 7004, *Application for Automatic Extension of Time to File Corporate Income Tax Return*.  This extension must be filed by the due date of Form 1120‑POL.  There is a penalty for failure to file Form 1120-POL.

**4.  Form 990 or 990-EZ – Return of Organization Exempt from Income Tax**Unless excepted (see chart below), a tax-exempt political organization must file an exempt organization annual information return if it has gross receipts of $50,000 or more for the taxable year ($100,000 for QSLPOs).  A tax-exempt political organization with gross receipts of less than $100,000 and assets of less than $250,000 at the end of the year may file a Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*.  Otherwise, it files a Form 990, *Return of Organization Exempt from Income Tax*.

Form 990 or Form 990-EZ is due on the 15th day of the 5thmonth after the end of the organization’s taxable year. There is a penalty for failure to file this return.  Organizations may request a three-month extension, without showing cause, by filing Form 8868, *Application for Extension of Time to File an Exempt Organization Return*, by the due date.  A second three-month extension, with cause, may also be requested through Form 8868.

| **Form** | **When filed** | **Exceptions to filing requirement** |
| --- | --- | --- |
| 8871 | Within 24 hours of establishment or within 30 days of any material change, including termination | Organization that does not seek tax-exempt status;  Political committee required to report to the FEC  Campaign committee of state and local candidates;  State or local committee of political parties; and  Organization that reasonably expects annual gross receipts to always be less than $50,000 |
| [8872](http://www.irs.gov/pub/irs-fill/f8872.pdf) | At organization's option, quarterly/semiannually or monthly, on same basis for entire calendar year (see form instructions for detailed information) | Any organization excepted from Form 8871 filing requirement (see above); and QSLPO |
| 1120-POL | Due the 15th day of the 3rd month after the close of the taxable year | Political organization with no taxable income after taking the $100 specific deduction |
| 990 or 990‑EZ | Due the 15th day of the 5th month after the close of the taxable year | Any organization excepted from Form 8871 filing requirement (see above); and  Caucus or association of state or local officials |

* **Disclosure Requirements**

Tax-exempt section 527 organizations must make their forms (other than Form 1120‑POL) publicly available for inspection and copying at their principal place of business.