

# Political Law

## Compliance and Investigations Update

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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## Time to Review Your PAC's Tax Obligations

As spring arrives, so does tax day. Now is a good time for political organizations, including a company's PAC, to review their tax filing obligations and avoid any unwelcome surprises. Although political organizations are exempt from income taxes under Section 527 of the Internal Revenue Code on contributions they receive, that status does not eliminate all Internal Revenue Service (IRS) requirements. PACs may still be required to file with the IRS and pay taxes on investment income or interest from bank accounts, and failure to do so can lead to unexpected tax liability, substantial penalties and burdensome audits.

Section 527 political organizations are required to make the following tax filings. However, a political organization may be exempt from one or more of these requirements to the extent it is registered as a political committee under federal or state election laws.

- **Form 8871:** Form 8871 is a one-time filing by political organizations to notify the IRS that the organization is to be treated as a tax-exempt entity pursuant to Section 527. If required, it is due within 24 hours of formation of the organization. There are certain exemptions, such as expecting annual gross receipts of less than \$25,000 or being a state or local candidate committee or political party.
- **Form 8872:** Form 8872 is a periodic filing which discloses the financial activity of the entity, including its receipts and expenditures. These filings follow a schedule based on semiannual filings in nonelection years and quarterly filings in election years, along with additional pre- and post-election reports, unless the organization elects monthly filing.
- **Form 1120-POL:** If a political organization has more than \$100 in taxable income, it must file Form 1120-POL by the 15th day of the fourth month following the close of its fiscal tax year. For a committee that has a calendar year as its fiscal year, the return is due on April 15. This filing is generally a result of interest earned in bank accounts or from investment income.
- **Form 990:** Form 990 is an annual informational return. If required, in addition to financial information, it also discloses information related to governance, employees and activity. Form 990 is due on the 15th day of the fifth month after the close of the PAC's accounting period, which for an organization that uses the calendar year as its fiscal year is May 15. Organizations that receive less than \$25,000 during a fiscal tax year are exempt from filing this return.

Below is an outline of when federal PACs and state or local PACs incur such obligations.

### Federal Committees

Committees registered and reporting with the Federal Election Commission (FEC) are exempt from most IRS filing requirements, including Forms 8871, 8872 and 990. However, a federal committee is still subject to Form 1120-POL requirements.

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## State and Local Committees

A political organization that is registered under state election law must file Form 8871, as described above. However, it need not file Form 8872 reports. This exemption may be unavailable, however, if a federal candidate or officeholder has materially participated in the direction of the PAC's activities or disbursements, or has, with the committee's knowledge or consent, solicited contributions for the PAC.

As with federal PACs, a state or local PAC that earns more than \$100 in investment income during a tax year must file Form 1120-POL and pay any tax due.

As for Form 990 tax returns, a state or local political committee is required to file Form 990, but only if it has gross receipts of \$100,000 or more, as opposed to \$25,000 for other political organizations.

For further information or for help completing filing obligations, please contact us.

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