

**TECHNICAL EXPLANATION OF H.R. 5596,
RELATING TO POLITICAL ORGANIZATIONS DESCRIBED IN
SECTION 527 OF THE INTERNAL REVENUE CODE,
AS PASSED BY THE HOUSE AND THE SENATE**

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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of H.R. 5596, a bill modifying the rules applicable to political organizations described in section 527 of the Internal Revenue Code of 1986.² H.R. 5596 passed the House of Representatives on October 16, 2002, and passed the Senate on October 17, 2002.

¹ This document may be cited as follows: Joint Committee on Taxation, *Technical Explanation of H.R. 5596, Relating to Political Organizations Described in Section 527 of the Internal Revenue Code, as Passed by the House and the Senate* (JCX-102-02), October 22, 2002.

² Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986.

PRESENT LAW AND EXPLANATION OF H.R. 5596

Present Law

In general

Under present law, section 527 provides a limited tax-exempt status to “political organizations,” meaning a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures (or both) for an “exempt function.” These organizations generally are exempt from Federal income tax on their “exempt function income” (e.g., contributions they receive, membership dues, other income related to an exempt function) but are subject to tax on their net investment income and certain other income at the highest corporate income tax rate (“political organization taxable income”). Donors are exempt from gift tax on their contributions to such organizations. For purposes of section 527, the term “exempt function” means: 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.

Notice of formation as a section 527 organization

An organization is not treated as a section 527 organization unless it has given notice to the Secretary of the Treasury (“Secretary”), electronically and in writing, that it is a section 527 organization.³ The notice is not required (1) of any person required to report as a political committee under the Federal Election Campaign Act of 1971, (2) by organizations that reasonably anticipate that their annual gross receipts always will be less than \$25,000, and (3) organizations described in section 501(c). All other section 527 organizations, including State and local candidate committees and State and local party committees, are required to file the notice.

The notice is required to be transmitted no later than 24 hours after the date on which the organization is organized. The notice is required to include the following information: (1) the name and address of the organization and its electronic mailing address, (2) the purpose of the organization, (3) the names and addresses of the organization’s officers, highly compensated employees, contact person, custodian of records, and members of the organization’s Board of Directors, (4) the name and address of, and relationship to, any related entities, and (5) such other information as the Secretary may require.

The organization and the Internal Revenue Service (“IRS”) are required to make the notice of status as a section 527 organization open to public inspection.⁴ In addition, the Secretary is required to make publicly available on the Internet and at the offices of the IRS a list

³ See sec. 527(i).

⁴ Sec. 6104(a)(1).

of all political organizations that file a notice with the Secretary under section 527 and the name, address, electronic mailing address, custodian of records, and contact person for such organization.⁵ The IRS is required to make this information available within five business days after the Secretary receives a notice from a section 527 organization.

An organization that fails to file a notice with the Secretary is not treated as a section 527 organization and its exempt function income is taken into account in determining taxable income.

Disclosure of expenditures and contributors

A political organization that accepts a contribution or makes an expenditure for an exempt function during any calendar year is required to file with the Secretary certain reports.⁶ The following reports are required: either (1) in the case of a calendar year in which a regularly scheduled election is held, quarterly reports, a pre-election report, and a post-general election report and, in the case of any other calendar year, a report covering January 1 to June 30 and a report covering July 1 to December 31, or (2) monthly reports for the calendar year, except that, in lieu of the reports due for November and December of any year in which a regularly scheduled general election is held, a pre-general election report, a post-general election report, and a year end report are to be filed. A political organization may choose to file pursuant to either option described above, but it must file on the same basis for the entire calendar year. An amount to be paid by the organization is imposed for a failure to file a report or to provide the required information in the report.

The reports are required to include the following information: (1) the amount of each expenditure made to a person if the aggregate amount of expenditures to such person during the calendar year equals or exceeds \$500 and the name and address of the person (in the case of an individual, including the occupation and name of the employer of the individual); and (2) the name and address (in the case of an individual, including the occupation and name of employer of such individual) of all contributors that contributed an aggregate amount of \$200 or more to the organization during the calendar year and the amount of the contribution.

The disclosure requirements do not apply (1) to any person required to report as a political committee under the Federal Election Campaign Act of 1971, (2) to any State or local committee of a political party or political committee of a State or local candidate, (3) to any organization that reasonably anticipates that it will not have gross receipts of \$25,000 or more for any taxable year, (4) to any organization described in section 501(c), or (5) with respect to any expenditure that is an independent expenditure (as defined in section 301 of the Federal Election Campaign Act of 1971).

For purposes of the disclosure requirements, the term “election” means (1) a general, special, primary, or runoff election for a Federal office, (2) a convention or caucus of a political party that has authority to nominate a candidate for Federal office, (3) a primary election held for

⁵ Sec. 6104(a)(3).

⁶ See sec. 527(j).

the selection of delegates to a national nominating convention of a political party, or (4) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

The IRS is required to make available to the public any report filed by a political organization.⁷ In addition, the organization is required to make any such report available to the public for inspection at the organization's principal office (and in certain cases, regional or district offices) during regular business hours, and provide a copy of such report upon a request made in person or in writing.⁸

Return requirements

Under present law, a section 527 organization that has political organization taxable income is required annually to file Form 1120-POL (Return for Certain Political Organizations).⁹ Section 527 organizations (other than organizations described in section 501(c)) that do not have political organization taxable income but have gross receipts of \$25,000 or more during the taxable year also are required to file a Form 1120-POL. In addition, section 527 organizations that are required to file Form 1120-POL also are required to file an annual information return, Form 990 (Return of Organization Exempt from Income Tax).¹⁰ The annual tax return and the annual information return must be made available to the public both by the organization and by the IRS.¹¹

Explanation of Provision

Notice of formation and purpose (secs. 1, 6(c), (f), and (g) of the bill)

The bill provides that a political organization that is a political committee of a State or local candidate, or that is a State or local committee of a political party, is exempt from the requirement of section 527(i) to provide notice to the Secretary of its formation and purpose.

For all political organizations subject to the notice filing requirement, the bill provides that the notice be filed electronically only, thus eliminating the requirement that the notice be filed in writing as well as electronically.

In addition, the bill requires that an organization that is required to file the notice and that intends to claim exemption from the expenditure and contribution reporting requirements of section 527(j), or the information return requirements of section 6033, state such intention in the

⁷ See sec. 6104(d).

⁸ *Id.*

⁹ Sec. 6012(a)(6).

¹⁰ Sec. 6033(g).

¹¹ See sec. 6104.

notice. If there is a material change to information provided in the notice, the organization must file a new notice not later than 30 days after the material change. An organization that fails to file a new notice is not treated as a section 527 organization and its exempt function income is taken into account in determining taxable income from the date of the material change until such time as a modified notice is filed.

Effective dates.--The provision exempting certain organizations from the filing of notice requirement and the provision regarding electronic filing are effective as if included in the amendments made by Public Law Number 106-230.

The provision requiring that an organization indicate its intent to claim a section 527(j) or section 6033 exemption is effective for notices required to be filed more than 30 days after the date of enactment.

The provision requiring filing of a modified section 527(i) notice upon a material change in information generally is effective for material changes occurring on or after the date of enactment. However, a transition rule applies in the case of material changes that occur during the 30-day period beginning on the date of enactment. In such cases, the notice is not required to be filed before the later of: (1) 30 days after the date of the material change, or (2) 45 days after the date of enactment.

Disclosure of expenditures and contributors (secs. 2, 6(e)(1), and 6(e)(2) of the bill)

Exemption for qualified State or local political organizations

The bill exempts qualified State or local political organizations from the requirement provided by section 527(j)(2) to file regular reports with the Secretary detailing contribution and expenditure information. For this purpose, a qualified State or local political organization means an organization meeting the following requirements.

First, the organization must not engage in any exempt function activities other than to influence or attempt to influence the selection, nomination, election, or appointment of any individual to any State or local public office or office in a State or local political organization.

Second, the organization must be subject to a State law that requires the organization to report (and it so reports) information regarding each separate expenditure and contribution (including information regarding the person who makes such contribution or receives such expenditure) that otherwise would be required to be reported to the Secretary. An organization would not fail this condition solely because: (1) the minimum amount of any expenditure or contribution required to be reported under State law is not more than \$300 greater than the minimum amount required to be reported to the Secretary; (2) State law does not require the organization to report the employer or occupation of any person who makes contributions or receives expenditures, or the date of the contribution, or the date or purpose of any expenditure of the organization; or (3) the organization makes de minimis errors in complying with State law reporting requirements, so long as such errors are corrected within a reasonable period after the organization becomes aware of such errors.

Third, the State agency receiving such information must make the information public. In addition, the organization must make the information public in a manner described in section 6104(d). De minimis errors in making the information publicly available that are corrected within a reasonable period after the organization becomes aware of such errors are permitted.

Fourth, no candidate for nomination or election to Federal elective public office or individual holding such office is permitted to control or materially participate in the direction of the organization, solicit contributions to the organization (with an exception for certain de minimis contributions), or direct, in whole or in part, disbursements by the organization.

Other provisions

The bill provides that section 527(j) reports include the date and purpose (in addition to the amount) of each expenditure of \$500 or more and the date of each contribution of \$200 or more. In addition, the bill mandates electronic filing of section 527(j) reports for organizations that have, or have reason to expect, contributions or expenditures exceeding \$50,000 in a calendar year.

Effective dates.--The provision exempting qualified State or local political organizations from the section 527(j) reporting requirements is effective as if included in the amendments made by Public Law Number 106-230.

The provision requiring additional disclosures in the section 527(j) reports is effective for reports required to be filed more than 30 days after the date of enactment. The provision regarding electronic filing is effective for reports required to be filed on or after June 30, 2003.

Tax and information return requirements (sec. 3 of the bill)

The bill provides that a political organization is required to file an income tax return (Form 1120-POL) only if such organization has political organization taxable income for the taxable year. Thus, political organizations without political organization taxable income and with gross receipts of at least \$25,000 for the taxable year are no longer required to file an income tax return. In addition, the Form 1120-POL is no longer required to be publicly available.

The bill modifies the present law rule that an information return (Form 990) is required to be filed by organizations that are required to file an income tax return. Instead, under the bill, information returns are required for political organizations that have gross receipts of \$25,000 or more for the taxable year except that, for qualified State or local political organizations, the gross receipts threshold is \$100,000. In addition, the bill exempts the following organizations from the information return filing requirement: (1) a State or local committee of a political party, or a political committee of a State or local candidate; (2) a caucus or association of State or local officials; (3) an authorized committee (as defined in section 301(6) of the Federal Election Campaign Act of 1971) of a candidate for Federal office; (4) a national committee (as defined in section 301(14) of the Federal Election Campaign Act of 1971) of a political party; (5) a U.S. House of Representatives or U.S. Senate campaign committee of a political party committee; (6) a political committee (as defined in section 301(4) of the Federal Election Campaign Act of 1971) required to report under such Act; or (7) an organization described in section 501(c). In

addition, the bill directs the Secretary to review the information return for possible modification. Also, the Secretary retains the discretion to waive the information return filing requirement.

Effective date.--The provisions regarding tax and information return requirements are effective as if included in the amendments made by Public Law Number 106-230.

Public availability of notices and reports (sec. 6(e)(3) of the bill)

Under the bill, the Secretary must make the section 527(i) notices and the electronically filed section 527(j) reports available for public inspection on the Internet not later than 48 hours of filing, and must make the entire database of such notices and reports searchable by names, States, zip codes, custodians of records, directors, and general purposes of the organization; entities related to the organization; contributors to the organization; employers of contributors; recipients of expenditures by the organization; ranges of contributions and expenditures; and time periods of the notices and reports. In addition, the database must be downloadable.

Effective date.--The provision regarding public availability of notices and reports is effective for notices and reports required to be filed on or after June 30, 2003.

Other provisions and technical corrections (secs. 4, 5, 6(a), (b), (d), and 7 of the bill)

The bill gives the Secretary the authority to waive all or any portion of the taxes imposed on an organization for failure to notify the Secretary of the organization's establishment (or to file a modified notice) or the amounts imposed for failure to file a report. Such waiver would be subject to a showing by the organization that the failure was due to reasonable cause and not to willful neglect.

The bill further provides that the Secretary in consultation with the Federal Election Commission shall publicize the effects of the bill and the interaction of the requirements to file a notification or report under section 527 and reports under the Federal Election Campaign Act of 1971.

Finally, the bill makes the following modifications. The bill clarifies that in computing taxable income for organizations that fail to notify the Secretary of their status as a political organization, all exempt function income, whether or not segregated for use for an exempt function, is taken into account. The bill also clarifies that amounts imposed for failure to report under section 527(j) are to be assessed and collected in the same manner as penalties imposed on exempt organizations for failure to file returns (sec. 6652(c)). The bill applies the penalty for fraudulent returns, statements, or other documents (sec. 7207) to the notification (sec. 527(i)) and reporting (sec. 527(j)) requirements of political organizations. In addition, the bill provides that notices and reports already made public by the Secretary may remain public, even if the retroactive effective dates of certain parts of the bill mean that a notice or report was not required to have been filed.

Effective dates.--The provision giving the Secretary the authority to waive penalties and amounts is effective for any tax assessed or amount imposed after June 30, 2000.

The remaining provisions are effective on the date of enactment.