



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RQ-2

March 10, 2006

Michael Lux, Treasurer  
21st Century Democrats  
1731 Connecticut Avenue NW, Second Floor  
Washington, DC 20009

**Response Due Date:  
April 10, 2006**

Identification Number: C00230342

Reference: Year End Report (12/1/05-12/31/05)

Dear Mr. Lux:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **An adequate response must be received at the Commission by the response date noted above.** An itemization of the information needed follows:

-Schedule B supporting Line 29 of your report discloses a disbursement for an apparent refund or rebate to your non-federal account for a previously allocated expense. Please be advised the refund or rebate must be allocated between the federal and non-federal accounts according to the same allocation ratio used to allocate the original disbursement. Furthermore, the federal account must transfer the non-federal portion to the non-federal account using one of two methods.

The method of reporting described in Advisory Opinion 1995-22 allows a committee to itemize the refund or rebate as a negative entry on Schedule H4. Alternatively, a committee may disclose the receipt of the refund or rebate into the federal account on Schedule A supporting Line 15, and the transfer of the non-federal account's share to the non-federal account on Schedule H4. Please refer to the enclosed sample of properly reported refunds and rebates of allocable activity and amend your report as appropriate.

-Schedule H4 discloses an expenditure(s) for "Direct Mail Expense." Please be advised that public communications (as defined by 11 CFR §100.26) and voter drive activity (under 11 CFR §106.6(b)(2)(i)) containing express advocacy as defined under 11 CFR §100.22, would

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constitute an in-kind contribution or an independent expenditure and should be properly disclosed on a Schedule B or E supporting Line 23 or 24 as appropriate. Public communications and voter drive activity that refer to a clearly identified Federal candidate, but that do not expressly advocate the election or defeat of that candidate should be reported on Schedule B for Line 21(b) of the Detailed Summary Page.

Furthermore, the costs for public communications and voter drive activity that refer to one or more clearly identified Federal candidates must be paid for with 100% federal funds. It appears that you have allocated these costs between federal and non-federal funds. Any reimbursement from your committee's non-federal account for public communications and voter drive activity referencing a clearly identified Federal candidate is not permissible and must be returned. 11 CFR §106.6(f)

Please clarify this activity and amend your report, if necessary, to properly disclose this activity. In addition, please inform the Commission of any corrective action immediately. Although the Commission may take further legal action regarding this apparent prohibited activity, your prompt action will be taken into consideration.

-Please clarify all expenditures made for "Event Supplies" on Schedule(s) B. If a portion or all of these expenditures were made on behalf of specifically identified federal candidates, this amount should be disclosed on Schedules B or E supporting Lines 23 or 24 and include the amount, name, address and office sought by each candidate. 11 CFR §§104.3(b) and 106.1

-Please amend your report by providing the address for each disbursement itemized on Schedule(s) H4 supporting Line(s) 21(a).

-On Schedule H4, your allocated activity or event year-to-date total calculations for the administrative category are incorrect. Allocated activity or event year-to-date totals for administrative, voter drive, exempt activity costs and expenses for public communications made by PACs referencing only political parties are derived by aggregating all disbursements during the calendar year for each separate category. Allocated activity or event year-to-date totals for fundraising and direct candidate support activities are derived by aggregating all disbursements during the calendar year within a specific event. These should be calculated by adding the latest disbursement for a category or event to the previous event year-to-date total for that category or event. This running event year-to-date total should be disclosed after each disbursement is

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listed. Please amend your report by providing the correct event year-to-date totals.

-The totals listed on Lines 6(c), 7, 11(a)(i), 11(a)(ii), 11(a)(iii), 11(c), 11(d), 19, 20, 21(a)(i), 21(a)(ii), 21(b), 21(c), 31, and 32, Column B of the Summary and Detailed Summary Page(s) appear to be incorrect. Please be advised that you should add the "Calendar Year-to-Date" total from your previous report to the current "Total This Period" figure from Column A to derive the correct Column B totals. Please amend your report and any subsequent reports that may be affected by this correction.

-Your calculations for Line 8 appear to be incorrect. Cash-on-hand at the close of the current reporting period should always equal the closing calendar year-to-date cash-on-hand amount. Please provide the corrected total on the Summary Page.

-Commission Regulations require that a committee disclose the identification of all individuals who contribute in excess of \$200 in a calendar year. (11 CFR §104.3(a)(4)(i)) Identification for an individual is defined as the *full* name, mailing address, occupation and name of employer. (11 CFR §100.12) Your report discloses contributions from individuals for which the identification is not complete.

You must provide the missing information, or if you are unable to do so, you must demonstrate that "best efforts" have been used to obtain the information. To establish "best efforts," you must provide the Commission with a detailed description of your procedures for requesting the information. Establishing "best efforts" is a three-fold process.

First, your original solicitation must include a clear and conspicuous request for the contributor information and must inform the contributor of the requirements of federal law for the reporting of such information. (11 CFR §104.7(b)(1))

Second, if the information is not provided, you must make one follow-up, stand alone effort to obtain this information, regardless of whether the contribution(s) was solicited or not. This effort must occur no later than 30 days after receipt of the contribution and may be in the form of a written request or an oral request documented in writing. (11 CFR § 104.7(b)(2))

The request must:

- clearly ask for the missing information, without soliciting a contribution;

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- inform the contributor of the requirements of federal law for the reporting of such information, and
- if the request is written, include a pre-addressed post card or return envelope.

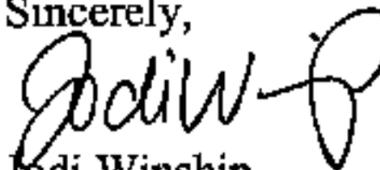
Third, if you receive contributor information after the contribution(s) has been reported, you shall either a) file with your next regularly scheduled report, an amended memo Schedule A listing all the contributions for which additional information was received; or b) file on or before your next regularly scheduled reporting date, amendments to the report(s) originally disclosing the contribution(s). (11 CFR §104.7(b)(4))

Please provide the missing information or a detailed description of your procedures for requesting the information. For more information on demonstrating "best efforts," please refer to the Campaign Guide.

**Please note, you will not receive an additional notice from the Commission on this matter.** Adequate responses received on or before this date will be taken into consideration in determining whether audit action will be initiated. **Requests for extensions of time in which to respond will not be considered.** Failure to provide an adequate response by this date may result in an audit of the committee. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action.

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended. If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1136.

Sincerely,



Jodi Winship

Campaign Finance Analyst  
Reports Analysis Division

### ALLOCATION OF REBATE (H4) (METHOD 1)

<b>SCHEDULE H4 (FEC Form 3X)</b> <b>DISBURSEMENT FOR SHARED FEDERAL/NON-FEDERAL</b> <b>ACTIVITY SCHEDULE</b>			PAGE 1 OF 1 FOR LINE 21a OF FORM 3X
NAME OF COMMITTEE (in full) Freedom Party State Committee			
A. Full Name (last, first, middle initial) Acme Office Supplies		Allocated Activity or Event: <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> Fundraising <input type="checkbox"/> Exempt <input type="checkbox"/> Voter Drive <input type="checkbox"/> Direct Candidate Support	
Mailing Address 111 Parkdemonst St.		Allocated Activity or Event Year-To-Date 5,600.00	
City City ST Zip Code ST 00000	Purpose of Disbursement: Rebate		
Activity or Event Identifier: Category Type 001	Date 08 15 2004		
FEDERAL SHARE -134.00	+ NON-FEDERAL SHARE -256.00	= TOTAL AMOUNT -400.00	

### RECEIPT OF REBATE (A/LINE 15) (METHOD 2)

<b>SCHEDULE A (FEC Form 3X)</b> <b>ITEMIZED RECEIPTS</b>		PAGE 1 OF 1 FOR LINE NUMBER 15 OF FORM 3X
NAME OF COMMITTEE (in full) Freedom Party State Committee		
A. Full Name (last, first, middle initial) Acme Office Supplies		Date of Receipt 08 01 2004
Mailing Address 111 Parkdemonst St.		Amount of Each Receipt (in whole) 400.00
City City ST Zip Code ST 00000	Name of Employee Occupation Rebate	
FED ID number of non-federal federal political committee C	Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	
ADDITIONAL INFORMATION 400.00		

### NONFEDERAL TRANSFER (H4) (METHOD 2)

<b>SCHEDULE H4 (FEC Form 3X)</b> <b>DISBURSEMENT FOR SHARED FEDERAL/NON-FEDERAL</b> <b>ACTIVITY SCHEDULE</b>			PAGE 1 OF 1 FOR LINE 21a OF FORM 3X
NAME OF COMMITTEE (in full) Freedom Party State Committee			
A. Full Name (last, first, middle initial) Freedom Party State Committee Nonfederal Account		Allocated Activity or Event: <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> Fundraising <input type="checkbox"/> Exempt <input type="checkbox"/> Voter Drive <input type="checkbox"/> Direct Candidate Support	
Mailing Address 111 Politics St.		Allocated Activity or Event Year-To-Date	
City City ST Zip Code ST 00000	Purpose of Disbursement: Transfer of Nonfederal Share of Rebate		
Activity or Event Identifier: (See Schedule A) Category Type 001	Date 08 15 2004		
FEDERAL SHARE 256.00	+ NON-FEDERAL SHARE 0.00	= TOTAL AMOUNT 256.00	

## 9. Refunds and Rebates of Allocable Expenses

If a committee receives a refund or a rebate of an allocable expense, the refund or rebate must be deposited in the federal or allocation account. The refund or rebate must then be allocated between the federal and nonfederal accounts according to the same allocation ratio used to allocate the original disbursement. The federal account must transfer the non-federal portion to the nonfederal account.

### Example

A committee receives a \$400 rebate on office equipment from the Acme Office Store. The original purchase was an administrative expense allocated according to the following ratio: 36 percent federal; 64 percent nonfederal.

Reporting Method 1 illustrates how this rebate would be reported according to the method approved in Advisory Opinion (AO) 1995-22. Reporting Method 2 shows how the rebate would be reported under an alternative method.

### Reporting Method 1

Using the method of reporting described in AO 1995-22, the committee discloses the receipt of the rebate and the federal and nonfederal shares on Schedule H4.

The amounts are negative entries subtracted from total shared federal and nonfederal disbursements for the reporting period (disclosed on Lines 21 a(i) and (ii) of the Detailed Summary Page).

### Reporting Method 2

Under the alternative method, the committee reports the receipt of the \$400 rebate under the category "Offsets to Operating Expenditures" on

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Line 15 of the Form 3X Detailed Summary Page. The committee uses Schedule H4 to disclose the federal account's \$256 transfer to the nonfederal account for the nonfederal share.

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## 10. Prohibited In-Kind Donations for Allocable Activities

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While contributions from corporations, labor organizations and federal government contractors are prohibited under federal law, they are permissible under some state laws. If that is the case, such donations may be accepted by a nonfederal account for strictly nonfederal activity. However, the situation is more complicated when donations of goods or services from such sources are made in connection with allocable activity, such as a fundraiser at which both federal and nonfederal funds are collected.

In AO 1992-33, the Commission explained how a committee can legally accept an in-kind donation from a prohibited source in connection with an allocable administrative or fundraising activity. Note that the Commission has not addressed the receipt of in-kind donations from prohibited sources for the other types of allocable expenses (i.e., generic voter drives and candidate support activity).

### Advance Payment of Federal Share

To avoid the receipt of a prohibited contribution by the federal account, that account must pay the nonfederal account for the federal share of the in-kind donation. This payment—a transfer to the nonfederal account—must be made in advance or on the date the goods or services are received.

### Per-Transaction Transfers

The federal transfer may be made on a per-transaction basis—that is, shortly before or on the same day the in-kind donation is received.

### Escrow Transfers

Alternatively, the federal account may make bulk transfers to cover the federal share of anticipated in-kind donations. Under this "escrow" arrangement, a committee makes a good faith estimate of the amount of in-kind donations that it expects to receive and transfers sufficient funds from the federal account to cover the federal share.

### Adjustments

Should the federal account pay more than its share of an in-kind donation, adjustment transfers from the nonfederal account are permissible.

### Basic Reporting of In-Kind Donations: Example

On October 1, a state party committee receives a \$5,000 in-kind donation of flowers from a corporation for a federal/nonfederal fundraiser ("Chairman's Gala"). The estimated allocation ratio for the fundraiser is 50 percent federal and 50 percent nonfederal. That same day, the federal account transfers its share of the in-kind donation (\$2,500) to the nonfederal account.

### Required Forms

- Schedule H2—Allocation Ratios
- Schedule H3—Transfers from Nonfederal Account
- Schedule H4—Payments for Allocable Expenses

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