



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 25, 2007

MEMORANDUM

To: Deborah Kant
Director of Alternative Dispute Resolution

Through: John D. Gibson *JDG*
Chief Compliance Officer

From: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Thomas J. Nurthen *TJN*
Audit Manager

By: Robert L. Morcomb *RLM*
Lead Auditor

Subject: Richard Pombo for Congress Committee (A05-02) -
Referral Matter

On September 11, 2007 the Commission approved the final audit report on the Richard Pombo for Congress Committee. The final audit report includes the following matter that is referable to ADR:

Receipt of Excessive Contributions

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Robert Morcomb or Thomas Nurthen at 694-1200.

Attachment: Finding 2 – Receipt of Excessive Contributions

cc: Reports Analysis Division

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Summary

RPC accepted contributions from individuals and Native American tribes that exceeded the limitation by \$26,400. In response to the interim audit report recommendation, RPC provided documentation that it refunded excessive contributions totaling \$22,400; presumptively reattributed a \$2,000 excessive contribution; and, provided documentation that demonstrated one contribution (\$2,000) was not excessive.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §§110.1(a) and (b).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignated the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii). Presumptive redesignations apply only within the same election cycle.

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- that the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

RPC accepted contributions from individuals and Native American tribes that exceeded the contribution limitation by \$26,400. The excessive portion of the contributions were either presumptively reattributed to another individual or presumptively redesignated to the general election.

Two of the excessive contributions could not be presumptively reattributed or redesignated because such action created additional excessive contributions. Further, RPC could not provide evidence that the contributors were notified of such action or offered a refund of the excessive portion of the contributions.

RPC did not deposit the excessive portions into a separate account but did maintain sufficient funds in its bank account to make the necessary refunds.

The Audit staff discussed this matter at the exit conference. RPC representatives inquired if the correct procedures were followed would the identified contributions be considered

excessive. RPC was informed that if the correct procedures were followed, the contributions would not have been excessive.

Subsequent to the exit conference, RPC indicated that the excessive contributions were refunded and disclosed making the refunds.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that RPC:

- Provide evidence demonstrating that the contributions in question were refunded. Such evidence should include copies of front and back of negotiated refund checks);
- If a refund check had not been negotiated and the contribution could have been presumptively reattributed under 11 CFR 110.1(k)(3)(ii)(B), send a letter to each contributor informing them that their contribution has been reattributed and offer a refund. A copy of such letter should be made available to the Audit staff.
- Absent such evidence, the Audit staff recommended that the value of the non-negotiated refund checks be paid to the United States Treasury.

In response to the interim audit report recommendation, RPC provided copies of negotiated refund checks totaling \$22,400. RPC also provided a copy of a letter sent to one contributor indicating the excessive portion (\$2,000) was presumptively redesignated to the general election. The letter also offered a refund. In addition, RPC provided documentation demonstrating that a contribution (\$2,000) was not excessive.

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