



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

October 7, 1992

*note fully  
24 hrs  
recirculate - not back in  
agenda.*

*TP  
5-1 (LAE)*

**SUBMITTED LATE  
AGENDA ITEM**

For Meeting of: OCT 8 1992

MEMORANDUM TO: The Commission  
THROUGH: John C. Surina  
Staff Director  
FROM: Lawrence M. Noble  
N. Bradley Litchfield  
SUBJECT: Revised Draft AO 1992-33

*Use LAE*

*[Handwritten signatures and initials over the memorandum text]*

*92-127-D  
TP - memo submitted  
to LAE  
to amend OGC  
revised -*

Attached is a revised draft of the subject advisory opinion as considered by the Commission on October 1, 1992, in Agenda Document #92-127.

We request that this revised draft be placed on the agenda for October 8, 1992.

The revisions are highlighted with the bold feature and concern the reporting directions for Schedules H3 and H4, and Schedule I with related memo Schedule A.

The revisions are found on page 8, new footnote 3; page 10, new footnote 5 and new text beginning line 22; page 11; and page 12.

In general, the revised and new language gives the requesters' various options for reporting total amounts of in-kind contributions related to particular fundraising events and administrative programs, and for significantly reducing the duplication of reporting entries normally required when disclosing both the receipt and corresponding disbursement of in-kind contributions as presented in the AOR.

Attachment 12-4  
L17a: 30 day window address aggreg all "amounts" in that period  
18 instant Fed report required, then aggregate by day  
in also needed  
-- Schedule I needs balancing disbursement

**DRAFT**

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3 **ADVISORY OPINION 1992-33**

4 **Carol C. Darr**  
5 **General Counsel**  
6 **Democratic National Committee**  
7 **430 South Capitol Street, S.E.**  
8 **Washington, D.C. 20003**

9 **Benjamin L. Ginsberg**  
10 **General Counsel**  
11 **Republican National Committee**  
12 **310 First Street, S.E.**  
13 **Washington, D.C. 20003**

14 **Dear Ms. Darr and Mr. Ginsberg:**

15 **This responds to your letter dated August 13, 1992,**  
16 **requesting an advisory opinion on behalf of the Democratic**  
17 **National Committee and the Republican National Committee**  
18 **("the national party committees") concerning the application**  
19 **of the Federal Election Campaign Act of 1971, as amended**  
20 **("the Act"), and Commission regulations to the acceptance of**  
21 **in-kind contributions from sources otherwise prohibited by**  
22 **the Act in connection with events and administrative expenses**  
23 **involving shared Federal and non-federal payments.**

24 **You state that the national party committees currently**  
25 **accept "non-federal" in-kind contributions for allocable**  
26 **expenses in connection with administrative and fundraising**  
27 **expenses. You believe this is in accordance with Commission**  
28 **regulations at 11 CFR 106.5 requiring national party**  
29 **committees to pay for the allocable expenses with a**  
30 **combination of both Federal and non-federal funds according**  
31 **to an appropriate percentage. You provide the following**  
32 **example of the treatment of "non-federal" in-kind**  
33 **contributions:**

34 **If a corporate vendor donates flowers with a fair**  
35 **market value of \$5,000 for a national party committee**  
36 **fundraising event, the committee would consider the full**

3 amount as an in-kind contribution to the non-federal  
4 account. Expenses for a fundraising event are allocated on a  
5 funds received basis under 11 CFR 106.5(f). Accordingly, if  
6 the event raises funds at a 50/50 Federal/non-federal ratio,  
7 \$2,500 of Federal funds would have been used to pay for the  
8 flowers had the national party committee paid for them  
9 directly. To ensure that the corporate donor does not "pay  
10 for" the Federal portion of the allocable expense, the  
11 committee transfers the amount from its Federal account to  
12 its non-federal account. For an administrative expense, a  
13 transfer of the Federal portion would be made no earlier than  
14 10 days before or no later than 60 days after the receipt of  
15 the in-kind contribution. For a fundraising event, the  
16 committees would make such transfers within 60 days of the  
17 event.<sup>1/</sup> If more than one non-federal in-kind contribution is  
18 received for an event, the adjustment would be made through  
19 one consolidated transfer, rather than by a transfer for each  
20 in-kind received for a specific event.

21 You propose to report the receipt and disbursement of an  
22 in-kind non-federal contribution on Schedule I, lines 1 and  
23 5. You also propose that the transfer of the Federal portion  
24 be reported on Schedule B, Line 22 of the national party  
25 committee's Federal report as a transfer to an affiliated  
26 committee and that it be clearly identified as a transfer of  
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28  
29 <sup>1/</sup> You assert that such time periods are consistent with  
30 the rules governing transfers for allocable expenses set out  
at 11 CFR 106.5(g)(2)(11)(B).

3 the Federal portion of an in-kind contribution. The  
4 non-federal account would report the receipt of the transfer  
5 on line 1 of Schedule I.

6 You state that there is no need for the committee to  
7 file an H3 or H4 schedule. You believe that the reporting  
8 will be adequate by identifying on line 22, for each in-kind  
9 received, the specific in-kind contribution for which the  
10 transfer is made and the event for which the in-kind  
11 contribution was received. You assert that, by cross  
12 referencing the committee's Schedules H1 and H2, the  
13 Commission can ascertain whether the transfer is for the  
14 proper amount and within the correct time period.

15 You ask the Commission to confirm that your proposed  
16 "method of accounting" for the Federal portion of an in-kind  
17 contribution from an otherwise prohibited source is  
18 permissible.

19 Commission regulations provide for allocation of  
20 expenses by party committees making disbursements for  
21 administrative expenses, fundraising activities, exempt  
22 activities, or generic voter drives in connection with both  
23 Federal and non-federal elections. 11 CFR 106.1(e). [More  
24 specifically with respect to the first two categories, party  
25 committees that make disbursements in connection with Federal  
26 and non-federal elections shall allocate expenses for (i)  
27 administrative expenses not attributable to a clearly  
28 identified candidate, including rent, utilities, supplies,  
29 and salaries; and (ii) the direct costs of a fundraising

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deletions

3 program or event, including disbursements for solicitation of  
4 funds and for planning and administration of actual  
5 fundraising events, where Federal and non-federal funds are  
6 collected by one committee through such a program or event.  
7 11 CFR 106.5(a)(2)(i) and (ii).

8 All administrative expenses must be allocated between  
9 Federal and non-federal accounts, if incurred by a committee  
10 that makes disbursements in connection with both Federal and  
11 non-federal elections, and that chooses to pay any portion of  
12 such disbursement from its non-federal account. Explanation  
13 and Justification of 11 CFR Part 106, 55 Fed. Reg. 26058,  
14 26063 (June 26, 1990). Each national party committee, other  
15 than a Senate or House campaign committee, shall allocate a  
16 fixed percentage of its administrative expenses during a  
17 reporting period, and such minimum Federal percentages differ  
18 depending upon the year the expenses were incurred. 11 CFR  
19 106.5(b)(1) and (2). These minimum percentages, 65 percent  
20 in a presidential election year and 60 percent in other  
21 years, reflect the national party committees' primary focus  
22 on presidential and other Federal elections, while still  
23 recognizing party-building activities at state and local  
24 levels. 55 Fed. Reg. at 26063.

25 Fundraising costs, however, must be allocated on a  
26 different basis, i.e., on the basis of the particular event  
27 or program. A party committee, whether national or not,  
28 allocates the direct costs of each fundraising program or  
29 event, where both Federal and non-federal funds are collected  
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3 by that one committee through such program or event. (This  
4 is not to be confused with joint fundraising events conducted  
5 by more than one committee.) 11 CFR 106.5(f); 55 Fed. Reg.  
6 at 26065. A party committee should allocate its fundraising  
7 costs based on the ratio of funds received into its Federal  
8 account to its total receipts from each fundraising program  
9 or event. Each event or program has its own ratio. The  
10 committee estimates this ratio prior to each program or  
11 event, based on the committee's reasonable prediction of its  
12 Federal and non-federal revenue for the program or event. 11  
13 CFR 106.5(f)(1). The committee adjusts its ratio no later  
14 than 60 days following each such event to reflect the actual  
15 ratio of funds received. If either the Federal or  
16 non-federal account has paid more than its share, then the  
17 necessary transfers will be made from the other account, and  
18 the adjustments will be noted in the report for the period in  
19 which the program or event occurred. 11 CFR 106.5(f)(2). ]

20 The purpose of these allocation rules is to assure that  
21 non-federal funds do not pay for the Federal share of a mixed  
22 expense. See 55 Fed. Reg. at 26066. Committees have the  
23 option of two payment procedures: (1) committees pay an  
24 entire bill from the Federal account and transfer funds from  
25 the non-federal to the Federal account to cover the  
26 non-federal share; or (2) committees establish a separate  
27 allocation account, which the Commission considers to be a  
28 Federal account, and funds are transferred from the Federal  
29 account and the non-federal account solely to make allocable  
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3 payments. 11 CFR 106.5(g)(1)(i) and (ii). Although the  
4 promulgation of the allocation regulations mark the first  
5 time that the Commission has allowed non-federal funds to be  
6 transferred to a committee's Federal account, this was only  
7 for the limited purpose of paying allocable expenses. Under  
8 the new rules, committees are prohibited from making such  
9 payments through their non-federal accounts. 55 Fed. Reg. at  
10 26066.

11 Commission regulations provide that in-kind  
12 contributions that are used or consumed as they are given,  
13 i.e., items other than stocks, bonds, art objects, or similar  
14 items to be liquidated, are both contributions and  
15 expenditures at the time they are accepted and reported as  
16 such. 11 CFR 104.13(a)(2) and (b). See 11 CFR  
17 100.8(a)(1)(iv)(A). The acceptance of flowers, food, or the  
18 use of a reception room from a corporation occurs at the time  
19 of their use. Since both the non-federal and Federal  
20 accounts would benefit at the time of acceptance, and since  
21 only the non-federal account may lawfully accept an in-kind  
22 donation from a corporation, the Federal account would  
23 benefit from an expenditure (of the in-kind donation) by the  
24 non-federal account. This, in effect, results in the use of  
25 non-federal funds to pay the Federal share. The subsidy of  
26 the Federal account in this manner may be avoided by a  
27 payment from the Federal account to the non-federal account  
28 at the time of the acceptance of the in-kind donation.

29 Unlike payments from the non-federal account to the  
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3 Federal account or the allocation account (also a Federal  
4 account), which may be made within 60 days of the payment of  
5 the allocable expense by the Federal account to a vendor, the  
6 payment from the Federal account in this case is to avoid  
7 subsidization by the non-federal account and should be made  
8 at the time of the benefit. See 11 CFR 106.5(g)(2)(ii)(B).<sup>2/</sup>  
9 Therefore, for each in-kind donation given with respect to an  
10 administrative event or program, the committee shall transfer  
11 from the Federal account 65 percent of the usual and normal  
12 charge of the item donated (or 60 percent in any year when a  
13 presidential election is not held) to the non-federal account  
14 on the day the committee receives the donation. For each  
15 in-kind contribution given with respect to a fundraising  
16 event or program, the committee should determine the ratio of  
17 funds received into the Federal account to the total  
18 receipts. 11 CFR 106.5(f). (This ratio will not include

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21 <sup>2/</sup> The regulations also permit a prepayment from the  
22 non-federal account to the Federal account ten days prior to  
23 the payment to the vendor. 11 CFR 106.5(g)(2)(ii)(B). The  
24 ten-day limit's purpose is to prevent subsidization by the  
25 non-federal account. 55 Fed. Reg. at 26066. In view of the  
26 circumstances presented and the nature of the regulations,  
27 the Commission does not grant a ten-day window for payment by  
28 the Federal account after the receipt of the benefit.  
29 Commission regulations on allocation do not explicitly make  
30 provisions for the receipt of in-kind corporate and labor  
organization contributions. Based on the Act and other  
Commission regulations defining contributions as including an  
advance, the Commission concludes that the requirement of the  
contemporaneous payment is the best accommodation for this  
situation. 2 U.S.C. §431(8)(A); 11 CFR 100.7(a)(1) and  
114.1(a)(1). The Commission also notes that most in-kind  
donations of a significant amount would be anticipated before  
actual delivery by the donor, so their value can be  
ascertained and payment made upon receipt by the committee.

3 those amounts received in the form of in-kind contributions  
4 because such inclusion would artificially inflate the  
5 non-federal share.) The Federal percentage of the in-kind  
6 donation will be paid to the non-federal account upon receipt  
7 of the donation. Because the ratio may be an estimate at  
8 first, an adjustment may be made in either direction to  
9 conform to the actual ratio, but no later than 60 days after  
10 the date of the event. 11 CFR 106.5(f)(2).<sup>3/</sup>

11 If more than one in-kind corporate donation is received  
12 for an administrative or fundraising program or event, the  
13 payments from the Federal account for that day may be made  
14 through one consolidated transfer if the transfer is made in  
15 a timely manner as described above. Nevertheless, for each  
16 transfer, the committee must itemize in its reports the  
17 allocable activities for which the transferred funds are  
18 intended as payment and the allocated disbursement for that  
19 activity. 11 CFR 106.5(g)(2)(i)(A) and (3). This  
20 itemization is inadequate without the use of the H3 and H4  
21 schedules which were designed to provide public disclosure of  
22 the transfers and related specific activities. Only through  
23 the use of these schedules will there be full and clear  
24 disclosure of the Federal and non-federal share of all the  
25 transfers.

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27 <sup>3/</sup> The requirement of payment to the non-federal account  
28 upon receipt does not preclude such a payment before the  
29 receipt date. This payment may be made if done on a basis  
30 relating only to a specific anticipated in-kind contribution,  
or several such contributions, with notations on the relevant  
report describing the situation.

TP

3 The receipt of an in-kind contribution for shared  
4 expenses should be reported in a manner consistent with the  
5 reporting of other in-kind contributions, which takes into  
6 account the need to balance the receipt with a disbursement  
7 in the same amount. Thus, to reflect the receipt of the  
8 in-kind corporate donation in this case, the committee must  
9 report a transfer from the non-federal account of an amount  
10 equal to the value of the in-kind. In addition, the  
11 committee must make and report the payment to the non-federal  
12 account which payment represents the Federal share of the  
13 in-kind donation.

14 For the contribution of \$5,000 in flowers, on Schedule  
15 H3 (Transfers from Non-federal Accounts) covering the  
16 relevant reporting period, the committee should first  
17 disclose a transfer (in-kind) for that fundraising event of  
18 the full amount of \$5,000 on the date the committee receives  
19 the flowers, e.g., the date of the fundraiser, next to a  
20 space on line 11 identifying the event.<sup>4/</sup> (If there are other  
21 such in-kind contributions on that date for the fundraiser,  
22 those amounts should also be included.) On Schedule H4  
23 (Joint Federal/Non-federal Activity Schedule), the committee  
24 should make two separate entries, the first of which

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27 <sup>4/</sup> Schedule H3 should reflect not just the remaining  
28 non-federal amount (\$2,500) after the \$2,500 transfer from  
29 the Federal account, but the total of the corporate gift,  
30 i.e., \$5,000. Such figure should be included on line 18 of  
the Detailed Summary Page; no portion may be reported on line  
11a because this transfer cannot be accepted by the Federal  
account as a contribution.



3 resulting from in-kind transactions by fundraising event or  
4 program or by administrative purpose. Thus, instead of  
5 setting out the transfers for in-kind transactions by date  
6 (to be aggregated with other transfers on that date), the H3  
7 will show separate listings by the event or program.

8 Therefore, all transfers ~~pertaining to the program or event,~~  
9 regardless of the date made (but made within the reporting  
10 period), will be aggregated for that entry. In order to  
11 clarify when these transfers occurred, the committee should  
12 also note, on the Schedule H3 listing, that the transfer  
13 reflected thereon relates to H4 entries that are itemized on  
14 specific pages, e.g. H4, p. 4, entries A and C. //

15 Instead of an entry on Schedule H4 for each  
16 contemporaneous payment by the Federal account to the  
17 non-federal account, the committee may report the aggregate  
18 of such payments made on a particular date and the H4 donor //  
19 entries to which that aggregate sum relates. Accordingly,  
20 the "first" entry for each in-kind donation must still be  
21 itemized.

22 On Schedule I, the committee should include the full  
23 \$5,000 as an in-kind contribution received by the non-federal  
24 account with a supporting memo Schedule A that itemizes the  
25 contributor's identification. 11 CFR 104.8(e). In this  
26 situation, the \$5,000 amount need not also be reported on  
27 Schedule I as a transfer to the Federal account with a memo  
28 Schedule B that itemizes the contribution. See 11 CFR  
29 104.9(c). Because of the nature of an in-kind contribution  
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3 made for the benefit of both the Federal and non-federal  
4 accounts of the committee, there would be a complete  
5 duplication of the memo Schedule A donor information if the  
6 memo Schedule B were also required. In these circumstances,  
7 the Commission will not require filing of either the memo  
8 Schedule B or the related "transfer disbursement" on Schedule  
9 I, line 2. However, in order to reflect the fact that the  
10 reported in-kind donations have been expended by the  
11 committee in the same period as received, the total amount of  
12 the in-kind contributions should be entered on line 5 of  
13 Schedule I as an other disbursement with a notation reference  
14 to the memo Schedule A filed for line 1.

15 As an alternative to itemizing the contributor  
16 identifications on Schedule I, line 1, and memo Schedule A,  
17 the committee may include the total amount of in-kind  
18 donations to the non-federal account on line 1 and then make  
19 a cross reference to the entries on Schedule H4 to which the  
20 total amount relates. This reference should specify  
21 particular pages of the schedule H4 where the in-kind donors  
22 are identified.

OK!  
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3 This response constitutes an advisory opinion concerning  
4 application of the Act, or regulations prescribed by the  
5 Commission, to the specific transaction or activity set forth  
6 in your request. See 2 U.S.C. §437f.

7 Sincerely,

8  
9 Joan D. Aikens  
10 Chairman for the  
11 Federal Election Commission

12 Attachments (Sample FEC Schedules H3 and H4)  
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TRANSFERS FROM  
NON-FEDERAL ACCOUNTS

[Attachment to: ADVISORY OPINION 1992-33]

NAME OF COMMITTEE <b>National Party Committee</b>	TOTAL AMOUNT TRANSFERRED
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NAME OF ACCOUNT <b>Non-federal Account</b>	DATE OF RECEIPT <b>10/1/92</b>	\$ <b>5,000</b>
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	BREAKDOWN OF TRANSFER RECEIVED		
	ADMIN VOTER DRIVE AMOUNT	DIRECT FUND RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT
i) Total Administrative Voter Drive	.	.	.
ii) Direct Fundraising (List Events Amount for Each)			
a) <b>CHAIRMAN'S GALA</b>	.	<b>5,000</b>	.
b) _____	.	.	.
c) _____	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Direct Fundraising	.	.	.
iii) Exempt Activity/Direct Candidate Support (List Events Amount For Each)			
a) _____	.	.	.
b) _____	.	.	.
c) _____	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support	.	.	.

NAME OF ACCOUNT	DATE OF RECEIPT	\$
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	BREAKDOWN OF TRANSFER RECEIVED		
	ADMIN VOTER DRIVE AMOUNT	DIRECT FUND RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT
i) Total Administrative/Voter Drive	.	.	.
ii) Direct Fundraising (List Events Amount for Each)			
a) _____	.	.	.
b) _____	.	.	.
c) _____	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Direct Fundraising	.	.	.
iii) Exempt Activity/Direct Candidate Support (List Events Amount For Each)			
a) _____	.	.	.
b) _____	.	.	.
c) _____	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support	.	.	.

	ADMIN VOTER DRIVE AMOUNT	DIRECT FUND RAISING AMOUNT	EXEMPT ACTIVITY/DCS
SUBTOTAL THIS PAGE			
TOTAL THIS PERIOD			

JOINT FEDERAL/NON-FEDERAL  
 ACTIVITY SCHEDULE

[Attachment to: ADVISORY OPINION 1992-33]

NAME OF COMMITTEE

*National Party Committee*

A FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
<i>Flowers by Fader, Inc. 300 Main Highway City, State Zip Code</i>	<i>Flowers for Chairman's Gala</i>	<i>10/1/92</i>	<i>5,000 In-kind</i>	<i>0</i>	<i>5,000</i>
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input checked="" type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR TO DATE \$ <i>21,000</i> <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
B FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
<i>National Party Committee Non-federal Account</i>	<i>Transfer of Federal share (see above)</i>	<i>10/1/92</i>	<i>2,500</i>	<i>2,500</i>	<i>0</i>
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR TO DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
C FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR TO DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
D FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR TO DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
E FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR TO DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
F FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR TO DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
SUBTOTAL OF JOINT FEDERAL AND NON FEDERAL ACTIVITY THIS PAGE					
TOTAL THIS PERIOD (last page for each line only)(Fed share to 21 a 1 and non Fed share to 21 a 2)					
TOTAL THIS PERIOD FOR THE NON FEDERAL SHARE (used for line 31 of the detailed summary page)					