

# THE SUTTON LAW FIRM

## Local Ballot Measure Committee Set-up Instructions for Treasurers

### 1. SUMMARY OF FORMS TO FILE TO SET UP COMMITTEE – IN THIS ORDER:

Form	Purpose	Filing Officer	Means of Filing	Deadline
SS-4	Obtaining FEIN	IRS	On-line only	Before opening bank account
410	Setting up political committee	SOS and county registrar/city clerk/ethics commission	Mail or FedEx	Within 10 days of receiving \$1,000; amendment filed at termination
Bank forms	Opening up bank account	n/a	n/a	n/a
460	Disclosing committee receipts and expenditures	County registrar/city clerk/ethics commission	Personal delivery or FedEx	Semi-annual and pre-election basis
990	Annual tax return	IRS	Certified mail	By May 15 (assuming calendar year is fiscal year)
Employment forms	Employment taxes	EDD	Mail	Quarterly
1099 & 1096s	Reporting payments to outside consultants	IRS	Mail	By January 31 (1096) and February 28 (1099)

Importantly, local ballot measure committees do not file: IRS Form 8871, IRS Form 8872, FTB Form 199, or AG Forms CT-2 and RFF-1.

## 2. OBTAIN A TAX ID NUMBER.

The application for a Federal Tax Identification Number (“FEIN”) is on-line at: <https://sa2.www4.irs.gov/modiein/individual/index.jsp>. This online application will ask you a series of questions to instantly set up the EIN. (You can also apply for an EIN by phone if you prefer to talk to a live person at the IRS Business & Specialty Tax Line at (800) 829-4933.) To obtain an FEIN, you will be asked to provide your Social Security number, but this will not become public information and will not affect your credit; it simply gives the IRS someone to contact about the account. You can find more information and a full overview of obtaining a Tax ID number at: <http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>

Instructions on completing FEIN application. To get started, click on the “Begin Application” button on the bottom of the screen. It is very important that you fill out this on-line form exactly as indicated below; filling out the spaces differently could lead the IRS to expect the committee to file other forms or pay taxes.

On the “legal structure” screen, click the bottom choice: “View Additional Types, Including Tax-Exempt and Governmental Organizations” and then click continue.

At the “Additional Types” screen, click the last selection “Other Non-Profit/Tax-Exempt Organizations.”

The next screen is a brief description of an “Other Non-Profit/Tax-Exempt Organization.” Click “Continue.”

On the “Why Requesting” screen, click the 3rd option -- “Banking Purposes” -- and click continue.

On the “Responsible Party” screen, click “individual,” provide that individual’s Social Security number, and click the box for being a member or officer of the organization.

From here on, the questions will be specific to your organization. (The treasurer is “responsible officer” for the committee.)

On the “Tell us about the organization” page, be sure to use the committee’s exact name at this time (it may change later).

Most of the next questions can be answered “no.” If you are unsure whether the committee plans to hire employees, check “no.” The next screen asks “What does business or organization do?”: click “other” on this and the next page; use something along the lines of “ballot measure committee” or “public education bond measure,” but

do not use the words “campaign” or “political” in this box. The IRS will then ask how you would like to receive your FEIN Confirmation Letter. Select “Receive letter online”; given the short period of time for a campaign, it’s important you have the FEIN immediately so you can open a bank account. You will also need the FEIN to file IRS Forms 1096/1099 and IRS Form 990 returns.

### **3. FILE STATEMENT OF ORGANIZATION (FPPC FORM 410).**

Before you can do any fundraising or campaign work, you must register the committee with the Secretary of State (“SOS”) by submitting Form 410, available on the FPPC’s website (<http://www.fppc.ca.gov/index.php?id=633>). You must submit this form within 10 days of receiving \$1,000 in contributions.

You file the Form 410 with the SOS in Sacramento, as well as with the county registrar of voters, city clerk, or local ethics commission. The SOS gets the original and one copy; the registrar, clerk or ethics commission just get a copy. Be sure to ask the SOS and registrar or clerk to give you a date-stamped copy as proof of filing.

Secretary of State  
Political Reform Division  
1500 11<sup>th</sup> Street, Rm. 495  
Sacramento, CA 95814  
916/653-6224

Instructions on completing Form 410. The SOS will reject a Form 410 which is filled out incorrectly or which leaves any blanks. For additional questions or information, go to [www.fppc.ca.gov](http://www.fppc.ca.gov) or call 866-ASK-FPPC, and press 2 to reach a consultant.

Page 1:

- **Statement Type:** Check “Initial” and fill out today’s date, or the date you received the check that brought you to the \$1,000 filing threshold.
- **Committee Information:** The committee’s name must include the proposition letter or number and indicate whether the committee supports or opposes the measure. It must also include any organization which is a “sponsor” of the committee (i.e., has decision-making authority or gives 80 percent of the committee’s funds), and the top two contributors of \$50,000 or more (if any). The SOS will reject Committee names which include abbreviations, except for common abbreviations for large cities (e.g., L.A. or S.F.).

- Street Address: No P.O. box allowed. You can use any street address (e.g., the treasurer's address), or even the street address of a post office box store. This address will not necessarily appear on campaign mail and ads.

- Mailing Address: This may be a P.O. box, and is the return address. It can also be the treasurer's home address if there is no P.O. box, or you can file an amendment later if you wish to add a P.O. box.

- E-mail address. Now required – can be treasurer's.

- Name of Treasurer and Assistant Treasurer. Although not required, you should name an assistant treasurer, so that he or she can sign reports, in case the treasurer is unavailable on or before filing dates.

- Name of Principal Officer: At least one "principal officer" (i.e., decision-maker) must be listed. List up to three individuals who have decision making authority over the committee's activities.

- Verification: Treasurer or Assistant Treasurer must sign and date. The form asks for any elected official who "controls" the Committee to also sign the form; you should not have a school board member or other elected official control the committee, to avoid various legal issues.

Page 2:

- You must list the committee's bank account information..

- Write the committee name on the top of each page. (The ID number will be assigned later by the FPPC – you should receive a letter from the SOS with the ID number within about a week, or you can call if you need the information sooner. You should print the FPPC ID number on contribution remit forms.)

- You are a "Primarily Formed Committee" so only fill out that section of Part 4. You should use the official name of the measure listed in the ballot pamphlet, but a short description is okay.

Page 3:

- You do not need to fill out Page 3 unless your committee has been set up by an organization which qualifies as the committee's "sponsor" (i.e., has decision-making authority or gives 80 percent of the committee's funds).

#### **4. OPENING A BANK ACCOUNT.**

Most banks do not understand campaign committees, which can lead to confusion and difficulty when opening a bank account. For example, banks often ask for “bylaws,” the “IRS Exemption Determination Letter,” or a Board of Directors resolution – which campaign committees do not have. Tell the banks that political committees are not typical nonprofits and do not have these documents. We recommend finding a bank that is easy for the treasurer to work with and who has a basic understanding of campaigns.

In most cases, you will need an FEIN, date-stamped Form 410, and FPPC ID number in order to open a bank account.

#### **5. SETTING UP CREDIT CARD CONTRIBUTIONS.**

If you think that your contributors will want to make contributions via credit card, you will need to retain a credit card processing vendor. Be sure to use a vendor which has experience with political fundraising; popular credit card processing vendors for California campaigns are: Click & Pledge, PayPal, ActBlue and Complete Campaigns.

These vendors typically charge both a monthly fee and a per-transaction fee; the fees are sometimes surprisingly high. You will also have to work with the vendor on linking the service to the campaign’s website.

You need to work with the vendor to make certain that the page asks for all of the information needed for campaign reports; namely, the contributor’s occupation and employer, and street address.

You also need to print-out copies of the e-mails which the campaign will receive from the vendor regarding each contribution as back-up documentation for the committee’s records.

#### **6. OPENING A P.O. BOX.**

The campaign will need to open a P.O. Box to be used as the return address on all mail pieces and contribution remit envelopes, and as the mailing address on the Form 410. Contributors will mail their checks to this address.

Since the treasurer or designated committee member will be checking the P.O. boxes regularly, please identify a location that is convenient for you.

Most P.O. box stores require an approved copy of an organizational document; i.e., the date-stamped Form 410.

## **7. FILE CAMPAIGN REPORTS.**

It is critically important to keep track of all contributions (including in-kinds), unpaid bills, and expenditures as the campaign proceeds. It is also critically important to maintain back-up documentation for all committee receipts and expenditures (copies of checks, print-outs from credit card processing site, invoices, receipts, etc.). This memorandum does not detail all of the reporting requirements for the committee; you should go to the FPPC's website to learn about campaign reporting rules, at: <http://www.fppc.ca.gov/index.php?id=505>. Be sure to review the "Candidate Toolkit."

The FPPC has several reporting deadlines throughout the campaign cycle: mid-year, year-end and two reports due before the election. The Treasurer will be responsible for ensuring that complete, accurate, and timely reporting of the committees' finances occurs per the schedule from the FPPC. You can find the filing deadlines on the FPPC website.

Additionally, during the 90 days before the election, any individual contribution of \$1,000 or more to the committee triggers a 24-hour reporting requirement. Note that there are significant (\$10 per day) penalties for late filings.

Form 460s are filed with the registrar, clerk or local ethics commission only, not with the SOS. Be sure to get the filing officer to date-stamp a copy of the report as proof of filing, and be sure to keep these proofs of filing in the committee's files.

## **8. EMPLOYMENT/INDEPENDENT CONTRACTOR FORMS.**

If the committee is hiring any employees (as opposed to only retaining independent contractors), you will need to file the appropriate employee paperwork with the IRS as well: I-9 and W-4 for new employees, plus quarterly reports.

If the committee makes payments of \$600 to non-incorporated outside consultants, it must send a Form 1096 to the vendor by January 31 and send a Form 1099 to the IRS by February 28. These forms become available in December of every year; you may not file them until January.

## **9. NOT NECESSARY TO FILE AS A TAX EXEMPT ORGANIZATION.**

The committee is considered a 501(c)(4) tax-exempt organizations under tax laws. However, the committee is not required to file a formal tax-exempt application with the IRS or California Franchise Tax Board ("FTB"). However, the organization absolutely must file an annual tax return (Form 990) with the IRS only. (Do not file an annual tax return (Form 199) with the FTB – very important.)

The annual tax return is IRS Form 990. This memorandum does not detail all of the Form 990 reporting requirements; you can learn about the filing requirements on the IRS website at: <http://www.irs.gov/pub/irs-pdf/i990.pdf>. And you can obtain the Form 990 here: <http://www.irs.gov/pub/irs-pdf/f990.pdf>.

Be sure to file the Form 990 via certified mail for proof of filing.

#### **10. ALSO NOT NECESSARY TO DO OTHER FILINGS REQUIRED FOR NONPROFITS.**

You do not have to, and should not, file a Form 8871 or 8872 with the IRS; these forms are only for political committees supporting candidates. You also do not have to file a CT-2 or RRF-1 with the Attorney General's office; political committees are explicitly exempt from these AG filings.

#### **11. CLOSING THE COMMITTEE.**

After the election, the committee may either remain open (to support a later measure) or more likely, should close. If the committee chooses to remain open, it will have to continue filing Form 460s and Form 990s. Committees can face substantial fines if they remain open but forget to file these forms.

Termination of a committee requires that the committee:

(1) not have any funds left in the account; and

(2) either have no debts or reach agreements with vendors to write off debts. (These agreements must be in writing.)

Committees then must file the following forms; be sure to mark "termination" boxes on all of these forms:

(1) a final Form 460;

(2) an amendment to the Form 410; and

(3) a final Form 990.

**THIS MEMORANDUM IS INTENDED FOR GENERAL INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE.**