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Advancing
Wholesalers



WINE & SPIRITS
WHOLESALERS
OF AMERICA

POLITICAL ACTION COMMITTEE

WSWA-PAC WORKS FOR YOU

**PAC PAYROLL DEDUCTION
& IMPLEMENTATION KIT**

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FEC RULE AND RELATED INFORMATION

Final Rule on Payroll Deductions for Trade Association SSFs (Separate Segregated Funds) PACs (Political Action Committees)

On July 14, 2005, the Federal Election Commission voted to revise its rules to allow corporate members of a trade association to provide incidental services, including the use of a payroll deduction or check-off system, to collect and forward voluntary employee contributions to the trade association's SSF.

The rules require any member corporation that provides such incidental services, and the corporation's subsidiaries, divisions, branches and affiliates, to make the same services available to a labor organization representing employees of the corporation or the corporation's subsidiaries, divisions, branches or affiliates, at cost, upon written request of the labor organization.

Background

Under the Federal Election Campaign Act (the Act), a trade association may solicit contributions to its SSF from a corporate member's stockholders and executive and administrative personnel and their families (the restricted class) so long as the corporation approves the solicitation ahead of time and does not approve a solicitation by any other trade association for the same calendar year. 2 U.S.C. §441b(b)(4)(D); 11 CFR 114.8(c).

Once these conditions are met, the regulations do not limit the methods that a trade association may use to solicit and facilitate the making of voluntary contributions to its SSF. Before this rulemaking, however, the regulations did limit the methods that a consenting member corporation could use to collect and forward contributions to a trade association's SSF. Specifically, 11 CFR 114.8(e)(3) stated that a "member corporation may not use a payroll deduction or check-off system for executive or administrative personnel contributing to the separate segregated fund of the trade association." In 2003, the Commission received a rulemaking petition from America's Community Bankers and its SSF, the America's Community Bankers Community Campaign Committee, asking the Commission to change its rules to allow a corporate member of a trade association to make payroll deductions and check off systems available to the corporation's restricted class employees for their voluntary contributions to the trade association's SSF.

The Commission issued a Notice of Availability for the petition, and received 30 comments, all of which supported the proposed change. In December 2004, the Commission published a Notice of Proposed Rulemaking (NPRM) that set forth draft rules on the subject. See the February 2005 Record, page 2. The Commission held a public hearing on the proposed rules on May 17, 2005. The written comments and the transcripts of the hearing are available at http://www.fec.gov/law/law_rulemakings.shtml.



Final Rules

After considering public comments and testimony, the Commission issued final rules.

The final rules:

- Remove the prohibition on corporate use of a payroll deduction or check-off system for contributions by executive and administrative class employees to the SSF of a trade association of which the corporation is a member (11 CFR 114.8(e)(3));
- Authorize a member corporation to provide incidental services to collect and transmit voluntary contributions from its solicitable class employees to a trade association's SSF, including a payroll deduction or check-off system, upon written request of the trade association (new 11 CFR 114.8(e)(4));
- Require any corporation that provides these incidental services, and its subsidiaries, divisions, branches and affiliates, to make the same services available upon written request to a labor organization representing members who work for the corporation or its subsidiaries, divisions, branches or affiliates, for contributions to the labor organization's SSF, at a cost not to exceed any actual expenses incurred (new 11 CFR 114.8(e)(4)); and
- Clarify that the provision of incidental services pursuant to new 11 CFR 114.8(e)(4) is not a prohibited form of corporate facilitation (new 11 CFR 114.2(f)(5)). In making these changes to the rules, the Commission focused on the special relationship that exists between a trade association and its member corporations. The Commission also recognized that recent advisory opinions had given corporate members of trade associations some latitude in collecting and forwarding contributions to their trade associations' SSFs, other than through a payroll deduction or check-off system, and that technological and societal changes support a change in the treatment of payroll deductions when used by member corporations.

The final rule was published in the July 21, 2005, Federal Register (70 FR 41939) and is available on the FEC web site at http://www.fec.gov/law/law_rulemakings.shtml and from the FEC faxline, 202/501-3413.

Definition of who may be solicited for the PAC:

(a) Stockholders, and

(b) Executive or administrative personnel means individuals employed by a corporation or labor organization who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes –

(i) The individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers; and

(ii) Individuals following the recognized professions, such as lawyers and engineers.

(2) Executive or administrative personnel does not include –

(i) Professionals who are represented by a labor organization;

(ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(iii) Former or retired personnel who are not stockholders; or

(iv) Individuals who may be paid by the corporation or labor organization, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-1, of the corporation or labor organization for the purpose of income withholding tax on employee wages under Internal Revenue Code of 1954, section 3402.

(c) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under the Internal Revenue Code of 1954, section 3402.

SAMPLE INTERNAL MEMO TO IMPLEMENT PAYROLL DEDUCTION

To: CFO or Finance Department Head
HR Director
From: President/CEO
Date:
Re: Payroll Deduction for Wine and Spirits Wholesalers of America Political Action
Committee (WSWA-PAC)

I am pleased to announce that we will be implementing employee payroll deduction as a means to solicit and collect political action committee contributions from eligible employees for WSWA-PAC. This effort is meant to enhance fundraising receipts in a partnership between WSWA and our company to efficiently raise PAC moneys to better impact Congress. I am confident that this will be a success among our eligible employees many of whom are already contributing to WSWA-PAC by writing personal checks. Last year alone, our employees gave a total of \$XX to the PAC.

Please review and act upon the attached materials that will allow us to collect funds from eligible employees for WSWA-PAC. We shall be responsible for the collection of and timely transmittal (within ten days) of PAC funds collected from employee payroll deduction. For our purposes, the "eligible employees" includes executive and administrative personnel of the corporation the following positions:

- (a) Stockholders, and
- (b) Executive or administrative personnel means individuals employed by a corporation or labor organization who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.
 - (1) This definition includes –
 - (i) The individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers; and
 - (ii) Individuals following the recognized professions, such as lawyers and engineers.
 - (2) Executive or administrative personnel does not include –
 - (i) Professionals who are represented by a labor organization;
 - (ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;
 - (iii) Former or retired personnel who are not stockholders; or
 - (iv) Individuals who may be paid by the corporation or labor organization, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-1, of the corporation or labor organization for the purpose of income withholding tax on employee wages under Internal Revenue Code of 1954, section 3402.
 - (c) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under the Internal Revenue Code of 1954, section 3402.

I have submitted authorization to WSWA-PAC to permit solicitation of our eligible employees to contribute on a voluntary basis. It is my goal to launch this effort internally through a letter to all eligible staff and payroll announcement on or before <Date>.

For questions, information and assistance with this effort, please do not hesitate to contact Catherine McDaniel at 202-371-9792 ext. 309. Thank you for your attention to this important matter.

<YOUR LETTERHEAD HERE>

SAMPLE SOLICITATION LETTER

<Date>

<Prefix> <First> <Last>
<Company>
<Address>
<City>, <State> <Zip>

Dear <Salutation>:

The complex state and federal regulations that govern our industry have a direct impact on our ability to serve our customers and remain a healthy and thriving business. In today's political environment, changes to these regulations could have a significant negative impact on the future of our company. That is why I support WSWA-PAC. It is the political arm of the Wine & Spirits Wholesalers of America (WSWA), our trade association, and it supports candidates for Congress who are supportive of issues that impact our industry and company.

WSWA is active in protecting the "Domestic Spirits Tax Equity Act," which eliminates the tax inequity that would otherwise make domestic spirits more costly to stock than imports. WSWA also works on a number of other federal legislative issues beneficial to our company such as tax reform for individuals and businesses, protecting against the deregulation of alcohol and regulatory enforcement that guarantees a fair marketplace.

Initiatives like these are important to the continued health of our industry and require the political voice provided by WSWA-PAC. However, WSWA-PAC only exists because of personal contributions from individuals like you and me.

Enclosed is a sign-up form for payroll deduction and contribution card with suggested giving levels. No matter the amount, your contribution counts.

Your support is greatly appreciated and needed! Thank you in advance for your help with our efforts to support and protect our industry's future.

Sincerely,

<First> <Last>, <Title>
<Company>

P.S. Federal law requires that all contributions made to the WSWA-PAC must be either through payroll deduction, personal check or personal credit card. Thank you again for your support!

Contributions are not deductible for Federal income tax purposes. Contributions to WSWA PAC are voluntary and are used for political purposes. The amount indicated is merely a guideline and you may contribute more or less than the suggested amount. The Association will not favor or disadvantage anyone by reason of the amount of their contribution, or their decision not to contribute. You may refuse to contribute without reprisal. Federal law requires WSWA-PAC to request and report the name, address, occupation and employer for each person whose contributions exceed two hundred dollars (\$200.00) or more in a calendar year.



RECOMMENDED GIVING LEVELS

STAFF LEVEL	GIVING LEVEL	ANNUAL AMOUNT	12 PAY PERIODS*	24 PAY PERIODS*	26 PAY PERIODS*	52 PAY PERIODS*
Sales Rep	Pewter	\$100	\$8.33	\$4.17	\$3.85	\$1.92
Manager	Bronze	\$250	\$20.83	\$10.42	\$9.62	\$4.81
Director	Silver	\$500	\$41.67	\$20.83	\$19.23	\$9.62
Vice Pres.	Gold	\$1,000	\$83.33	\$41.67	\$38.46	\$19.23
Senior VP	Platinum	\$2,500	\$208.33	\$104.17	\$96.15	\$48.08
Executives	Diamond	\$5,000	\$416.67	\$208.33	\$192.31	\$96.15

*Pay periods annually per check

Contributions are not deductible for Federal income tax purposes. Contributions to WSWA-PAC are voluntary and are used for political purposes. The amount indicated is merely a guideline and you may contribute more or less than the suggested amount. The Association will not favor or disadvantage anyone by reason of the amount of their contribution, or their decision not to contribute. You may refuse to contribute without reprisal. Federal law requires WSWA-PAC to request and report the name, address, occupation and employer for each person whose contributions exceed two hundred dollars (\$200.00) or more in a calendar year.

<YOUR LETTERHEAD HERE>

SAMPLE TRANSMITTAL LETTER

<Date>

Mrs. Catherine McDaniel
WSWA-PAC
805 15th St. NW, Suite 430
Washington, DC 20005

Dear Catherine:

Enclosed, please find a check for WSWA-PAC contributions collected on behalf of and sent to WSWA-PAC from the <Corporation> in the amount of \$<Amount> made payable to: "WSWA-PAC". These funds are being transferred from our corporation and represent individual employee contributions collected via payroll deduction.

To the best of our knowledge and ability we have determined that all monies being transferred to WSWA-PAC have been collected from individuals who are within WSWA-PAC "Eligible Class."

Attached hereto are the names, addresses, amounts, date of contributions, occupation and employer of each contributor to WSWA-PAC.

Sincerely,

<Name>, <Title>
<Corporation>



COMPANY ADMINISTRATIVE INFORMATION

1. Who may be solicited for PAC contributions within the company?

WSWA-PAC and a member corporation collecting funds for the PAC may not solicit contributions from anyone other than the member corporation's stockholders and its executive or administrative personnel and their respective families. The Federal Election Commission calls this group of people (stockholders, executive or administrative personnel) the "eligible class." Employees who are neither stockholders nor executive or administrative personnel are not in the eligible class. This includes, among others, hourly employees and consultants.

2. How do you involve employees in the PAC?

- Determine your "eligible class"
- Set your fundraising goal by working with WSWA-PAC to determine your goal
- Determine if you will implement payroll deduction
- Create your solicitation materials by using WSWA-PAC brochure
- Define solicitation methods from the brochure to achieve your goal
- Establish time frames for a fundraising campaign
- Assign responsibility for collection of forms, pledge cards, etc...
- Educate your employees about WSWA-PAC or ask a WSWA representative to make a presentation
- Solicit employees
- Keep contributor files

3. How many times per year should you solicit employees?

All eligible employees should be solicited for PAC contributions at least twice per year. We recommend one solicitation for PAC funds in the spring and one in the fall and as an "onboarding" tool to introduce WSWA-PAC to new, eligible employees.

4. Setting the company's fundraising goal.

There are different options on setting a company goal. WSWA staff can help you determine a goal appropriate for your company size. Please contact Catherine McDaniel at WSWA to further assist.

5. Who can contribute?

Executive, managerial or administrative personnel of the corporation may contribute to WSWA-PAC. These are individuals like corporate officers, executives, division managers, lawyers, engineers, etc., who are paid on a salary rather than an hourly basis and have policymaking, managerial, professional or supervisory responsibilities. In the case of corporate directors, they may only be solicited if they are stockholders or receive a regular salary or fee from the corporation. Any person, including employees, who are stockholders, may be solicited even if they



are not executive or administrative personnel. Professionals represented by labor unions, salaried lower-level supervisors, hourly employees, former or retired personnel or consultants not subject to withholding taxes, are not considered executive or administrative personnel.

If they are salaried individuals (as opposed to hourly workers or persons who work on commissions) and have managerial or executive responsibilities they are solicitable assuming the employing company has provided prior approval. One indicator of whether they qualify is to ask whether they are exempt under the Fair Labor Standards Act. The FEC has explained that exemption under the Fair Labor Standards Act can be used as a guideline, but is not conclusive, when determining whether employees are solicitable (however, exempt employees who belong to a union or only supervise hourly workers are not solicitable).

6. Contribution limits to the PAC

An individual may contribute \$5,000 to WSWA-PAC per calendar year.

7. Contribution notices required

One suggested method of giving the appropriate notice is to provide each employee solicited a piece of PAC material such as a flier or brochure that contains the necessary information. In the case of "payroll deduction" solicitations, the information must be plainly printed on the statement. (A clearly identified and visible footnote is sufficient). The following is a notice that might be used on a statement or solicitation card.

Contributions are not deductible for Federal income tax purposes. Contributions to WSWA-PAC are voluntary and are used for political purposes. The amount indicated is merely a guideline and you may contribute more or less than the suggested amount. The Association will not favor or disadvantage anyone by reason of the amount of their contribution, or their decision not to contribute. You may refuse to contribute without reprisal. Federal law requires <Organization> PAC to request and report the name, address, occupation and employer for each person whose contributions exceed two hundred dollars (\$200.00) or more in a calendar year.

8. Restrictions on contributions

Illegal contributions may not be accepted by WSWA-PAC. PAC officers and agents are prohibited from knowingly accepting any contribution that is barred by the Federal election laws. Illegal contributions include:

- Contributions in excess of the contribution limits (see above)
- Contributions from corporations, from national banks or federal government contractors
- Contributions from non-citizens of the United States who have not been admitted for permanent residence;
- Contributions made in the name of another person
- Cash contributions exceeding \$100 per contributor per year
- Contributions from individuals who belong to a labor union.



9. Manner of solicitation

- Members of the eligible class may be solicited as often as the company desires.
- The contribution must be voluntary. It is unlawful to obtain contributions by use or threat of physical force, job discrimination, or financial reprisal. While PAC contributions cannot be a condition of employment or membership in an association, a superior may solicit a subordinate.
- At the time of solicitation, an employee must be informed of the political purpose of the PAC and of his or her right to refuse to contribute without fear of reprisal.
- A PAC or corporation is allowed to suggest contribution amounts to employees as long as it makes clear these are: (a) only guidelines; (b) they will not be enforced; and (c) that the individual can contribute in whatever amount he or she desires without reprisal.
- Payroll deduction can be used to collect contributions from the restricted class. A written authorization must be obtained from the employee before making the deduction.
- Contributions by personal credit card may be solicited and accepted by a PAC.
- Solicitations of a member of the restricted class may be routed through that person's secretary or assistant, even though the secretary or assistant may not be a solicitable person.

10. Types of solicitation

- Oral – in a speech, a meeting, by phone
- Mail – a pre-addressed, stamped return envelope may be included
- Internet – If the website has an area only accessible by the restricted class
- Events – coffees, dinners, auctions, etc.

A company publication CANNOT include a solicitation to the PAC if it is sent to employees outside the eligible class.

11. Contributor Recordkeeping

For each contribution that exceeds \$200 either by itself or when aggregated with previous contributions from the same donor to the PAC during the same calendar year, records must identify the:

- Amount
- Date of receipt
- Donor's name and address
- Donor's occupation and employer

For each contribution exceeding \$50, but not greater than \$199, the records must note:

- Amount
- Date of receipt
- Donor's name and address



For each employee who chooses to cancel payroll deduction, reports from the company's accounting department to the organization PAC should also indicate this.

When reporting information about contributors, the PAC's agent is deemed to have exercised their "best efforts" if each PAC solicitation contained a clear request for the information above and if they made at least one additional attempt (by phone or mail) to obtain the information after the contribution was received.

12. Payroll Deduction Record Keeping

Individual employees in the eligible class who wish to contribute using payroll deductions are required to provide WSWA-PAC with a written authorization to the payroll department to deduct the designated amount from the employee's payroll. This Payroll Deduction Authorization Form must be signed and transmitted to WSWA-PAC so that the PAC keeps it on file for the duration of payroll deduction for each individual employee participating.

13. Transferring Contributions to the Organization

Contributions in excess of \$50.00 must be transferred and then deposited by WSWA-PAC within ten (10) days of being deducted, and those of \$50.00 or less within thirty (30) days after being deducted. It is recommended that the company transmit all contributions collected through payroll deduction to the organization within 10 days of each pay period. Along with the contribution, the company shall transmit a letter indicating that these funds are being transferred from the corporation and represent individual employee contributions collected via payroll deduction. In addition, a record of each contribution (see Section 12) shall be transmitted to the organization's PAC. To satisfy this requirement, contributor records may be transmitted as a simple flat file via written or electronic means.