



AMERICAN TARGET ADVERTISING™ INC.
HOME OF VIGUERIE'S FOUR HORSEMEN OF MARKETING®

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June 21, 2024

Ms. Lisa J. Stevenson, Acting General Counsel
Federal Election Commission
Office of General Counsel
1050 First Street, NE
Washington, DC 20463

Re: Advisory Opinion Request – IE Direct Mail Check Packages

Dear Ms. Stevenson:

This letter is an Advisory Opinion Request filed by American Target Advertising, Inc. (ATA)¹ and The Conservative Caucus (TCC). ATA is a Virginia for-profit corporation. TCC is a Virginia nonprofit corporation exempt from taxation under section 501(c)(4) of the Internal Revenue Code. ATA and TCC seek guidance on the reporting of “check packages” prepared by ATA for TCC that are in the nature of Independent Expenditures (IEs).² Our request applies only to direct mail fundraising solicitation letters using a check package technique and containing language that is unambiguously express advocacy exhorting recipients to “Vote for Trump” or “Elect Trump.”

I. Description of Relevant Facts

ATA is a direct marketing agency. Its clients include TCC. In consultation with TCC, ATA prepares direct mail letters that, among other purposes

¹ ATA was founded by, and its chairman is, Richard A. Viguerie, who first pioneered political direct mail beginning in the 1960s, and is called the “funding father of the conservative movement.”

² “[I]ndependent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.” 11 CFR § 100.16.

such as marketing TCC's tax-exempt mission, solicit contributions for the organization. ATA itself does not solicit donations. The letters are those of TCC, and TCC relies on the marketing and related expertise of ATA for the preparation of the letters.

ATA drafts copy, and oversees the printing and production of the letters, which include donation forms, reply envelopes, and perhaps other inserts. ATA prepares budgets of each respective mailing that TCC approves before mailings are sent. As agent for TCC, ATA issues purchase orders to the vendors involved in producing the mailings, then reviews invoices sent by the vendors to ensure the charges are correct before being paid by TCC's escrow agent. Vendor invoices are addressed to TCC but sent care of ATA for review. Many vendor invoices are not ready and produced until after a mailing has been sent. ATA uses the invoices to prepare reports about the actual costs of the respective mailings.

The quantities of any respective mass mailing of a letter can range from thousands to tens of thousands to hundreds of thousands. A very successful package can be millions mailed.

The ATA-TCC program uses a caging company to retrieve reply mail from a designated U.S. Post Office box, open the mail in a secure setting, record replies (which may include surveys or petitions), and deposit donations into a TCC escrow bank account.

For the mass-mailed letters to be effective, recipients of course must first open the letters rather than discard them in the trash, as may often be the fate of such letters.

One of the techniques ATA employs to encourage recipients of its clients' mail to open the letters is to show a real check through a window of the carrier envelope. Those are called "check packages." The checks are made payable to the "bearer" and the individual to whom the letter is mailed. The checks are of some small amount usually in the range of \$1 to \$3, and the amounts of the checks are frequently consistent with a marketing theme of the mailing.

ATA and TCC desire to mail a check package as part of one or more Independent Expenditures by TCC for the 2024 election. For purposes of this AO request, I will use a check in the amount of \$2.24 as a theme

consistent with the 2024 election. However, the face value of checks in check packages can vary from mailing to mailing.

The recipients of the check package may deposit these \$2.24 checks in their own bank accounts, and some do. It is ATA's experience that on average fewer than three percent of the checks are deposited by recipients. Funds to pay the checks are drawn on a bank account of the ATA nonprofit client, in this case, TCC. The recipients are urged to not deposit the checks, but instead return those mailed checks along with a contribution written on a personal check of the recipient of the letter. Check package checks that are returned by recipients and caged will not be deposited into the TCC escrow account, unlike an actual donation to TCC. Therefore, even for mailings that are not Independent Expenditures, the check package checks mailed back are not treated as contributions to the nonprofit organization. Since they are neither drawn on a bank of the check package recipients nor will they be deposited into TCC's escrow account, we presume means they are not donations for purposes of the Independent Expenditure either.

TCC's Independent Expenditures are, of course, subject to the IE reporting requirements, including the 48-hour and 24-hour reports. ATA provides TCC information necessary for TCC to comply with Commission reporting requirements, such as the amounts of payments to respective vendors, ATA's fees, postage spent, and any other costs associated with making the IE. TCC uses that information to report the IEs to the Commission.

The check in a check package is usually part of the donation reply sheet, and can be detached using scissors or sometimes a perforation. I attach an example as Exhibit 1. For any TCC IE mailing that employs the technique of a check package, it is obvious that the costs of printing the checks and inserting them into the letters would be included as part of the costs of the IE mass mailing, just like any other component of the letters.

II. Questions Presented and Associated Discussion

Some recipients of an IE check package mailed by TCC may deposit the \$2.24 check into their own bank accounts. Some may mail back the \$2.24 check either with a donation (called a donor reply) or without a donation but with a reply device such as a survey or petition (called a non-donor reply). Some recipients may never open the check package at all and simply

discard the letter, or may open the letter but discard it and the \$2.24 check. In four of these scenarios, the \$2.24 check is never deposited by the recipient, and the cost of those checks in the context of an IE is only the cost to print the checks and insert them into the letters. All of those costs are easily discernable at the time the IE letters are mailed, and therefore would be reported to the Commission as part of distribution and dissemination of the IE.

In one of these scenarios, however, the \$2.24 checks are deposited by the recipients into their bank account, thereby raising the overall costs to TCC by \$2.24 times the number of checks deposited (as stated above, on average under three percent of the number of letters mailed). That additional cost, however, is only incurred after the IE has been made, and is therefore not part of the costs of disseminating the IE. In other words, the checks that recipients deposit are not an expense incurred for what makes the letters an IE, i.e., advocating the election or defeat of a candidate. This post-distribution expense is not an Independent Expenditure, *qua* Independent Expenditure, we respectfully suggest.

Additionally, the time between when the IE is made (“the date that the communication is publicly distributed or otherwise publicly disseminated”³) and the day on which recipients may cash their checks will always be beyond the time for 48-hour and 24-hour reports to be filed, especially when mailed at the slower-delivering bulk nonprofit standard. Recipients might deposit these checks weeks after receiving the letters, and sometimes up to 45 (or more) days from the date of the check, which is when the checks become void by pre-printed instruction. If there were multiple mailings of the check package on different mail dates, it would be difficult if not impossible to determine the specific IE to which to attribute many checks.

This is a post-IE cost not attributable to the public distribution or dissemination of the IE itself, and as a practical matter could not be included in the costs sent by ATA to TCC needed to comply with the 48-hour or 24-hour reporting requirements. The issue becomes even more

³ Reporting independent expenditures on Form 3X, <https://www.fec.gov/help-candidates-and-committees/making-independent-expenditures/reporting-independent-expenditures-form-3x/> (viewed March 8, 2024).

complicated under the aggregation rules, where an IE may cost under \$10,000 to publicly disseminate, but the subsequent checks cashed cause the costs to the ATA client to exceed \$10,000 in a delayed, *post hoc* fashion.

We found no authority that these checks deposited by the recipients (or similar *post hoc* costs) would be treated as expenditures under 52 U.S. Code § 30101(9)(A).⁴ While the letters themselves that are mailed are clearly an IE made “for the purpose of influencing an[] election for Federal office” (11 CFR § 100.111(a)), any determination by TCC of the expense of the checks deposited would be speculative (or estimated) at the time the IE is distributed. At best that expense is merely a potential obligation of TCC. Also, to proactively report the \$2.24 checks by treating them as “deposited” as part of the costs of each check package mailed would artificially inflate the costs of the IE.

Therefore, the questions presented in this AO Request are:

1. Should the face amount of the checks (in our example, \$2.24) in a check package mailed as an IE be included in the costs of the IE reported by TCC to the Commission?
2. Is there any other formula required under FECA to report a value of these checks included in an IE mailing?

⁴ Nor does there appear to be authority that they would be expenditures consistent with 52 U.S. Code § 30101(9)(B)(v) covering “any payment made or obligation incurred by a corporation or a labor organization which, under section 30118(b) of this title, would not constitute an expenditure by such corporation or labor organization.” IE principles seem to support that the recipient-cashed checks are not IE expenditures because (1) they are not expenses incurred at the time of publication and distribution of the check package, and (2) they are not expenses incurred to pay for the direct mail package itself, which is the IE. 52 U.S. Code § 30118, “Contributions or expenditures by national banks, corporations, or labor organizations,” does not address whether these checks are expenditures, and there appear to be no other interpretations or guidance on this matter.

Thank you for your consideration of this request.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark J. Fitzgibbons', with a long horizontal flourish extending to the right.

Mark J. Fitzgibbons
President of Corporate Affairs, ATA
Agent for TCC

Attachment

Exhibit 1



The Conservative Caucus
Stand With Trump for Re-Election
PO Box 1890
Merrifield, VA 22116-8090

Date: xxDropDatexx

XXXO
65-12:

Pay: ----- Two Dollars and Twenty Four Cents -----

Dollars

\$2.24

Pay to the Bearer or

NOT VALID AFTER 45 DAYS FROM THE DATE OF ISSUANCE. NOT VALID FOR MORE THAN TWO DOLLARS AND TWENTY FOUR CENTS.

XXXXFullNameXXXX
XXXXAddressXXXXX
XXXXAddressXXXXX
XXXXCity, ST, ZipXX
XXIMBXX

xxMailcodexx xxld#xx

Peter J. Thomas, Chairman

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IMPORTANT DONATION REPLY
STAND WITH TRUMP FOR RE-ELECTION!
An Independent Expenditure Campaign of The Conservative Caucus (TCC)

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Dear Peter,

- YES**, you can count on my support! I am, without delay, **using the enclosed pre-paid, pre-addressed return envelope.**
- Return** your enclosed **\$2.24 Check.**
- Rush** back a donation to help our coming efforts across America:
 - **Reach** Trump supporters to ensure they are registered, explain how President Trump can win with their help, and motivate them to vote and vote early.
 - **Distribute** pro-Trump, anti-socialism, anti-fake news media promotional materials.
 - **Provide** a go-to pro-Trump, anti-Democrat socialism website where voters can go for election-related information, sample Letters to the Editor, issue talking points, campaign tools and up-to-date election new

Enclosed, please find the **\$2.24 check you sent me along with my special gift of:**

- \$10
- \$25
- \$50
- \$75
- \$100
- \$250
- \$500
- \$My Best Gift \$ _____

➔ **Please make your check payable to: Stand With Trump for Re-Election!** ⬅

TCC may accept unlimited personal and corporate donations.
Donations are not deductible for income tax purposes.

To comply with federal law, we must use our best efforts to obtain, maintain and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. Please provide your occupation, and the name of your employe (or simply retired, if that is the case), using the form below.

Employer: _____ Occupation: _____ Retired? ____ Yes ____ No

Paid for by The Conservative Caucus (TCC) www.TheConservativeCaucus.org. Not authorized by any candidate or candidate's committ

ORIGINAL
DOCUMENT

**This program by TCC is an Independent Expenditure, and therefore unlimited and corporate contributions are welcome.
Donating is not a contribution to the campaign committee of Donald J. Trump
and does not limit you in contributing to his official campaign committee.**

I prefer to donate by credit card:

Please put \$ _____ on my Visa Mastercard AMEX Discover

Card #: _____ Exp. Date: ____ / ____

Name on Card: _____ Signature: _____

Please make this a monthly gift.

By submitting this form, I certify that: (1) I am a United States citizen or an individual lawfully admitted with permanent residence status (e.g., a "green card holder"); (2) This contribution is made from funds of the donor identified above, and not those of another; (3) Donor is not a foreign national who lacks permanent resident status; (4) This contribution is not made from the treasury of an entity or person who is a federal contractor (does not apply to personal contributions by subcontractors, employees, partners, shareholders or officers of federal contractors); (5) This contribution, if made on credit or debit card, is that of the donor listed above for which the donor has legal obligation to pay, and is not made on the card of another.