



## STATE BOARD OF ELECTIONS

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## Campaign Finance 2012 Filer Update

This notice contains important information from the New York State Board of Elections (NYSBOE) concerning Campaign Finance. Please review all information carefully.

### Campaign Finance Seminars

NYSBOE will be presenting its 2012 series of campaign finance seminars throughout the state during the period **May 1st through June 14<sup>th</sup>**. A schedule of these free seminars is enclosed. You may register for any seminar online at [www.elections.ny.gov](http://www.elections.ny.gov) or by calling (518) 474-8200 or 1-800-458-3453.

### Campaign Finance Continuing Legal Education (CLE) Seminars

The New York State Continuing Legal Education (CLE) Board recently approved NYSBOE's Campaign Finance Seminar as meeting the appropriate legal standards for CLE accreditation. As a result, as space permits, three CLE credit hours for admitted attorneys who pre-register will be offered at the Campaign Finance Seminars in **Albany** (May 18), **Erie County/Buffalo** (June 5), **Monroe County/Rochester** (June 6), **Suffolk County** (June 13) and **New York City** (June 14). You may register for any of these seminars online at [www.elections.ny.gov](http://www.elections.ny.gov).

### 2012 Filing Calendar

Enclosed is the 2012 Filing Calendar. Please note that at this time the next campaign financial disclosure report is due July 16, 2012\*. This report must contain all campaign financial activity from January 14, 2012, through July 12, 2012. For committees formed after January 13, 2012, this report must contain all campaign financial activity from the date of formation through July 12, 2012.

*\* NOTE: Candidates and committees which participate in any 2012 election (including a special election) held prior to the July 16, 2012 filing date, are required to file election reports for that election. Contact NYSBOE or your local board of elections to obtain the schedule of applicable filing dates. In such a case, the July 16<sup>th</sup> filing will contain all campaign financial activity from the cut-off date of the post-election report through July 12, 2012. Candidates who are running for office in the Fall 2012 Primary and/or General Election, and who have not yet made any filings, should consult the Campaign Finance Handbook or contact NYSBOE for specific instructions on when to file their first campaign financial disclosure report.*

## **Electronic Filing System (EFS) Software Update**

NYSBOE is finalizing a new version of the Electronic Filing System (EFS) software. Please continue to check the NYSBOE website for the availability of the software. The new software functions on a variety of operating systems, including Macs, and offers a more intuitive approach to entering data.

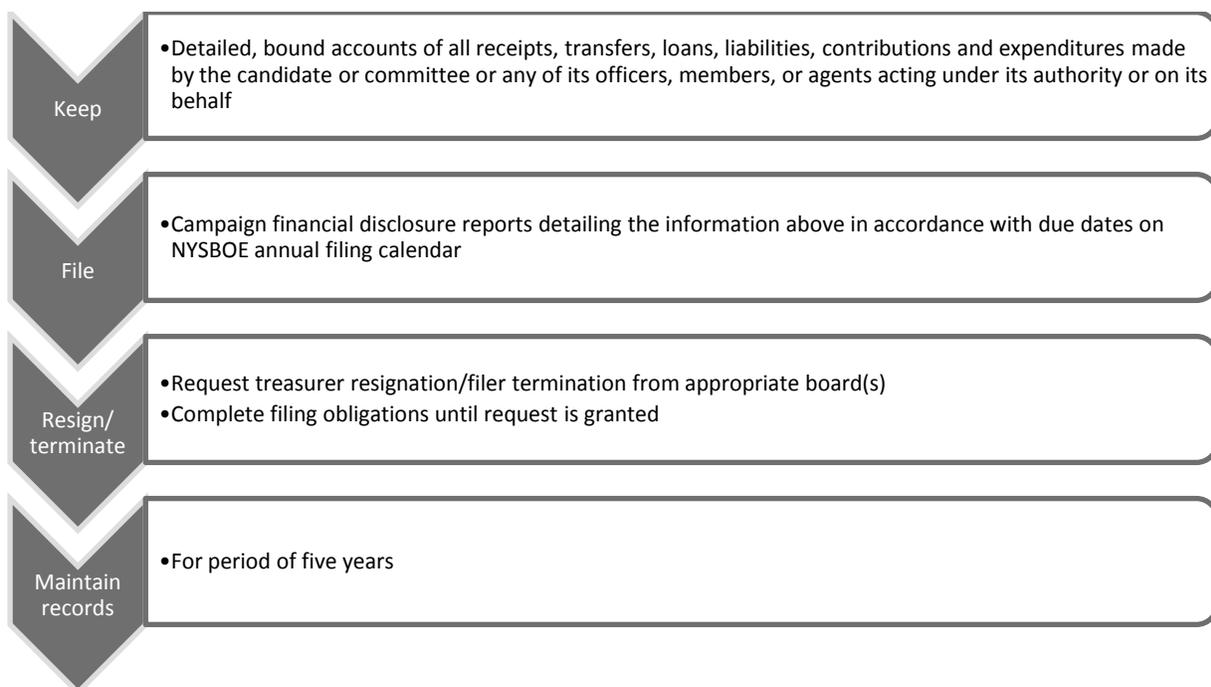
## **Registration Requirements**

Local Boards are responsible for processing registrations of local candidates/committees even when the local candidates/committees file their campaign financial disclosure reports with NYSBOE. Specifically, candidates running for local public and party offices, and the committees supporting or opposing those candidates, including local party and constituted committees, must register and file with the appropriate Local Board of Elections (NYCRR 6200.1(a)(2).), unless exempt from filing pursuant to NYS Election Law Section 14-124.

Local candidates/committees who make their own filings and who raise or spend, or expect to raise or spend over \$1,000 in a calendar year, must register and file campaign financial disclosure reports with the NYSBOE **in addition to registering with their Local Board of Elections.**

Upon registering with NYSBOE, these candidates/committees will receive their Filer ID# and PIN with which to file campaign financial disclosure reports. Such reports made with NYSBOE must be made electronically, unless a waiver has been applied for and granted in writing. (EL 14-102(4).) State and Local Board Filer ID#s may be different. The \$1,000 raised or spent (including the candidate's own contributions/expenditures regarding his or her campaign) relates to campaign financial activity (receipts or expenditures) in the calendar year, not an ending cash balance.

## **Reminder for Registered Filers**



## **Forgot Your PIN?**

Reminder: Whenever you use NYSBOE's Electronic Filing System (EFS) Software to submit your disclosure reports, you must have the Personal Identification Number (PIN) issued by NYSBOE. PIN use is mandatory as the PIN serves as your electronic signature. **Disclosure reports submitted with an incorrect/incomplete Filer ID# or PIN or no PIN will be rejected.** Forgot your PIN? Contact NYSBOE at (518) 474-8200 or 1-800-458-3453. When calling, please have your Filer ID# or name of the candidate/committee ready. Note that only a designated filer (the treasurer of a committee, or a candidate making his or her own filings) can request the PIN.

## **Campaign Finance Website**

The NYSBOE Campaign Finance website ([www.elections.ny.gov](http://www.elections.ny.gov)) includes a menu bar to make it easier for filers to find information and instructions when registering and filing campaign financial disclosure reports. Features include:

- Downloadable Calendar of Events
- Campaign Finance News
- Useful Links
- FAQs

*NOTE: If you do not have internet access, please visit your local board of elections or public library which may have internet access or copies of these materials available. You may also contact NYSBOE at 1-800-458-3453 or (518) 474-8200 for further information about campaign financial disclosure.*

## **Filing Options via the Internet**

The following items can be submitted directly via the NYSBOE website:

- No-Activity Report
- In-Lieu-Of Statement
- Notice of Non-Participation in Election(s) by a Registered PAC, Party or Constituted Committee
- 24-Hour Notice

To make any of these specific types of filings, if applicable, via NYSBOE's website, go to [www.elections.ny.gov](http://www.elections.ny.gov), link to "Campaign Finance", select "File Disclosure Reports" and follow the step-by-step instructions. For details, consult the *Campaign Finance Handbook*. Please note that while these four reports are filed via NYSBOE's website, the EFS Software cannot be used to file these reports, as it does not offer that option. As such, if not filing one of these items via the website, use the appropriate paper forms for No-Activity Report, In-Lieu-Of Statement or Notice of Non-Participation in Election(s). Also, the 24-Hour Notice can be submitted by fax or overnight delivery.

## **Campaign Finance Handbook and Forms**

The Campaign Finance Handbook and the following forms are available on the NYSBOE website at [www.elections.ny.gov](http://www.elections.ny.gov) and by calling NYSBOE at (518) 474-8200 or 1-800-458-3453.

- (CF-01) Campaign Financial Disclosure Report
- (CF-02) Committee Registration/Treasurer and Bank Information
- (CF-03) Committee Authorization Status
- (CF-04) Candidate Campaign Finance Registration Form to Request NYSBOE Filer ID# and PIN
- (CF-05) Candidate or Committee Claim of Exemption from Filing Campaign Financial Disclosure Reports
- (CF-16) Candidate's Authorization for a Committee to Make Campaign Financial Disclosures
- (CF-18) Termination or Resignation Request Form/No-Activity Report Form
- (CF-19) Application for Electronic Filing Exemption
- (CF-20) Notice of Non-Participation in Election(s) by a Registered PAC, Party or Constituted Committee

### **Independent Expenditures**

A Regulation (NYCRR 6200.10.) setting forth the requirements under existing law that individuals, organizations, corporations, political committees, or any entity making independent expenditures must follow to disclose independent expenditures has been proposed by NYSBOE. Public comment may be submitted by email to: [PublicComments@elections.ny.gov](mailto:PublicComments@elections.ny.gov) through Monday, April 9, 2012.

The NYS Election Law mandates how campaign financial activity, including independent expenditures, is to be disclosed. Specific to independent expenditures, those making them must register a committee with NYSBOE and/or a local board of elections, as appropriate, through which to report the activity. An independent expenditure is an expenditure made subject to section 14-100 of the NYS Election Law that:(i) expressly advocates for the election or defeat of a candidate; and (ii) is independent of the candidate or his agents or authorized political committees in that the candidate or his/her agents or authorized political committees did not authorize, request, suggest, foster or cooperate with in any way. "Express advocacy", a standard created by the U.S. Supreme Court in *Buckley v. Valeo*, means a communication that contains express words such as "vote", "oppose", "support", "elect", "defeat" or "reject", which call for the election or defeat of a candidate.

The U.S. Supreme Court in the *Citizens United Case* addressed the making of independent expenditures by corporations and unions. It did not prohibit limits on contributions, including those made by corporations. An independent expenditure is not the same as a contribution. The decision does not change NYS Election Law.

### **Federal Bi-Partisan Campaign Reform Act (BCRA)**

There are significant requirements under BCRA that apply to political committees filing with either NYSBOE, a county board of elections, the New York City Board of Elections, or with a village clerk. Under certain circumstances, these committees will need to submit campaign financial disclosure reports with the Federal Election Commission (FEC). For further information, please refer to the enclosed BCRA Memo. You may also contact the FEC at [www.fec.gov](http://www.fec.gov) or call 1-800-424-9530.

## **Internal Revenue Service (IRS) Filing Requirements**

Enclosed is a synopsis concerning IRS filing requirements. Consult the IRS website [www.irs.gov](http://www.irs.gov) for specific details or call the IRS toll free at 1-877-829-5500.

## **Campaign Materials**

For all filers who were involved in any 2011 Primary/General/Special Elections or will be involved in any future elections, section 14-106 of the NYS Election Law requires that you provide a copy of all broadcast, cable or satellite schedules and scripts, internet, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced, with the post-election campaign financial disclosure report made for each election (primary, general and/or special election) in which the filer was involved, to all the applicable board(s) of elections where election reports are required to be submitted. If no campaign material was produced, a disclaimer so stating must be filed in conjunction with the applicable post-election report. If such applicable campaign materials or disclaimer from 2011 have yet to be submitted, please do so immediately with the applicable board(s) of elections. The same rules apply for all future elections.

## **Non-Compliance and Penalties (EL 14-126.) (Amended 2011; Effective August 15, 2011)**

NYSBOE, or a local board of elections where applicable, may institute a judicial proceeding (i.e., lawsuit) to obtain filing compliance as well as a financial penalty, plus costs and disbursements, for bringing the proceeding. The maximum financial penalty obtained in a judgment has been increased. Penalties for each individual failure to file or multiple failures to file by a treasurer or candidate are outlined below. (EL 14-126(1)). Interest will accrue on unpaid judgments as provided by law.

### ***Violations; Penalties***

1. Any person who fails to file a statement required to be filed by this article shall be subject to a civil penalty, not in excess of one thousand dollars, to be recoverable in a special proceeding or civil action to be brought by NYSBOE or other board of elections. Any person who, three or more times within a given election cycle for such term of office, fails to file a statement or statements required to be filed by this article, shall be subject to a civil penalty, not in excess of ten thousand dollars, to be recoverable as provided for in this subdivision.
2. Any person who, acting as or on behalf of a candidate or political committee, under circumstances evincing an intent to violate such law, unlawfully accepts a contribution in excess of a contribution limitation established in this article, shall be required to refund such excess amount and shall be subject to a civil penalty equal to the excess amount plus a fine of up to ten thousand dollars, to be recoverable in a special proceeding or civil action to be brought by NYSBOE.
3. Any person who knowingly and willfully fails to file a statement required to be filed by this article within ten days after the date provided for filing such statement or any person who knowingly and willfully violates any other provision of this article shall be guilty of a misdemeanor.

4. Any person who knowingly and willfully contributes, accepts or aids or participates in the acceptance of a contribution in an amount exceeding an applicable maximum specified in this article shall be guilty of a misdemeanor.
5. Any person who shall, acting on behalf of a candidate or political committee, knowingly and willfully solicit, organize or coordinate the formation of activities of one or more unauthorized committees, make expenditures in connection with the nomination for election or election of any candidate, or solicit any person to make any such expenditures, for the purpose of evading the contribution limitations of this article, shall be guilty of a class E felony.

**Common Mistakes/Oversights Made in Filing Campaign Financial Disclosure Reports.**  
**(See NYSBOE Campaign Finance Handbook for more details.)**

- **Filing an amendment:**

It is important to understand that the amended report replaces the original report. As such, simply filing only the corrections/changes will result in an incomplete filing. You must resubmit all unchanged transactions, together with the corrections/changes. Amendments apply to transactions that: 1) were reported and need to be modified; 2) occurred in the reporting period and should have been reported in the filing, but were not; or 3) were reported, but were incorrectly included, as they were outside the date range of the particular filing. Note: Amendments to one report may require the amendment of additional report(s).

- **Saving a report/filer verification of receipt by NYSBOE:**

Saving the report to the filer's computer does not transmit the report to NYSBOE; you must take appropriate steps to send it as an email attachment, or submit it by diskette, CD or DVD. Filers should verify NYSBOE's receipt of their report at [www.elections.ny.gov](http://www.elections.ny.gov). If the report is not viewable on the NYSBOE website after 24 hours, contact NYSBOE immediately at 1-800-458-3453.

## Treasurer's Resignation

Treasurers must submit resignation requests to NYSBOE. In order to resign, a treasurer must complete a series of steps (see chart). Note that resigning at one board does not resign you at any other board. You must request resignation at all applicable boards.

<b>How to Resign as Treasurer</b>			
File all campaign financial disclosure reports due to date and until resignation is approved	Submit request with CF-18 and/or CF-01 to NYSBOE and appropriate local board(s)	Include a letter of resignation	Retain all records for five years •New treasurer submits amended CF-02, CF-03 •Candidate files amended CF-16 if applicable

## Termination of Committee or Candidate's Filing Obligation

Termination ends a filer's obligation to file. In order to terminate, the filer must complete a series of steps (see chart). All filing obligations continue until the termination process is approved. Note that terminating at one board does not terminate you at any other board. You must request termination at all applicable boards.

<b>How to Terminate</b>				
File all campaign financial disclosure reports due 'til termination is approved	Have ending cash balance of \$0 reflected in the final itemized report and bank account	Have no outstanding loans or liabilities	Submit CF-18/ CF-01 to NYSBOE <u>and</u> appropriate local board(s)	Submit outstanding evidence of forgiveness/ indebtedness

For a full understanding of your legal obligations and responsibilities, refer to the NYS Election Law and Related Rules and Regulations and the Opinions of NYSBOE. Visit [www.elections.ny.gov](http://www.elections.ny.gov) or call 800-458-3453.



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### FEDERAL BI-PARTISAN CAMPAIGN REFORM ACT (BCRA)

There are significant requirements under BCRA that apply to political committees filing with the New York State Board of Elections, a local board of elections or with a village clerk. Under certain circumstances these committees will need to make financial disclosure filings with the Federal Election Commission (FEC).

For example:

- Committees that contribute more than \$1,000 per year, in the aggregate, to federal candidates or committees, or have expenditures of more than \$1,000 per year, in the aggregate, in support of federal candidates or committees, are required to register and file with the FEC.
- Party committees that spend at least \$5000 per year on certain activities conducted in connection with an election in which a candidate for federal office appears on the ballot, including voter registration activity and get out the vote activity, are required to register and file with the FEC. It does not matter if the party committee conducting these activities did not contribute to a federal candidate, support a federal candidate, or even mention a federal candidate.

Additionally:

- Local party committees should consult with their state party committees concerning activities that may be deemed "coordinated party expenditures" under federal law, and which would then be subject to strict limitations.
- There may also be restrictions on the use of money that is received from contributors.

These are only a few examples of activities which may trigger the BCRA filing requirements. If you believe that your committee may fall under BCRA, you are urged to contact the Federal Election Commission at [www.fec.gov](http://www.fec.gov), "Help with Reporting and Compliance" or call 1 800 424-9530 for further information.



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### MEMORANDUM

#### I.R.S. Filing Requirements - Reduced for Certain State/Local Political Organizations

##### **1. State - local candidate committees, multi-candidate committees and party committees:**

Do not have to file anything with the I.R.S., unless they have taxable income (e.g., interest and dividends) over \$100. In that case, they only have to file Form 1120-POL, "U.S. Income Tax Return for Certain Political Organizations". (This form must be filed by the 15<sup>th</sup> day of the third month following the close of the organization's taxable year; usually March 15<sup>th</sup>)

##### **2. PAC'S and all others (including caucuses or an association of state or local officials):**

###### **A) If they file with the F.E.C., or have gross receipts of less than \$25,000:**

Do not have to file anything with the I.R.S., unless they have taxable income (e.g., interest and dividends) over \$100. In that case, they only have to file Form 1120-POL, "U.S. Income Tax Return for Certain Political Organizations".

###### **B) If they do not file with the F.E.C. and have gross receipts of \$25,000 or more:**

They may have to file one or more of the following Forms -

**Form 8871:** ("Political Organization Notice of Section 527 Status") - Must be filed except if tax-exempt under Section 501 (c) of the I.R.S. Code as having taxable income under section 527 (f) (1); or do not seek tax exempt status.

**Form 8872:** ("Political Organization Report of Contributions/Expenditures") - Must be filed **except** if do not have to file Form 8871; or if subject to tax as did not file/amend, when required, Form 8871; or if a qualified state or local political organization (**QSLPO**) (new). Organizations, other than **QSLPO's**, that file Form 8871 must file Form 8872. The new exception for QSLPO's is significant for state/local PAC's/others with gross receipts of \$25,000 or more that do not file with the F.E.C. - if they meet all requirements of a QSLPO, they do not have to file Form 8872. **QSLPO criteria:** **1)** All political activities relate solely to state or local public office or office in a state or local political organization; **2)** Org. is subject to state law that requires it to report (and it does) to a state agency about contributions/expenditures similar to information it

would otherwise be required to report to the I.R.S. (Note: county filing pursuant to state law are deemed filed with the state); **3**) The state agency and the organization make the report publicly available; and **4**) No Federal Candidate or office holder controls it or materially participates in its direction, solicits contributions for it, or directs any of its disbursements.

**Form 990/990EZ:** (“Return of Organization Exempt From Income Tax”) Unless fall within an exception, must file if have gross receipts of \$25,000/more for the taxable year, or \$100,000 if a **QSLPO**. 990/990EZ used if gross receipts are less than \$100,000 and assets are less than \$250,000 at end of year. **Exceptions:** Do not file if not required to file Form 8871; or are a caucus or association of state or local officials. State/local PACs, or others that are not a caucus or association of state or local officials, that meet the definition of QSLPO and have gross receipts less than \$100,000, do not have to file Form 990. If they do not meet the requirements of a **QSLPO** and have gross receipts of \$25,000/more, then they have to file Form 990.

**Form 1120-POL:** (“U.S. Income Tax Return for Certain Political Organizations”) Must be filed only if have taxable income over \$100 in a taxable year (e.g. interest, dividends, rents and other types of receipts). (There is a specific deduction of \$100.) Includes tax-exempt political organizations that do not have gross receipts of a least \$25,000.

### **Filing Requirements:**

**Form 8871:** This Form, which must be filed electronically, is only required to be filed once, within 24 hours after the committee is established, or the next business day following a weekend/legal holiday. After it has been filed, if there is a material change in information, including termination, an amended form must be filed within 30 days of the material change.

**Form 8872:** This Form must be filed monthly or quarterly in any year in which there is a regularly scheduled federal general election held (even numbered years); Semiannually or monthly in all other years (odd numbered years). The organization can opt for either monthly or quarterly filings or semiannual or monthly filings as the case may be, but it must file on the same basis for the entire calendar year. There are also pre-election and post-election report filing requirements which impact the filing option chosen, and which are explained in greater detail on the I.R.S. Instruction for Form 8872.

**Form 990/990EZ:** This Form must be filed on the 15<sup>th</sup> day of the 5<sup>th</sup> month after the end of the organizations taxable year. There is a penalty for failure to file this form. There is a three month extension available, without cause, upon filing the requisite form, and an additional extension available, with cause, upon filing the requisite form.

**Form 1120-POL:** This Form must be filed by the 15<sup>th</sup> day of the third month following the close of the organization’s taxable year, usually March 15<sup>th</sup>.

The I.R.S. website [www.irs.gov](http://www.irs.gov) should be consulted for specific details/explanations.

IRS Memo from January 17, 2003



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### 2012 FILING CALENDAR Campaign Financial Disclosure

Please check [www.elections.ny.gov](http://www.elections.ny.gov) for any change to this calendar.

<u>Report Period</u>	<u>Cut-Off Date</u>	<u>Filing Date</u>
July 2012 Periodic	July 12, 2012	July 16, 2012***
<u>PRIMARY ELECTION - SEPTEMBER 13, 2012</u>		
32-Day Pre-Primary	August 09, 2012	August 13, 2012
11-Day Pre-Primary	August 31, 2012	September 04, 2012
10-Day Post-Primary*	September 20, 2012	September 24, 2012
24-Hour Notice: September 1, 2012 thru September 12, 2012**		
<u>GENERAL ELECTION - NOVEMBER 06, 2012</u>		
32-Day Pre-General	October 01, 2012	October 05, 2012
11-Day Pre-General	October 22, 2012	October 26, 2012
27-Day Post-General*	November 29, 2012	December 03, 2012
24-Hour Notice: October 23, 2012 thru November 05, 2012**		
January 2013 Periodic	January 11, 2013	January 15, 2013

\* **Campaign Material** (or a disclaimer stating that no campaign materials have been produced) must be submitted with Post Election reports. All filers with NYS Board of Elections (NYSBOE) must send this campaign material or disclaimer by mail. Local filers that are only required to file with their Local Board of Elections must continue to file this material with that office.

\*\* **24-Hour Notice** - During these time periods, any contribution or loan which exceeds \$1,000 must be reported within 24 hours of receipt via fax or the NYSBOE website (address above). This same contribution or loan must also be reported in the associated Post Election report.

\*\*\* **July 15, 2012 Periodic** report is due on Monday, July 16, 2012, the first business day after Saturday and Sunday (Election Law (EL) §1-106). The cut-off date is July 12, 2012 (EL§14-108(2)).

#### **Notes for Filers with Local and NYSBOE:**

1) Periodic Reports are required to be filed until the Candidate or Committee requests termination, and termination is approved by NYSBOE. The criteria for termination are: **a)** an ending cash balance of zero; **b)** all loans and liabilities (subject to applicable contribution limits) are repaid or forgiven; and for NYSBOE electronic filers only: **c)** a completed CF-18 is mailed to NYSBOE.

#### **Notes for Filers with NYSBOE:**

2) After submitting electronic reports, please visit the NYSBOE website to confirm receipt and accuracy of content. No report should have a negative balance. Negative balances are caused by reporting errors.

3) For electronic filers: "Filing Year" is the year the report is due to be filed.

4) Primary and/or General Election Reports are required from all registered PACs, Party and Constituted Committees, UNLESS a Notice of Non-Participation in Election(s) by a Registered PAC, Party or Constituted Committee (CF-20) is qualified for and filed. The CF-20 may be submitted at the NYSBOE website, click on Campaign Finance and then click on File Disclosure Reports. Candidates and their related Committees, or any other Committees supporting or opposing those Candidates, may NOT file a Notice of Non-Participation in Election(s) in substitution for the required Election Reports. Please note that PACs, Party and Constituted Committees that file a CF-20 must still file Periodic Reports. A CF-20 may not be substituted for Periodic Reports.