

## PDC Interpretation

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REFERENCES: [RCW 42.17A](#) [Title 390 WAC](#)  
[RCW 42.17.005~~\(13\)~~](#) [WAC 390-05-210](#)  
[RCW 42.17A.125](#) [WAC 390-05-235](#)  
[RCW 42.17A.235](#) [WAC 390-05-245](#)  
[RCW 42.17A.240](#) [WAC 390-05-400](#)  
[RCW 42.17A.405](#) [WAC 390-16-041](#)  
[RCW 42.17A.410](#) [WAC 390-16-042](#)  
[RCW 42.17A.420](#) [WAC 390-16-207](#)  
[RCW 42.17A.445](#) [WAC 390-16-242](#)  
[RCW 42.17A.560](#) [WAC 390-16-245](#)  
[WAC 390-37-300](#)

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### **DISTINGUISHING IN-KIND LOANS, DEBT, AND PLEDGES**

The Public Disclosure Commission enforces the campaign disclosure provisions and contribution limits found in RCW 42.17A and Title 390 WAC. This interpretative statement is intended to help campaigns with respect to reporting in-kind loans, debt and pledges.

The purpose of this section is to distinguish the difference between an "in-kind loan" and a "debt." "Pledges" are also addressed. Contribution limits apply to in-kind loans, but not debts because an in-kind loan is an in-kind contribution for which the contributor has asked to be repaid. While the value of an in-kind loan is "owed" to the contributor, based on the terms of the loan agreement, it is not considered a "debt," which is incurred when the campaign purchases goods or services from a vendor who is selling goods or services in the normal course of business. If a vendor no longer wants to be repaid, the value of the goods or services provided to the campaign must be recharacterized as an in-kind contribution, subject to any applicable contribution limits.

#### **Debt**

A campaign will ordinarily incur a debt if it places an order or receives an invoice in the normal course of business from a vendor for the purchase of goods and services. The debt is reportable as an expenditure.

The term “expenditure” includes a promise to pay for a good or service. RCW 42.17A.005 (20). A debt is incurred when:

- (1) The candidate, campaign treasurer, campaign official, or campaign agent or principal decision maker, or campaign volunteer authorized by any of the above, places an order for goods or services, or otherwise obligates itself to a vendor;
- (2) The vendor is in the business of selling the goods or services provided to the campaign; and
- (3) The vendor makes those services available to the campaign in its usual course of business.

Campaign debts are not considered contributions and are not subject to contribution limits. However, campaign debts that are forgiven by the vendor become contributions from the vendor and are subject to contribution limits. If the vendor gives the campaign preferential treatment, such as extending favorable credit for the repayment of the amount owed, so long as payment is still expected within a reasonable and definite time period, the underlying expenditure will continue to be reportable as a debt until repaid, but the value of the credit extension must be reported as an in-kind contribution.

Campaign debt must be timely and accurately disclosed on a C-4 report, Schedule B. RCW 42.17A.240(8); WAC 390-05-245. Instructions for reporting debt are provided under WAC 390-16-042.

### **In-Kind (Non-Monetary) Contributions & Loans**

The term “contribution” is defined broadly and includes not only monetary contributions, but also in-kind contributions which involve goods and services being contributed or loaned by a person to assist a campaign or a political committee. See RCW 42.17A.005(16) and WAC 390-05-210.

In-kind contributions include but are not limited to donated items such as campaign office space, computers, auction items, and services such as printing, campaign consulting, and website development. The contributor may or may not be the person ultimately providing the goods or services. For example, an in-kind contribution may include paying a vendor on behalf of the campaign for goods or services. A business owner also may contribute employee services to assist a campaign during work hours, which would be reportable as an in-kind contributions.

The dollar value for in-kind contributions is based on the “fair market value” of each item or service donated to the campaign. See WAC 390-05-235 and 390-16-207. In-kind contributions are subject to contribution limits. A candidate whose name appears on both the primary and general election ballots is prohibited from receiving general

election in-kind contributions prior to the primary election being held. A general election in-kind contribution may not be received and used for the primary election if to do so would cause the contributor to exceed the primary election contribution limit. WAC 390-17-300.

An in-kind loan occurs when a person procures goods or services on behalf of the campaign with the expectation of reimbursement at a later date. The loan must be recorded in writing and executed at the time the loan is made in order to qualify for repayment by the campaign, and the loan documentation must be maintained as part of the campaign's books of account. See PDC Interpretation No.14-01.

The campaign must timely and accurately report both the in-kind contribution and the in-kind loan on a C-4 report, Schedules B and L, respectively, including the disclosure of all required information about the contributor. The in-kind loan must be reported on the Schedule L until it has been repaid. Once the loan is repaid, it is no longer treated as a contribution and does not count against the contribution limits. However, if the loan is forgiven, it continues to be reportable as a contribution.

A candidate's out-of-pocket expenditures are treated as in-kind contributions if the campaign does not repay the candidate within twenty-one days of the expenditure. The candidate may qualify for repayment *after* the twenty-one day period as an in-kind loan only if the candidate had executed a loan agreement before the period expired. Repayment of in-kind loans made by the candidate, when combined with other loans repaid to the candidate, may not exceed \$6,000 per election. RCW 42.17A.445; WAC 390-05-400 and 390-16-226.<sup>1</sup>

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<sup>1</sup> At the beginning of even-numbered years, the Commission adjusts the candidate loan repayment limit in accordance with RCW 42.17A.125. See WAC 390-05-400.

**Comparative Examples:**

<u>Candidate X is an employee of a public relations firm and is seeking to produce a campaign flyer.</u>		
<u>In-kind contribution</u>	<u>In-kind loan</u>	<u>Debt</u>
<u>Candidate X asks the firm's graphic artist to design a campaign logo. The firm donates the graphic artist's time to the campaign. No payment is expected.</u>	<u>The firm permits Candidate X to use the office copy machine for the candidate's campaign, with the expectation that Candidate X will reimburse the firm for the cost of the paper, or per-use copy fee. The firm does not ordinarily provide copy services for its customers.</u>  <u>NOTE: If the firm had previously made a contribution to the candidate, and the loan amount would exceed the contribution limit, then the campaign must repay the firm promptly and report the payment as an expenditure.</u>	<u>Candidate X enters into the firm's standard contract to pay for the firm's graphic artist's services and is not treated differently from any other client.</u>  <u>NOTE: If the firm provides preferential payment terms not ordinarily granted to other customers, such as extended repayment period, then the value of such preference is reportable as a contribution.</u>
<u>Reporting:</u>		
<u>C-4, Schedule B, reported at the end of the period in which the staff time was donated.</u>	<u>C-4, Schedules B (part 1) &amp; L, reported at the end of the period in which the time was donated and on subsequent Schedules L until reimbursed.</u>	<u>C-4, Schedule B (part 3), reported at the end of the period in which the contract was signed and on subsequent Schedules B until paid.</u>

## **PLEDGES**

A pledge is a promise from a contributor to make a future contribution to the campaign. A pledge may be written or verbal and for monetary and/or in-kind contributions. To be considered a pledge for purposes of reporting requirements and contribution limits, the promise must be for a specific amount if a monetary pledge or for specific goods or services if an in-kind pledge and the contributor must intend to pay the pledged amount in its entirety. A pledge is a form of contribution and thus subject to contribution limits. RCW 42.17A.005(16). The pledged amount, when combined with other contributions from a contributor, may not exceed the contributor's limit.

Once received, a pledge must be timely and accurately disclosed as a contribution on a C-4 report, Schedule B. RCW 42.17A.240; WAC 390-16-041. Once a pledge has been redeemed it is no longer disclosed on the C-4 report. As pledges are redeemed, the payments or goods and services received are disclosed as contributions on the appropriate reports.

A candidate subject to contribution limits may not redeem a primary election pledge after the date of the primary *unless* the candidate loses the primary election and has outstanding debts, loans, or orders placed to retire. A candidate who loses the primary election and has outstanding debts or liabilities may redeem a primary election pledge up to 30 days after the primary election is held. A general election pledge must be redeemed no later than December 31 of the election year. RCW 42.17A.405 and 42.17A.410; WAC 390-16-245.

A state official or a person employed by or acting on behalf of a state official may not accept a pledge or payment of a pledge during a session freeze period. RCW 42.17A.560 and WAC 390-16-245.

Unless the recipient is a ballot measure committee, a pledge may not be made or redeemed within twenty-one days of an election if the amount of the pledge or redemption exceeds the maximum amount provided in RCW 42.17A.420.<sup>2</sup> However, when payment of a pledge is made and the monetary or in-kind contribution is in possession of the recipient twenty-two or more days before the election, the contribution may be accepted. WAC 390-16-245.

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<sup>2</sup> See footnote one. Also see RCW 42.17A.405 and 42.17A.410 and WAC 390-05-400 for candidate contribution limits.

## **~~IN-KIND LOANS, PLEDGES, AND DISCLOSURE OF CONTRIBUTIONS ON 21- AND 7-DAY PRE-ELECTION REPORTS~~**

~~The Public Disclosure Commission enforces the campaign disclosure provisions and contribution limits found in RCW 42.17A and Title 390 WAC. This interpretative statement is intended to guide campaigns with respect to in-kind loans, pledges, and disclosure of contributions on the 21- and 7-day pre-election reports.~~

### **~~IN-KIND LOANS~~**

~~Contribution limits apply to in-kind loans, but not debts. The purpose of this section is to distinguish the difference between an “in-kind loan” and a “debt.”~~

#### **~~In-Kind (Non-Monetary) Loans~~**

~~The term “contribution” is defined broadly and includes not only money, but also the vast majority of items and services donated or loaned to assist a campaign. See RCW 42.17A.005(13-16). Donated items include but are not limited to items such as campaign office space, computers, and auction items. Donated services include, but are not limited to, printing, campaign consulting and campaign website development. Donated items and services are commonly referred to as in-kind contributions. See also WAC 390-05-210.~~

~~The dollar value for in-kind contributions is based on the “fair market value” of each item or service donated to the campaign. See WAC 390-05-235 and 390-16-207. In-kind contributions are subject to contribution limits and the pre-election timing provision of RCW 42.17A.420. A candidate whose name appears on both the primary and general election ballots is prohibited from receiving general election in-kind contributions prior to the primary election being held.~~

~~An in-kind loan occurs when a person pays for a good or service on behalf of the campaign with the expectation of reimbursement. The contributor may or may not be the person ultimately providing the goods or services. A business owner, for example, may authorize employees to assist a campaign during work hours.~~

~~Indicators that an item or service provided to a campaign is an in-kind loan and not a debt include:~~

- ~~• A person other than the campaign pays for the item or service and~~
- ~~• before accepting the item or service, the campaign agrees to reimburse the contributor.~~

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~~• In the case of a commercial entity providing a good or service to the campaign in the course of its normal business, the campaign is given preferential treatment not granted to a majority of the entity's customers.~~

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~~For purposes of reporting requirements and contribution limits, an in-kind loan must be recorded in writing and executed at the time of the loan, listing the details of the loan. The campaign must timely and accurately report the in-kind loan on a C-4 report, Schedules B and L, and disclose all required information about the contributor.~~

~~In-kind loans are subject to contribution limits and the pre-election limitations of RCW 42.17A.420.<sup>3</sup> A general election in-kind contribution may not be used for the primary election if to do so would cause the contributor to exceed the primary election contribution limit. WAC 390-17-300.~~

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<sup>3</sup> RCW 42.17A.420(1) prohibits a candidate for statewide office from receiving aggregate contributions exceeding \$50,000 and all other candidates and political committees from receiving aggregate contributions exceeding \$5,000 within 21 days of a general election. By law, this prohibition does not apply to contributions made by or accepted from a bona fide political party's state committee. The prohibition also no longer applies to ballot measure committees, pursuant to the federal court ruling in *Family PAC v. McKenna et al.*, 9<sup>th</sup> Circuit Court of Appeals Nos. 10-35832 and 10-35893 (Dec. 29, 2011).

The following examples illustrate the difference between an in-kind contribution, an in-kind loan, and debt as well as typical in-kind loan transactions:

<b>Example of a typical in-kind loan:</b>	<i>Anna, a campaign volunteer, buys ten rolls of stamps for the campaign with the prior agreement that she will be reimbursed. When she submits the receipt for reimbursement, however, she tells the treasurer that she's willing to wait until the end of the campaign and would forego reimbursement in the event there's not enough money at the end.</i>
<b>Reporting:</b>	<i>Anna has made an in-kind loan. At the end of the reporting period, Joe reports the amount owed to Anna on the C-4, Schedules B and L. The in-kind loan continues to appear on subsequent reports until paid.</i>

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An in-kind loan also occurs when a candidate purchases campaign items or services using personal funds with the expectation of being repaid, and the campaign has not fully repaid the candidate within 21 days of the expenditure. In order to be reimbursed with campaign funds for out-of-pocket expenditures, a candidate must first submit receipts or similar documentation to the campaign. All out-of-pocket campaign expenditures made by a candidate must be documented in order to be reimbursed. Any undocumented out-of-pocket campaign expenditures made by the candidate are not eligible for reimbursement and are considered in-kind contributions. Repayment of in-kind loans made by the candidate, when combined with other loans repaid to the candidate, may not exceed \$5,000. RCW 42.17A.445; WAC 390-05-400 and 390-16-226.<sup>4</sup>

### Debt

The term "expenditure" includes a promise to pay for a good or service. RCW 42.17A.005 (20). A debt is incurred when the candidate, campaign treasurer, campaign official, or campaign agent or principal decision maker, places an order for goods or services, or otherwise obligates itself to a vendor who is in the business of selling the goods or services provided to the campaign, and makes those services available to the campaign in its usual course of business.

A contractual liability, even when it is contingent on a future event such as a "win" bonus, is a debt. WAC 390-16-042.

<sup>4</sup>At the beginning of even-numbered years, the Commission adjusts the candidate loan repayment limit in accordance with RCW 42.17A.125. See WAC 390-05-400.

~~Campaign debts are not subject to contribution limits. However, campaign debts that are forgiven by the vendor become contributions from the vendor and are subject to contribution limits.~~

~~Campaign debt must be timely and accurately disclosed on a C-4 report, Schedule B, RCW 42.17A.240(8) and WAC 390-05-245.~~

**Comparative Examples:**

~~Candidate X is an employee of a public relations firm and asks the firm's graphic artist to design a campaign logo.~~

<del><b>In-kind contribution</b></del>	<del><b>In-kind loan</b></del>	<del><b>Debt</b></del>
<del>The firm donates the graphic artist's time to the campaign. No payment is expected.</del>	<del>The firm agrees to provide the graphic artist's services to the campaign with the expectation of payment at a later date. Since Candidate X is an employee, the firm agrees to flexible payment terms not ordinarily granted to other customers.</del>	<del>Candidate X asks the firm to extend him credit. He enters into the firm's standard contract to pay for services and is not treated differently from any other client.</del>
<del><b>Reporting:</b></del>		
<del>C-4, Schedule B, reported at the end of the period in which the staff time was donated.</del>	<del>C-4, Schedules B (part 1) &amp; L, reported at the end of the period in which the time was donated and on subsequent Schedules L until reimbursed.</del>	<del>C-4, Schedule B (part 3), reported at the end of the period in which the contract was signed and on subsequent Schedules B until paid.</del>

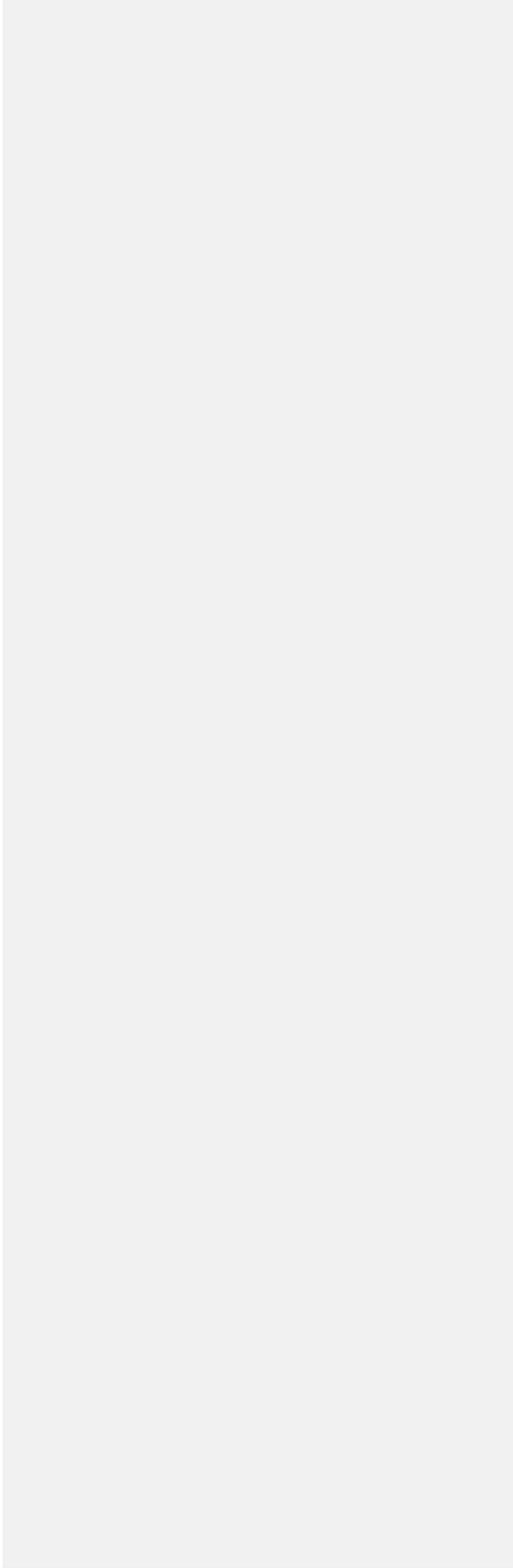
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~~Candidate Y is permitted by her employer, an insurance broker, to use the office copy machine for her campaign.~~

<del><b>In-kind contribution</b></del>	<del><b>In-kind loan</b></del>	<del><b>Debt</b></del>
<del>No reimbursement is expected.</del>	<del>Candidate Y is expected to reimburse for the cost of paper, a per use copy fee, or both.</del>	<del>N/A — copying/reproduction services is not the customary business of the insurance broker.</del>
<del>See examples above for reporting instructions</del>		

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## PLEDGES

~~A pledge is a promise from a contributor to make a future contribution to the campaign. A pledge may be written or verbal and for monetary and/or in-kind contributions. To be considered a pledge for purposes of reporting requirements and contribution limits, the promise must be for a specific amount if a monetary pledge or for specific goods or services if an in-kind pledge and the contributor must intend to pay the pledged amount in its entirety. A pledge is a form of contribution and thus subject to contribution limits. RCW 42.17A.005(1316). The pledged amount, when combined with other contributions from a contributor, may not exceed the contribution's limit.~~

~~Once received, a pledge valued at \$100 or more must be timely and accurately disclosed as a contribution on a C-4 report, Schedule B. RCW 42.17A.240; WAC 390-16-041. Once a pledge has been redeemed or is valued at less than \$100 it is no longer disclosed on the C-4 report. As pledges are redeemed, the payments or goods and services received are disclosed as contributions on the appropriate reports.~~

~~A candidate subject to contribution limits may not redeem a primary election pledge after the date of the primary *unless* the candidate loses the primary election and has outstanding debts, loans, or orders placed to retire. A candidate who loses the primary election and has outstanding debts or liabilities may redeem a primary election pledge up to 30 days after the primary election is held. A general election pledge must be redeemed on or before the end of the election, or no later than December 31 of the election year. RCW 42.17A.405 and 42.17A.410; WAC 390-16-245.~~

~~A state official or a person employed by or acting on behalf of a state official may not accept a pledge or payment of a pledge during a session freeze period. RCW 42.17A.560 and WAC 390-16-245.~~

~~Unless the recipient is a ballot measure committee, a pledge may not be made or redeemed within twenty-one days of an election if the amount of the pledge or redemption exceeds the maximum amount provided in RCW 42.17A.420.<sup>5</sup> However, when payment of a pledge is made and the monetary or in-kind contribution is in possession of the recipient twenty-two or more days before the election, the contribution may be accepted. WAC 390-16-245.~~

<sup>5</sup> See footnote one. Also see RCW 42.17A.405 and 42.17A.410 and WAC 390-05-400 for candidate-contribution limits.

**DISCLOSURE OF CONTRIBUTIONS ON 21- AND 7-DAY PRE-ELECTION C-4  
REPORTS**

~~A campaign is required to file a Campaign Summary Receipts & Expenditures Report (PDC Form C-4) at regular intervals including 21 and 7 days before an election in which the campaign participates. The 21- and 7-day pre-election C-4 reports disclose all campaign contribution and expenditure activities made as of the end of one business day before the date of the report, including in-kind contributions, orders placed, debts, pledges, and loans. RCW 42.17A.235.~~

~~Monetary contributions must be deposited within five business days of receipt. A contribution received by a candidate or political committee that is returned to the contributor within five business days of receipt is not a contribution and need not be disclosed. RCW 42.17A.005(13)(b)(iii).~~

~~The C-4 report, WAC 390-16-041, provides for the disclosure of deposits. The C-4 report does not require disclosure of contributions received but not yet deposited.~~

~~The Commission interprets RCW 42.17A.235 to require campaigns to disclose on the 21- and 7-day pre-election reports contributions *that have been deposited* as of the end of one business day before each report is due.~~