

Atlatl, Inc.

P.O. Box 2936, Durham, NC 27715-2936 800-768-0907 dwilliams@accu-rater.com

02/07/2007

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

AOR 2007-04

2007 FEB 14 A 11:00

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RE: Advisory Opinion on Convenience Fees as part of accepting a Campaign Contribution

Dear FEC,

I am Duke Williams. My company, Atlatl, Inc. has a service under the d/b/a name of Simply Easier Payments. (www.simplyeasierpayments.com).

My question is this...

Would the dollar amount of the "Convenience Fee" in the service described in this document be considered a part of the campaign contribution?

Simply Easier Payment's service provides a third party, Internet based credit and debit card payment platform for a variety of entities.

We wish to use this service for processing campaign contributions.

When a campaign uses our service, their contributor comes to our web pages through a link on the campaign's site and...

- Is presented with a contribution page that shows the amount of the contribution they are making to the campaign, plus...
- A separate "Convenience Fee" to Simply Easier Payments.
- The contributor must see the fee as a separate charge and actively agree to pay the fee. On our site they have to actually check an "I Accept" check box.
- Simply Easier Payments processes the contribution as one transaction and the convenience fee as a separate transaction.
- The receipts for the contribution clearly show the contribution and the Convenience Fee as unique and separate amounts. In addition, the receipt shows

the way the contributor's actual monthly card statement will show the two transactions as separate transactions.

- The funds from the two separate transactions are never co-mingled. 100% of the contribution is deposited into the depository account of the campaign. The Convenience Fee amount is deposited into an account which is used to pay all the normal transaction fees associated with accepting card payments. The remaining amount of the convenience fee is left to cover Simply Easier Payments expenses.
- No portion of the Convenience Fee is ever shared in any way with the campaign.

The Convenience Fee format has been in use for over seven years in a variety of industries. In fact, it is currently a method by which any tax payer may choose to pay the IRS personal income taxes. When paying the IRS the convenience fee amount is most definitely not considered a part of your tax payment.

As a concrete example, if the contribution maximum is \$2,300.00 and a contribution of this amount is made through our service generating an additional and separate Convenience Fee amount of \$57.50, would the Convenience Fee be considered as a part of the \$2,300.00 or as a separate cost? As is explained above, the campaign never touches the Convenience Fee funds in any way.

Thank you for your consideration.

Sincerely,



Duke Williams



LUIS VILLARTE
<dwilliams@accu-rater.com>
02/28/2007 11:41 AM

To "Tony Buckley" <tbuckley@fec.gov>
cc
Subject Simply Easier Payments

Atlatl, Inc.

P.O. Box 2936, Durham, NC 27715-2936 800-768-0907 dwilliams@accu-rater.com

02/26/2007

Mr. Tony Buckley
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

RE: Advisory Opinion on Convenience Fees as part of accepting a Campaign Contribution

Dear Mr. Buckley,

This letter is in response to your phone call of 2/23/2007 and the questions you asked me during that call.

First, my sole interest in this issue is from a for profit business perspective. My company offers this same service to the insurance industry and I saw enough similarities between that opportunity and political campaign contributions to feel a business opportunity exists. I am clearly only doing this for the potential profit to be realized directly from this activity.

My company and our various products are completely funded by our general operating revenues. No investment or loans have been made by any political campaign, party or interest group.

Under our business plan our operations will be entirely funded by our retained portion of each convenience fee. The Federal and non-Federal candidates, political committees, and non-profit organizations that receive forwarded contributions and donations will not pay Simply Easier Payments for its services.

Here is how I generate a profit and the other parties involved.

In an online card transaction there are always these parties:

- **The card holder.**
- **The party being paid.**
- **The card issuing bank – Wachovia, Harris Bank, BankOne, etc.**
- **The card association – Visa, MasterCard, etc.**
- **The card processor – in our case Moneris.**
- **The card network.**
- **The payment Gateway – us, or VeriSign, etc.**

The card holder is presented a page where payment information can be entered. This payment page should meet a long list of security requirements know as PCI compliance standards. These standards are published on behalf of the Card companies – Visa, MasterCard, etc – for the benefit and security of the payer.

Ideally, to comply with the PCI standards, the payment page will have to be hosted on PCI Level 1 certified servers which exist in a physically isolated and secure environment. This would probably never be the servers a campaign would host the rest of its web site on because of the cost involved in certifying all servers.

One of our services is to provide these certified, secure, compliant servers for the payment page.

We – Simply Easier Payments – collect the contributor's identification and card information. We display the contribution as separate and unique amount. We also display our charge – the "convenience fee" – as a separate and unique amount. The contributor is required to actively click an "I accept this Convenience Fee" check box to complete the payment.

When the contributor clicks a "make payment" button we forward the payment request for the amount of the contribution to the systems run by our processing partner Moneris. Moneris' systems forward the request for the contribution amount for authorization of payment through the card network to the appropriate issuing bank. The card issuing bank responds either yes or no to the authorization request for the contribution amount and Moneris returns that response to us.

Immediately after we – Simply Easier Payments – forward the payment request for the payment of the contribution amount, we forward the payment request for the amount of the convenience fee to the systems run by our processing partner Moneris. Moneris' systems forward the request for the convenience fee amount for authorization of payment through the card network to the appropriate issuing bank. The card issuing bank responds either yes or no to the authorization request for the convenience fee amount and Moneris returns that response to us.

If the issuing bank authorized the contribution amount payment and separately the payment of the convenience fee, we display a receipt. The receipt shows the two transactions separately. The

card holder's monthly statement from the card company will also show the two transactions separately. If the issuing bank does not authorize the payments of both; we display a message to that effect.

At this point, as far as the contributor is concerned the payment is made. There is still much to be done with the funds.

Please see the emphasis on how the contribution amount and the convenience fee amount are handled separately. We feel this is exactly the same as if a contributor used a money order, or a certified check, or Western Union to make a contribution. The fees these methods of payment incur are made separately, are not co-mingled with the contribution, and are not considered a part of the contribution.

After reviewing AO 2006-8 – Brooks – we feel we would also provide services to individual subscribers to assist them in making contributions, similar to corporations that provide delivery services, bill paying services, or check writing services. The individual subscribers would compensate Simply Easier Payments as an incidental cost in making contributions.

After the accounting close of day for the specific campaign, Moneris forwards electronic requests for funding of payments to each card issuing bank. The card issuing bank funds the transactions separately. The full contribution amount is funded to a Moneris account indicating that amount, and only that amount is to be deposited into the depository account indicated by the campaign. The full convenience fee amount is funded to a Moneris account for payment of all transaction costs. (I will outline these costs next.)

After receiving electronic confirmation of funding from the card issuing bank, Moneris sends an electronic request to the Federal Reserve to fund the full contribution payment amount to the depository account of the specific campaign. The full contribution, and only the contribution, amount are deposited into the campaign's account.

The transaction costs are made up of the discount fee and our normal business operating costs.

The discount fee is the amount the card companies and card issuing banks charge for processing the transactions. These discount fees vary but generally are in the 2% to 3% range. So on a contribution of \$100.00 with a convenience fee of \$3.95 and a discount rate of 3%; we have to pay the card companies \$3.12. $((\$100.00 + \$3.95) * .03) = \$3.12$

This leaves \$0.88 to be split between Moneris and Simply Easier Payments to pay for T-1 access lines, servers, software licensing, PCI compliance audits, physical security, office rent, payroll, taxes, etc.

Our ability to make a profit is dependent on transacting volume of payments. Our initial estimate of the campaign contribution potential as opposed to the insurance industry is that there is a large enough volume of transactions spread over a wide enough groups of individual campaigns to offer the possibility of achieving volume levels which will make a profit possible.

In addition to the requirements of PCI compliance, accepting campaign contributions requires contributors to affirm several factors. Campaigns are also required to report specific information about contributors and their contributions.

To satisfy the reporting requirements, Simply Easier Payment will obtain each subscriber's mailing address, occupation, and employer information and provide it to the recipients, whenever necessary. Simply Easier Payments will employ various screening and verification procedures to prevent the making of prohibited contributions.

We will word this as...

Enter Contact Information

First Name:

Last Name:

Address:

City:

State:



Zip:

Phone:

Email:

Enter Employment Information

To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in an election cycle.

If not employed, enter "none"

Employer:

Occupation:

To affirm the contributor's eligibility to make contributions, Simply Easier Payments will require responses to these questions worded in this way...

Confirm Your Eligibility

By checking this box, I confirm that the following statements are true and accurate:

1. 1 - I acknowledge that this contribution is made from my own funds and not those of another.
2. 2 - I acknowledge that it is not made from the general treasury funds of a corporation, labor organization or national bank.
3. 3 - I am not a Federal government contractor.
4. 4 - I am not a foreign national who lacks permanent resident status in the United States.
5. 5 - I am at least 18 years of age.
6. 6 - This contribution is made on a personal credit or debit card for which I have the legal obligation to pay, and is made neither on a corporate or

business entity card nor on the card of another.

We will also include this or similar statement on the contribution page...

Your contribution is not tax-deductible for federal income tax purposes. An individual may contribute a maximum of \$2,300 per election (the primary and general are separate elections). By submitting your contribution, you agree that the first \$2,300 of your contribution is designated for the primary, and any additional amount up to \$2,300 is designated for the general election.

Thank you for your questions. If you have others, please feel free to contact me.

Yours,

Duke Williams

800-768-0907

dwilliams@accu-rater.com