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November 12, 2009

Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 2009-31

Re: Advisory Opinion Request—MAXIMUS, Inc. Employee “Credits”

Dear Ms. Duncan:

This letter is a formal Advisory Opinion request filed on behalf of MAXIMUS, Inc. (“MAXIMUS”). MAXIMUS seeks the Commission’s guidance as to whether MAXIMUS employees may voluntarily contribute the net value of “credits” they receive as compensation to the corporation’s separate segregated fund, MAXIMUS, Inc. Political Action Committee (“MAX PAC”).

I. BACKGROUND

In addition to salary payments and in consideration for time worked, MAXIMUS employees currently earn and accrue up to 240 “credits” in the normal course of employment as part of a regular compensation plan. Employees maintain control over these credits and may redeem them in order to receive monetary payments: (1) while on personal leave (i.e. vacation); (2) during times of financial or personal hardship; and/or (3) after permanently leaving MAXIMUS for retirement or for other employment. The monetary value of an employee’s credit is equal to a pro rata share of the employee’s salary.

MAXIMUS employees have requested greater flexibility in using these credits. In response, MAXIMUS proposes to revise its compensation plan so that employees within its “restricted class”¹ may also redeem credits to make a personal, voluntary contribution to MAXIMUS Foundation (a 501(c)(3) charitable organization that, in turn, distributes donations to organizations and charities in the United States that help disadvantaged citizens), and/or MAXPAC. Employees who choose to redeem credits would realize income and personally pay all applicable taxes related to any contribution.

¹ 11 C.F.R. § 114.1(j). All subsequent references to “employees” include only those who are in MAXIMUS’s restricted class.

Before making a contribution, employees would be required to complete an internal form.² The form would notify employees who contribute to MAXPAC that contributions will be used for political purposes, that contributions are voluntary, and that MAXIMUS will not favor or disadvantage anyone because of their contribution or their refusal to contribute.³ By completing and submitting the internal form, employees would redeem a specified number of credits and make a contribution to MAXPAC by authorizing the PAC to deduct and collect each redeemed credit's net value, consistent with federal contribution limits.

II. LAW

MAXIMUS seeks confirmation that employees' credits are a permissible source of voluntary contributions to MAXPAC. Federal law forbids a corporation, such as MAXIMUS, from making contributions or expenditures in connection with a Federal election.⁴ Corporations also may not specially augment employee compensation "to effect a contribution in the employee's name to Federal candidates or political committees."⁵ Corporate employees may, however, use compensation paid by a corporation in the normal course of work to make a voluntary contribution to the corporation's separate segregated fund.⁶ Thus, if the Commission agrees that MAXIMUS employees' credits are *bona fide* compensation, these credits should be found to be a permissible source of employees' voluntary contributions.

The Commission has periodically considered employee contribution arrangements similar to MAXIMUS's proposal. In 1979, the Commission approved workers' plans to make contributions from "Vacation Fund" compensation. Each member of a labor union earned and accrued 75 cents in the Vacation Fund for each hour that the employee worked. An individual employee's share of the Vacation Fund was then used to compensate the employee during any personal leave he or she might take during a calendar year. The labor union's separate segregated fund planned to "allow an individual union member to sign an authorized card permitting the deduction of [around] 5 cents per hour worked from vacation fund monies." The Commission ultimately concluded that the Vacation Fund was *bona fide* compensation and a "permissible source of voluntary contributions."⁷ In 1980, the Commission considered a nearly identical arrangement and again found that employees could voluntarily contribute vacation-oriented compensation to a PAC.⁸

² A draft version of the internal form is attached.

³ 11 C.F.R. § 114.5(a)(2)-(3).

⁴ 2 U.S.C. 441b(a). MAXIMUS may use corporate treasury funds to pay for MAXIMUS PAC's operating expenses. 11 C.F.R. § 114.5(b).

⁵ Fed. Election Comm'n Adv. Op. 1986-41, 1984-52; 11 C.F.R. § 114.5(b)(1).

⁶ The FEC has treated compensation awarded under an established compensation plan as an employee's personal property. See 11 C.F.R. § 113.1(g)(6)(iii); Fed. Election Comm'n Adv. Ops. 2006-13, 2004-08.

⁷ Fed. Election Comm'n Adv. Ops. 1979-60, 1980-69. See also Fed. Election Comm'n Adv. Op. 1996-25.

⁸ Fed. Election Comm'n Adv. Op. 1980-74.

Like the vacation funds reviewed by the Commission, the MAXIMUS employees' credits are *bona fide* compensation for several reasons. First, employees earn and accrue credits only in consideration for time worked and only in the normal course of employment. Second, under MAXIMUS's proposal, employees would pay personal income tax on any redeemed credits. Third, employees would decide when to redeem their credits and could choose to use redeemed credits for any of the following purposes:

- Receiving salary while on personal leave (e.g., vacation);
- Collecting wages during times of financial or personal hardship;
- Obtaining a lump sum payment upon permanently leaving MAXIMUS's employ;
- Making a charitable donation to MAXIMUS Foundation; and/or
- Making a political contribution to MAXPAC.

Fourth, credits have personal value to a MAXIMUS employee because credits may be utilized for several important purposes. For instance, if an employee redeems credits to make a contribution to MAXPAC, the employee would reduce his or her ability to receive salary during personal leave, collect wages if hardships arise, obtain a lump sum upon leaving MAXIMUS, and make a donation to charitable causes. The fact that employee credits have value outside of a political context offers further assurance that credits are an actual form of compensation, not a method to "effect a contribution in the employee's name to Federal candidates or political committees."⁹

Again, these four characteristics of MAXIMUS's proposal strongly indicate that employees' credits are *bona fide* compensation. Because employees labor to earn credits, pay taxes once those credits are redeemed, control when and how credits are used, and value credits in non-political contexts, MAXIMUS seeks confirmation from the Commission that credits are a permissible source of employees' voluntary contributions to MAXPAC.

III. CONCLUSION

MAXIMUS respectfully requests the Commission's timely consideration of this Advisory Opinion Request and guidance on this important proposal.

Sincerely,



Kirk L. Jowers
Matthew T. Sanderson

⁹ Fed. Election Comm'n Adv. Op. 1986-41, 1984-52; 11 C.F.R. § 114.5(b)(1).

MAXIMUS, INC. CREDIT REDEMPTION FORM

I want to redeem one or more of my compensation credits for one of the purposes below.

Please Select One of the Following Options:

- Redeem _____ credits to take personal leave for the following dates:

- Redeem _____ credits because of financial/personal hardship.
Please explain hardship in a separate letter.
- Redeem the balance of my credits because I will no longer be a
MAXIMUS employee.
- Redeem _____ credits to make a charitable donation to MAXIMUS
Foundation.
- Redeem _____ credits to make a personal voluntary political
contribution to MAXIMUS, Inc. Political Action Committee
(MAXPAC). Maximum individual contribution may not exceed
\$5,000 per calendar year.

Please note that you may be required to pay federal and
state income taxes upon redeeming credits.

Please Provide the Following Information*:

Name _____
Title _____
Office Name and Location _____
SSN _____
Home Address _____
Work Phone # _____
Signature _____
Date _____

Please return form to:
MAXIMUS Human Resources
11419 Sunset Hills Rd.
Reston, VA 20190-5207

For Political Contributions to MAXPAC:

Contributions to MAXPAC are not deductible as charitable contributions for federal income tax purposes. You may contribute to MAXPAC only if you are a U.S. citizen or lawfully admitted permanent U.S. resident. You may only contribute personal funds and may not seek or expect reimbursement from any source.

*If you are making a contribution to MAXPAC, federal law requires MAXPAC to obtain, maintain, and report the name, address, occupation, and employer for all contributors who give over \$200 in a calendar year.

Funds contributed to MAXPAC will be used for political purposes. All contributions are strictly voluntary, and you have the right to refuse to contribute to MAXPAC without reprisal. You will not be favored or disadvantaged by MAXIMUS, Inc. because of your contribution or your decision not to contribute. Please send your feedback, comments, and questions about MAXPAC via email to: maxpac@maximus.com.



"Matthew Sanderson"
<MTS@Capdale.com>

11/24/2009 11:01 AM

To <JSelinkoff@fec.gov>

cc "Kirk Jowers" <KLJ@Capdale.com>

Subject MAXIMUS AOR

Ms. Selinkoff:

As we discussed yesterday, Kirk Jowers and I discussed with MAXIMUS further the formula for accruing "credits." As we mentioned on yesterday's call, credits are earned based upon tenure with MAXIMUS. The number of credits earned each year increases with the length of employment. For executive employees who have worked with MAXIMUS 0-5 years, 10 credits are earned each month. For executive employees who have worked with MAXIMUS more than 5 years, 13.34 credits are earned each month.

Please let us know if you have any other questions.

Best,

Matt

Matthew T. Sanderson

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"Matthew Sanderson"
<MTS@Capdale.com>

12/03/2009 08:51 AM

To <JSelinkoff@fec.gov>

cc "Kirk Jowers" <KLJ@Capdale.com>

Subject Additional Information--MAXIMUS AOR

Ms. Selinkoff:

During a phone call last week, you requested further information on how non-executive employees accrue "credits." Like executive employees, non-executives earn credits based upon tenure with MAXIMUS. The number of credits earned each year increases with the length of employment. For non-executive employee who have worked with MAXIMUS 0-3 years, 6.66 credits are earned each month. For non-executive employee who have worked with MAXIMUS 4-10 years, 10 credits are earned each month. For non-executive employee who have worked with MAXIMUS more than 10 years, 13.34 credits are earned each month.

You also inquired during last week's call about the source of the information provided to you regarding credit accrual. All information provided comes from the MAXIMUS Employee Manual.

Best,

Matt

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