

**CERTIFIED MAIL NO. 7000 0520 0025 5830 8810
RETURN RECEIPT REQUESTED**

BAO # 2007-0717-0018

September 14, 2007

Mr. Tom Weekley
American Legion Post 37
P.O. Box 1686
McAllen, TX 78505

Re: Bingo Advisory Opinion No. 2007-0710-0017; Use of Bingo Account

Dear Mr. Weekley:

This advisory opinion responds to your request received on July 17, 2007, regarding use of distributions. Specifically, you requested:

Hidalgo and Starr counties have roughly 50-60 thousand eligible veterans who some may need VA hospital care; primarily at Audie Murphy in San Antonio or Legion (Kerrville). Our discussion centered on providing transportation to either of those facilities. Providing a mileage fee, motel stipend and a per diem for meals budgeted out to be about \$300-\$350 a trip. In the event of a handicapped veteran, a driver in a suitable van would be provided. A limit of four trips a month was discussed.

My question for you is: (1) would this assistance to any eligible veteran be consistent with the charitable bingo distribution rules and (2) would it also comply with the rules if the assisted veteran happened to be a member of our American Legion post?

ANSWER:

Texas Occupations Code § 2001.453(a) provides that a licensed organization may withdraw funds from the Bingo Account only for (1) payment of necessary and reasonable expenses incurred and paid in connection with the conduct of bingo, (2) charitable purposes, or (3) deposit into a bingo savings account pending disbursement to a charitable purpose. The issue is whether the proposed uses of bingo funds would qualify as necessary and reasonable expenses incurred and paid in connection with the conduct of bingo or as disbursements for charitable purposes. The expenditures described in your request are not related to the conduct of bingo and therefore would not qualify as a permissible bingo expenses.

In regards to disbursement for charitable purposes, Texas Occupations Code § 2001.454 provides:

(a) A licensed authorized organization shall devote to the charitable purposes of the organization its net proceeds of bingo and any rental of premises.

(b) Except as otherwise provided by law, the net proceeds derived from bingo and any rental of premises are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. § 501 and under which the organization qualifies as a nonprofit organization as defined by § 2001.002. If the organization is not required to obtain a federal tax exemption under 26 U.S.C. § 501, the organization's net proceeds are dedicated to the charitable purpose of the organization only if directed to a cause, deed, or activity that is consistent with the purposes and objectives for which the organization qualifies as an authorized organization under § 2001.002.

If the organization can prove that the expenses associated with non-bingo activities are reasonable and are directed to a cause, deed or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. § 501 and the Tex. Occ. Code § 2001.002(19) definition of non-profit organization, then those costs may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo. Under this definition, the organization:

(A) may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services; and

(B) must have obtained tax exempt status under § 501(c), Internal Revenue Code of 1986.

The Texas Constitution requires that all proceeds from bingo be spent in Texas for the charitable purposes of the organization. Tex. Const. art. III, § 47(b)(1). Additionally, a person given bingo proceeds for a charitable purpose may not use the donation "for a

purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.” Tex. Occ. Code § 2001.455.

Charitable Bingo Administrative Rule 16 TAC § 402.502 describes the type of information a licensed authorized organization must maintain to identify its charitable purpose and to substantiate its charitable distributions. The rule further clarifies the uses of proceeds that would not be considered dedicated to charitable purposes. Additionally, the organization should maintain records to demonstrate the reasonableness of the expenses.

Reimbursement for lodging and mileage expenses incurred by members in furtherance of the organization’s charitable purposes may be treated as a charitable contribution. Reimbursement for mileage expenses should not exceed the amount specified by the Internal Revenue Service under the federal income tax regulations or documented actual expense.

Texas Occupations Code § 2001.002(19) (A) provides that the organization “may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services” Therefore, personal food expenses of members incurred in the furtherance of a charitable purpose may not be treated as a charitable contribution. Moreover, the organization may not distribute any of its income to its members as beneficiaries of a charitable purpose.

SUMMARY

American Legion Post 37 may use funds derived from the conduct of bingo to pay for mileage, lodging, per diem for food, and a driver for non-member veterans if it maintains records to identify its charitable purpose and to substantiate its charitable distributions.

American Legion Post 37 may not distribute any of its bingo proceeds to a member except as reasonable compensation for services in accordance with Texas Occupations Code § 2001.002(19) (A).

This advisory opinion cannot be construed as a tax ruling or otherwise interpretive of the Internal Revenue Code. The information provided is completely limited to the context of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

This advisory opinion is based on the laws, rules and regulations in effect at the time of its issuance. All of the information provided herein is subject to change in law.

This opinion is purely advisory in nature and is limited to the particular questions at issue and to the facts presented in the request. Therefore, this opinion must not be relied upon

as a previous determination regarding any conduct which is not substantially consistent with the opinions and facts stated in the request.

Yours truly,

Philip D. Sanderson, Director
Charitable Bingo Operations Division

cc: James A. Cox, Jr., Chairman
C. Tom Clowe, Jr., Commissioner
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel