

James A. Cox, Jr.
Chairman

C. Tom Clowe, Jr.
Commissioner



TEXAS LOTTERY COMMISSION

Anthony J. Sadberry, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

CERTIFIED MAIL NO. 7004 1350 0000 5061 8792
RETURN RECEIPT REQUESTED

BAO # 2007-0831-0026

January 11, 2008

Ms. Patricia Greenfield
Greenfield Bingo Services
P.O. Box 2065
Weatherford, TX 76086

Re: Bingo Advisory Opinion (BAO) No. 2007-0831-0026

Dear Ms. Greenfield:

This advisory opinion responds to your request for which you submitted additional information on November 15, 2007, regarding a performance based incentive program. Specifically, you requested:

A charity wants to try and increase sales by offering an incentive program to their employees. Are there any restrictions for such a program? Are there any guidelines that must be followed?

In response to our request for detailed information describing the incentive program, you provided information on possible incentive program objectives, conditions, and benefits for hall managers and employees. Your stated objectives are to increase net profits of charities and to reward individual performance of employees with bonuses. You envision hall managers creating and implementing promotional programs and/or changes that increase the monthly net profit of all charities.

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ANSWER:

Expenditures related to an incentive program for bingo employees or a promotional program must meet the requirements of the Bingo Enabling Act (Act) (Tex. Occ. Code ch. 2001) and the Bingo Administrative Rules (Rules) (16 TAC ch. 402). The Act provides in §2001.453 that expenses paid from the organization's Bingo Account must be both reasonable and necessary. In accordance with §2001.458 of the Act, reasonable or necessary is the standard to be applied for bingo related expenses to be paid from other sources. See BAO # 2006-0808-0022.

In general, employee incentives and promotional programs are reasonable as items of expense, and a licensed authorized organization may exercise its judgment as to the types of incentives and promotions offered. However, determination of whether or not a specific incentive or promotional activity is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure. Rule §402.505 provides guidance on the determination of a permissible expense.

...
b) The Commission will consider the following in determining the reasonableness of an expense:

(1) Whether the amount of the expense incurred exceeds that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs;

(2) Whether the individuals authorizing the amount of the expense acted with prudence in the circumstances, considering their responsibilities to the organization;

(3) Whether there was significant deviation from the established practices of the organization which unjustifiably increased the amount of the expense incurred; and

(4) Whether the licensed authorized organization engaged in arms-length transactions and generally accepted sound business practices.

(c) The Commission will consider the following in determining the necessity of an expense:

(1) Whether the goods or services provided were justifiably required to support the conduct of bingo;

(2) Whether the expense was of a type generally recognized as an expense for the conduct of bingo; and

(3) Whether the expense might contribute to an increase in the proceeds available for charitable distribution.

In addition §402.505 (d) provides:

The licensed authorized organization is responsible for maintaining documentation to substantiate the permissibility of expenses incurred for the conduct; administration and operation of bingo. Detailed records, including receipts or copies of invoices that fully document and substantiate the bingo expenses must be complete, true, and accurate, and be maintained for 4 years.

SUMMARY

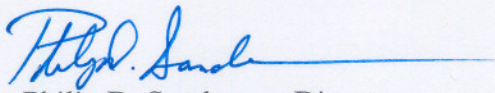
In general, employee incentives and promotional programs are reasonable as items of expense, and a licensed authorized organization may exercise its judgment as to the types of incentives and promotions offered. However, determination of whether or not a specific incentive or promotional activity is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure. Rule §402.505 provides guidance on the determination of a permissible expense and on the requirement that an organization maintain documentation to substantiate the permissibility of expenses.

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
David J. Schenck, Commissioner
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel