



Texas Lottery Commission

Commissioners:

J. Winston Krause, Chairman • Carmen Arrieta-Candelaria

Peggy A. Heeg • Doug Lowe • Robert Rivera



Alfonso D. Royal III
Director

CERTIFIED MAIL NO. 91 7199 9991 7030 8543 8170
RETURN RECEIPT REQUESTED

August 17, 2017

Kris Keller
7515 Shadylane Drive
San Antonio, TX 78209

Re: Bingo Advisory Opinion Request No. 2017-0622-0003

Dear Mr. Keller,

This opinion responds to your request for a bingo advisory opinion received on June 22, 2017, in which you asked two questions. Below are your questions and our responses.

Question 1:

Is there a law that would prohibit an outside entity from paying for product going to a bingo game. Here is the scenario, if a pull tab that had a design or logo of a local business incorporated in the tab that had been approved for sale in the state, could the local business pay the bill for that pull tab. In other words could I go to Whataburger and say I will put your logo on a pull tab if you pay the cost of the tab. They would look at it as advertising and we would look at it as free pull tabs at no expense to the charities.

Answer:

An outside entity cannot pay for pull-tab bingo tickets. Bingo product must be paid for out of the licensed organization's bingo account. The Bingo Enabling Act ("BEA") states that "the purchase . . . of bingo supplies and equipment" must be "paid from an organization's bingo account." TEX. OCC. CODE § 2001.459. In addition, the only funds generally deposited into the licensed organization's bingo account are funds "derived from the conduct of bingo." § 2001.451(b). Therefore, the BEA does not contemplate that pull-tab bingo product would be paid for by an outside entity.

Furthermore, a licensed manufacturer must present any new pull-tab bingo tickets to the Commission for review and approval, including review and approval of the pull-tab ticket's images and text, before that pull-tab ticket may be sold. TEX. ADMIN. CODE § 402.300 (entitled "Pull-tab Bingo") (the "Pull-tab Rule"). Among other requirements, all pull-tab bingo tickets must contain

graphic symbols that “preserve the integrity of the Commission.” § 402.300(b)(3)(G) & (c)(1). Please continue to keep these requirements in mind when considering new pull-tab bingo tickets.

Question 2:

Also if a tab that had no cash value, but offered something like buy a soda get a free fry, would that be considered a prize that would have to be claimed by the bingo hall, or since there is no cash value would it be considered a prize.

Answer:

Yes, that prize would have to be reported by the licensed conductor during the bingo occasion that the game or product was sold and prize awarded. Merchandise prizes are considered prizes, as discussed below. Section 2001.505 of the BEA requires that a licensed organization submit a list of “all prizes offered and given, with their respective values.” There is no exception for prizes of “no cash value.” There is an exception for the collection and remittance for prize fees for bingo prizes of \$5 or less. *See* § 2001.502. But such prizes still must be identified on the bingo occasion report, prize fee schedule and ultimately included in the licensed organization’s quarterly report.

In addition, the Pull-tab Rule defines “prize” as “[a]n award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.” The Pull-tab Rule defines “prize amount” as “[t]he value of cash and/or merchandise which is awarded as a prize, as valued under Section 402.200(f) of this chapter.” The rules state that “[a]ny merchandise . . . awarded as a bingo prize shall be valued at its current retail price.” TEX. ADMIN. CODE § 402.200(f). In certain cases, “a non-cash prize awarded as a bingo prize may be valued at the price actually paid for that prize provided that the licensed authorized organization maintains a receipt or other documentation evidencing the actual price paid.” *Id.*¹

In this case, even if the prize is not directly exchangeable for cash, it would have to be valued at its current retail price, and the licensed organization would have to report that prize value. If the merchandise prize was provided to the licensed organization at a price lower than the current retail price, the organization should retain documentation of the actual price paid and report the value actually paid.

Please keep in mind, as stated above, the requirements in the Pull-tab Rule regarding Commission approval of all pull-tab bingo tickets before they may be allowed for sale.

¹ If the licensed organizations paid nothing for the merchandise prize, it would be considered a donated prize. A licensed organization, other than a non-annual temporary license holder, may not accept donated prizes. TEX. ADMIN. CODE § 402.200(g). If a non-annual temporary license holder accepts a donated merchandise prize, such a prize would then be valued at its current retail price. *Id.*

SUMMARY

The cost of pull-tab bingo supplies must be paid for by a licensed organization from its bingo account, and therefore cannot be paid for by an outside entity. Furthermore, all prizes, including merchandise prizes not redeemable for cash, must be reported by the licensed organization. Merchandise prizes should generally be valued at their current retail price.

The Commission must approve of all pull-tab bingo tickets, including their images and text, before they are allowed for sale.

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 BEA 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.

Sincerely,



Alfonso D Royal III, Director
Charitable Bingo Operations Division

cc: J. Winston Krause, Chairman
Carmen Arrieta-Candelaria, Commissioner
Peggy A. Heeg, Commissioner
Doug Lowe, Commissioner
Robert Rivera, Commissioner
Gary Grief, Executive Director
Bob Biard, General Counsel