

BAO 2004-0319-00008	Date Issued: 05/18/2004	View Request <a href="#">RO 2004-0319-00008</a>
Summary:	The Bingo Enabling Act does not allow for the transfer of bingo equipment by sale or otherwise from a licensed distributor to a lending or financial institution which is not itself a licensed distributor, nor does the Act allow for the transfer of bingo equipment from a non-licensed entity to a licensed authorized organization for use in the conduct of bingo.	

**CERTIFIED MAIL NO. 7001 2510 0002 0891 8286  
RETURN RECEIPT REQUESTED**

BAO # 2004-0319-00008

May 18, 2004

Mr. Steven W. Hieronymus, Manager  
Trend Gaming Systems, LLC  
8868 Research Boulevard, Suite 500  
Austin, Texas 78758

*via certified mail*

Re: Request for Advisory Opinion relating to the transfer of bingo equipment through a capital lease structure as it relates to compliance with the Bingo Enabling Act and Charitable Bingo Administrative Rules.

Dear Mr. Hieronymus:

The Texas Lottery Commission (the "Commission") received your request for an advisory opinion regarding the transfer of bingo equipment through a capital lease structure in Texas.

Below are the issues identified in your email followed by the Commission's response.

"...Trend intends to offer various lease options, but also wants to make available a purchase option. Given the more stable product cycle that now exists and the functionality of current products, we feel that a purchase option would be advantageous to many organizations. While an ongoing software royalty would be required, this royalty would be small compared to current lease rates and would provide many organizations an opportunity to enhance their cash flow. Many charities now jointly own equipment (blowers, etc.) or have a lead charity officially own the required regulated bingo equipment. I would anticipate the same scenario with respect to cardmindes.

I am trying to arrange with a company that EGS uses in other markets a financing program to be made available to our Texas charities, but want to make sure that we have covered our regulatory bases. Most financing of this sort is done through a capital lease structure. At the end of a set term, the charity or charities would complete the purchase

for a dollar additional payment. EGS would be the manufacturer and provide to Trend. Trend would provide to the charities, though the paperwork trail would indicate the lender as the buyer of the equipment. The charities would have a lease obligation to the lender and would make monthly payments to the lender for the term of the agreement. At the end of the term and for the additional \$1.00 payment the charity or charities would then own the equipment. The charitable organizations would be making a royalty payment to continue the use of the software and for rights to any TLC approved software upgrades.”

**ANSWER:**

Based on the information provided in your request for advisory opinion, it is understood that the bingo related products at issue in your request meet the definition of “Bingo Equipment” as provided in Texas Occupations Code §2001.002(5)<sup>[\[1\]](#)</sup>.

Section 2001.407 provides:

(a) A licensed manufacturer may furnish, by sale or otherwise, bingo equipment or supplies to a licensed distributor. Except as provided by Section 2001.257(b), a licensed manufacturer may not furnish, by sale or otherwise, bingo equipment or supplies to a person other than a licensed distributor.

(b) A licensed distributor may not furnish by sale, lease, or otherwise, bingo equipment or supplies to a person other than a licensed authorized organization, another licensed distributor, or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4). A sale of bingo equipment or supplies authorized by this section must be made on terms requiring immediate payment or payment not later than the 30th day after the date of actual delivery.

(c) A licensed distributor may not receive by purchase or otherwise bingo equipment or supplies from a person other than a licensed manufacturer or another licensed distributor.

(d) A licensed authorized organization may lease or purchase electronic or mechanical card-minding devices, pull-tab dispensers, bingo machines, consoles, blowers, and flash boards directly from a licensed distributor.

(e) Except for a purchase made by a licensed authorized organization under Subsection (f), a licensed authorized organization or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4) may not obtain by purchase or otherwise bingo equipment or supplies from a person other than a licensed distributor.

(f) With the prior written consent of the commission, a licensed authorized organization may make an occasional sale of bingo cards or of a used bingo flash board or blower to another licensed authorized organization.

Based on the scenario described in your email, the licensed manufacturer would provide the bingo equipment to a licensed distributor who would then allow a licensed authorized organization to use the equipment so long as the licensed authorized organization made monthly payments to a lending or financial institution (the “lender”) who would hold title to the bingo equipment throughout the term of the lease. At the end of the lease term, the licensed authorized organization would have the option to purchase the equipment for a

minimal amount, maybe \$1.00. Although the tangible bingo equipment would go from the licensed manufacturer to the licensed distributor to the licensed authorized organization, ownership of the bingo equipment would pass from the licensed manufacturer to the licensed distributor to the lender who would then be set to receive monthly payments from the licensed authorized organization.

This transaction is not consistent with the provisions of the Bingo Enabling Act, Texas Occupations Code, Section 2001.407. First, subsection (b) prohibits the transfer, *by sale, lease or otherwise*, [emphasis added] of bingo equipment from a licensed distributor to anyone other than a licensed authorized organization, another licensed distributor, or an organization exempted under Section 2001.551(b)(3) or (4). In the scenario described in your request, the lender would not qualify as a licensed authorized organization<sup>[2]</sup>, licensed distributor<sup>[3]</sup> or an entity exempted under Section 2001.551(b)(3) or (4)<sup>[4]</sup>. Thus, the licensed distributor, in this case Trend Gaming Systems LLC, would not be able to transfer the bingo equipment to the lending institution. Second, subsection (e) provides that except as part of an occasional sale between licensed authorized organizations, a licensed authorized organization may not obtain bingo equipment, by purchase or otherwise, from a person other than a licensed distributor. Unless the lender described in your request is a licensed distributor, the capital lease structure, as described, would violate subsection (e).

It is important to note that the Bingo Enabling Act provides that some violations of the Act reach the level of a criminal offense. Section 2001.553 provides in pertinent part:

(a) A person commits an offense if a person sells or attempts to induce the sale of bingo equipment, supplies, or automated bingo services to a licensed authorized organization and the person is not licensed to do so...

(c) An offense under this section is a Class A misdemeanor.

Based on the facts presented in your request for an advisory opinion, the lender would be selling bingo equipment without a license to a licensed authorized organization. Thus, the lender may be subject to criminal prosecution.

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### SUMMARY

The Bingo Enabling Act does not allow for the transfer of bingo equipment by sale or otherwise from a licensed distributor to a lending or financial institution which is not itself a licensed distributor, nor does the Act allow for the transfer of bingo equipment from a non-licensed entity to a licensed authorized organization for use in the conduct of bingo.

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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,

William L. Atkins, Director  
Charitable Bingo Operations Division

cc: C. Tom Clowe, Jr., Chairman  
James A. Cox, Jr., Commissioner  
Rolando Olvera, Commissioner

Kimberly L. Kiplin, General Counsel

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<sup>[1]</sup> (5) "Bingo equipment" means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

- (i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;
- (ii) an electronic or mechanical cardminding device;
- (iii) a pull-tab dispenser;
- (iv) a bingo card;
- (v) a bingo ball; and
- (vi) any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

- (i) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or
- (ii) a commonly available component part of bingo equipment such as a light bulb or fuse.

<sup>[2]</sup> See Texas Occupations Code, Section 2001.101.

<sup>[3]</sup> See Texas Occupations Code, Section 2001.002(9) and Section 2001.206, et seq.

<sup>[4]</sup> Texas Occupations Code, Section 2001.551(b)(3)&(4) provide as follows:

(b) A person conducting, promoting, or administering bingo commits an offense if the person conducts, promotes, or administers bingo other than:

(3) on behalf of an organization of individuals 60 years of age or over, a senior citizens' association, a senior citizens' community center program operated or funded by a governmental entity, the patients in a hospital or nursing home, residents of a retirement home, or the patients in a Veteran's Administration medical center or a military hospital, solely for the purpose of amusement and recreation of its members, residents, or patients, when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate; and

(B) the prizes awarded or to be awarded are nominal; or

(4) on behalf of a business conducting the game for promotional or advertising purposes if:

(A) the game is conducted by or through a newspaper or a radio or television station;

(B) participation in the game is open to the general public and is not limited to customers of the business;

(C) playing materials are furnished without charge to a person on request; and

(D) no player is required to furnish anything of value for the opportunity to participate.