

BAO 2004-0514-00013	Date Issued: 07/13/2004	View Request RQ 2004-0514-00013
Summary:	Consistent with Texas Occupations Code §2001.454, an organization may use funds derived from the conduct of bingo to pay for travel expenses so long as it complies with 16 TAC §402.598 Charitable Use of Proceeds.	

CERTIFIED MAIL NO.7001 1140 0001 4303 6081
RETURN RECEIPT REQUESTED

BAO # 2004-013

July 13, 2004

Koshy Alexander, CPA
Axley & Rode, LLP
P.O. Box 1388
Lufkin, Texas 75902-1388

Re: Request for Advisory Opinion relating to the use of bingo funds

Dear Mr. Alexander:

On May 14, 2004, the Texas Lottery Commission (the "Commission") received your letter requesting an advisory opinion related to the use of bingo funds. For your convenience, enclosed is a copy of Texas Occupations Code, sections 2001.451 through 2001.459 and new rule 16 TAC §402.598 Charitable Use of Proceeds. These statutes and rule address issues related to the use of funds derived from the conduct of bingo.

Specifically, the Disabled American Veterans Chapter No. 84, an exempt organization under §501(c) seeks guidance as to the use of net proceeds from bingo operations for ". . . travel expenses for chapter members to attend seminars, conventions, or retreats. . ." within and outside of the state of Texas. The main purpose of the events ". . . would be to provide instruction to the local chapters of the Disabled American Veterans on the manner and methods in which they can improve their work in the communities they service." Thus, the question presented is whether the use of bingo funds for such a purpose would be an authorized use of funds under §2001.453 pertaining to authorized uses of bingo account.

ANSWER:

Texas Occupations Code §2001.453(a) provides that an 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. Therefore, the issue is whether the proposed use of bingo funds would be a necessary and reasonable expense incurred and paid in connection with the conduct of bingo or whether it would qualify as a disbursement for charitable purposes.

Texas Occupations Code §2001.458(a) (3) provides in pertinent part:

(a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

(10) attending a bingo seminar or convention required under Section 2001.107.

§2001.107 requires that certain persons complete an eight hour, commission-approved training program related to conducting and promoting bingo. You do not indicate that the events you describe would offer such training. Thus, the expenses for attending would not be permissible as reasonable and necessary expenses. However, it may be possible that the travel expenses could be paid with funds derived from bingo. The Bingo Enabling Act provisions relating to the distribution of charitable proceeds were recently revised during the 78th Legislature, Regular Session (effective September 1, 2003). Section 2001.454 of the Act now reads as follows:

(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. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. If the organization is not required to obtain a federal tax exemption under 26 U.S.C. Section 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 Section 2001.002.

An organization may now claim a charitable distribution if money derived from the net proceeds of bingo is directed to a cause, deed or activity that is consistent with the federal tax exemption of the organization.^{[\[1\]](#)} If the organization can prove that the travel expenses associated with non-bingo activities are directed to a cause, deed or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. Section 501, then those costs may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo. As noted above, the organization must maintain records necessary to substantiate that the use of funds is

directed to a cause, deed or activity that is consistent with the federal tax exemption of the organization.

The Commission adopted new rule § 402.598 Charitable Use of Proceeds on May 27, 2004, and it became effective on June 16, 2004. The rule directly addresses reimbursement for travel expenses as follows:

(f) Reimbursement or direct payment for member or employee travel expenses. Reimbursement or direct payment for member or employee travel expenses will only be considered a cause, deed, or activity dedicated to the charitable purposes and consistent with the 26 U.S.C. Section 501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization if the following records are provided to the commission upon request:

(1) the itinerary of the seminar, convention, or retreat showing that the purpose of the seminar, convention, or retreat was primarily to discuss the charitable functions and purposes consistent with the 26 U.S.C. Section 501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization; and

(2) the original receipts and cancelled checks, or true and correct copies of the same, showing the date and amount of the contribution for actual out-of-pocket reasonable and necessary expenses such as hotel, airline tickets, meals, etc. and the corresponding request for payment or reimbursement maintained by the organization.

If an organization wishes to claim charitable distributions for travel expenses incurred by members to attend seminars, conventions and retreats, then the organization must maintain the records and documentation required by 16 TAC 402.598(e) and make that information available to the Commission upon request.

SUMMARY

Consistent with Texas Occupations Code §2001.454, an organization may use funds derived from the conduct of bingo to pay for travel expenses so long as it complies with 16 TAC §402.598 Charitable Use of Proceeds.

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

[\[1\]](#) Section 2001.002 (19) “Nonprofit organization” means an unincorporated association or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon’s Texas Civil Statutes). The organization:

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

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