

BAO 2004-0602-00015	Date Issued: 08/23/2004	View Request <a href="#">RQ 2004-0602-00015</a>
Summary:	Use of bingo funds for meals, beverages, bingo prizes, coffeemaker repairs, mobile phones, and a sympathy wreath are not allowable as reasonable and necessary advertising expenses to conduct bingo.	

**FIRST CLASS UNITED STATES MAIL  
and  
CERTIFIED MAIL NO. 7001-2510-0002-0891-7401  
RETURN RECEIPT REQUESTED**

BAO # 2004-0602-

015

August 23, 2004

Gene Garrison  
Daytime Bingo  
3303 W. Illinois  
Midland, Texas 79703

Re: Request for Advisory Opinion, #2004-0602-015

Dear Mr. Garrison:

This is in response to your letter received on June 2, 2004, requesting an advisory opinion related to the use of net proceeds derived from the conduct of charitable bingo. We understand your question to be whether use of bingo funds for meals, beverages, bingo prizes, coffeemaker repairs, mobile phones, and a sympathy wreath are allowable as reasonable and necessary advertising expenses to conduct bingo.

You characterize the expenditures for the first four expense categories as in-house promotions that are the key ingredients of an advertising program. You send direct mailing cards to prospective players notifying them of in-house promotions. You also state that the sympathy wreath and mobile phones should be allowable as expenditures for good will and providing a secure environment for patrons.

ANSWER:

Texas Occupations Code §2001.458 provides

(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:

(1) advertising, including the cost of printing bingo gift certificates;

Disbursements of bingo funds for meals, beverages, bingo prizes, coffeemaker repairs, mobile phones, and a sympathy wreath as described in your request for an advisory opinion are not reasonable or necessary to conduct bingo as advertising expense. Although the Bingo Enabling Act does not provide a definition of “advertising”, review of the Act indicates that such expenditures are not advertising expenses.

In Texas Occupations Code §2001.458 quoted above, inclusion of the “cost of printing bingo gift certificates” as an advertising expense implies that “advertising,” as envisioned in the Act, is a promotion through use of media. Notably, the section does not include as an advertising expense the value or cost of the product or service for which the gift certificate may be redeemed. Likewise, Texas Occupations Code §2001.415 distinguishes between an advertisement and the product or item that is the subject of the advertisement. It states that

(b) A licensed authorized organization, licensed commercial lessor, or the commission may include in an advertisement or promotion the amount of a prize or series of prizes offered at a bingo occasion.

Clearly, the prize itself is distinguished from the advertisement of the prize. Similarly, the expense items about which you inquire are not advertising, but rather they may be the subject or result of advertising. On the other hand, the cost of direct mail encouraging prospective players to attend a bingo occasion could be considered advertising expense. Accepting your rationale would arguably lead to the result that any type of expense would be characterized as advertising expense because it would be done to attract players. This is not a reasonable interpretation of the Act.

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## **SUMMARY**

Use of bingo funds for meals, beverages, bingo prizes, coffeemaker repairs, mobile phones, and a sympathy wreath are not allowable as reasonable and necessary advertising expenses to conduct 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  
Jim Cox, Jr., Commissioner  
Rolando Olvera, Commissioner  
Kimberly L. Kiplin, General Counsel  
Sandra Joseph, Assistant General Counsel  
Marshall McDade, Audit Manager