

BAO 2004-0604-00017	Date Issued: 07/12/2004	View Request RO 2004-0604-00017
Summary:	If a fraternal organization can prove that the distribution of money to another fraternal organization or auxiliary is directed to a cause, deed or activity that is consistent with the federal tax exemption of the donating organization obtained under 26 U.S.C. Section 501, then that use of funds may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo.	

**CERTIFIED MAIL NO. 7001 2510 0002 0891 7685
RETURN RECEIPT REQUESTED**

BAO # 2004-0607-00017

July 12, 2004

Leon J. Brandt
826 Strange Drive
Richmond, Texas 77469-3933

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

Dear Mr. Brandt:

On June 7, 2004, the Texas Lottery Commission (the "Commission") received your letter requesting an advisory opinion related to the charitable use of funds derived from bingo. Accordingly, I have enclosed a copy of Texas Occupations Code, Section 2001.454 and Charitable Bingo Administrative Rule 16 TAC 402.598, both of which relate to the charitable use of bingo proceeds.

The following is a restatement of the questions posed in your letter followed by the Commission's response.

During my most recent school attendance, I posed a question to the instructor and he referred me to the board for an opinion or advisement. The question is: Can one fraternal organization, ie. Veterans of Foreign Wars give to another such as the American Legion as a charitable contribution from the Bingo proceeds? Also can one organization such as the VFW give a charitable contribution to the Ladies Auxiliary of the same post? We do not practice this procedure, but your enlightenment by an answer will be greatly appreciated. The question was posed as some veteran's organizations are in need of extra finances for various needs.

One other point is that we were informed of a self teaching class on video tape for each post to show as a training school instead of traveling to other locations. Is this a reality as yet or when?

The section of the Act relating to the distribution of charitable proceeds was recently amended during the 78th Legislature, Regular Session (effective September 1, 2003). Texas Occupations Code, Section 2001.454 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 2001.102. 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 2001.102.

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 fraternal organization can prove that the distribution of money to another fraternal organization or auxiliary is 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 that use of funds 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.

Subsequent to the amendment of Texas Occupations Code, Section 2001.454, the Commission promulgated a new rule relating to the charitable use of proceeds derived from the conduct of bingo. 16 TAC 402.598 was adopted by the Commission on May 27, 2004 and became effective on June 16, 2004. The new rule describes the type of information an organization must maintain to identify its charitable purpose and to substantiate its charitable distributions. In addition, subsection (e) of the rule provides in pertinent part:

- (e) A use of net proceeds, which would not be considered as a cause, deed, or activity dedicated to the charitable purposes of the organization and not 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, are any use of proceeds which:
 - (1) inures to the benefit of any private shareholder, individual, officers, governing body or member other than as reasonable compensation for services rendered;
 - (2) has no documentation to substantiate the use of net proceeds; or
 - (3) does not further the organization's cause, deed or activity consistent with the federal

tax exempt application or other written purposes furnished to the commission that are consistent with the organization's tax exemption.

Thus, if the distribution of bingo proceeds by one fraternal organization to another fraternal organization or auxiliary inured to the benefit of an individual listed in subsection (e)(1), if the organization was unable to maintain records to substantiate the use of proceeds, or if the distribution did not further the organization's cause, deed or activity consistent with its tax exempt purpose, then the distribution would not be an allowable charitable distribution of proceeds derived from the conduct of bingo.

Even if a fraternal organization could prove that the distribution of bingo proceeds to another fraternal organization or auxiliary was an authorized charitable distribution, there are statutory limitations on how those funds may be used. Texas Occupations Code, Section 2001.455 provides:

A person given bingo proceeds for a charitable purpose may not use the donation:

- (1) to pay for services rendered or materials purchased in connection with the conduct of bingo by the donor organization; or
- (2) for a purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.

With regard to your request concerning the operator training video tape, it has not been completed. You may want to check on the progress and availability of the video tape by contacting the Charitable Bingo Operations Division at 1-800-246-4677.

SUMMARY

If a fraternal organization can prove that the distribution of money to another fraternal organization or auxiliary is directed to a cause, deed or activity that is consistent with the federal tax exemption of the donating organization obtained under 26 U.S.C. Section 501, then that use of funds may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo.

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:

1. may not distribute any of its income to its members, officers, or governing body, other than a reasonable compensation for services; and
1. must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.