

BAO 2004-0719-00027	Date Issued: 09/24/2004	View Request RO 2004-0719-00027
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Summary:	Because the Post donates use of the auditorium to various organizations at no charge, the Post may not reimburse itself for the rental fees. In regard to making a charitable distribution for clean-up charges, consistent with 16 TAC 402.598(e)(2), the Post could make a distribution for reimbursement of the actual cleaning charges the Post incurred resulting from charitable use of the auditorium. The expense for replacing the air conditioning system may not be paid with bingo account funds as a reasonable and necessary expense because it is not in connection with the conduct of bingo. However, bingo funds could be used for part of the expense of replacing the air conditioner based on the use of the auditorium for charitable purposes. The portions of the liability and worker compensation insurance costs incurred in connection with the conduct of bingo may be reasonable and necessary expenses that may be paid from the general account and reimbursed from the bingo account.
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FIRST CLASS UNITED STATES MAIL
and
CERTIFIED MAIL NO. 7001 2510 0001 4202 6856
RETURN RECEIPT REQUESTED

BAO # 2004-0719-0027

September 24, 2004

Mr. Larry Gist
Mr. George Price
The American Legion Earl S. Bailey Post No. 430
P. O. Box 1109
Odessa, Texas 79760

Re: Request for Advisory Opinion Related to the Use of Bingo Funds

Dear Mr. Gist and Mr. Price:

On July 26, 2004, the Texas Lottery Commission (the "Commission") received your letter requesting an advisory opinion related to the use of bingo funds. Below are your questions followed by the Commission's response.

1. The Post has an auditorium, which we donate and rent for various occasions. The American Red Cross also designates it as an emergency shelter. The Post allows the use of this facility to various organizations (Humane Society, American Cancer Society,

Red

Cross, Boy and Girl Scouts, High School ROTC's, etc.) at no cost. The auditorium is

rented to the general public for a fee of \$700.00 per occasion plus a clean up charge.

Can a charitable distribution be made from the Bingo Account to the Post in the amount

of the general rental fee of \$700.00 per occasion plus clean up charge?

2. We are presently in the process of replacing the air conditioning system in the auditorium. Since it is used by the above organizations, can we use Bingo Account funds

for part of this expense? We do not play Bingo at this location.

3. The Post pays liability and Workers Compensation Insurance for Bingo. Can the Post

be reimbursed from the 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 Commission's response focuses on whether the proposed uses of bingo funds are necessary and reasonable expenses incurred and paid in connection with the conduct of bingo or whether they qualify as disbursements for charitable purposes.

Your first question relating to charitable contributions has two parts. Texas Occupations Code, §2001.454 states 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 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 Post can prove that the distribution of money from its bingo account to the Post account 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.

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. Commission rule 16 TAC §402.598 relating to the charitable use of proceeds derived from the conduct of bingo 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:

(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 from the Post's bingo account to another Post account 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 authorized.

Based on the facts presented in your first question, it does not appear that the Post can substantiate that the reimbursement for a rental fee of \$700.00 per occasion would be a charitable contribution. Because the Post donates use of the auditorium to various organizations at no charge, the Post can not reimburse itself for the rental fees.

In regard to making a charitable distribution for clean-up charges, consistent with 16 TAC §402.598(e)(2), the Post could make a distribution for reimbursement of the actual cleaning charges the Post incurred resulting from charitable use of the auditorium.

In response to your second question about using bingo funds for part of the expense of replacing the air conditioning system in the auditorium, you may not use bingo account

funds for part of the expense. Texas Occupations Code §2001.458(a) provides the following in pertinent part:

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. . .

Because the expense is not in connection with the conduct of bingo, it could not be considered as a reasonable and necessary expense consistent with Texas Occupations Code §2001.458(a). However, in accordance with Texas Occupations Code §2001.453(a)(2) set forth below, bingo funds could be used for part of this expense based on the use of the auditorium for charitable purposes.

Sec. 2001.453. AUTHORIZED USES OF BINGO ACCOUNT.

(a) A licensed authorized organization may draw a check on its bingo account only for:

. . .

(2) the disbursement of net proceeds derived from the conduct of bingo to charitable purposes; . . .

Your third question relates to whether the Post may be reimbursed from the bingo account to pay liability and workers compensation insurance for bingo. Texas Occupations Code §2001.458(a) (6) provides as follows:

(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

. . .

(6) stated rental or mortgage and insurance expenses; . . .

The portions of the liability and worker compensation insurance costs incurred in connection with the conduct of bingo may be reasonable and necessary expenses. However, whether such expenses are, in fact, reasonable and necessary is a fact issue that must be determined based on specific facts as such facts are presented.

Texas Occupations Code §2001.459 provides the following:

(a) The following items of expense incurred or paid in connection with the conduct of bingo

must be paid from an organization's bingo account:

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security during a bingo occasion;
- (3) the purchase or repair of bingo supplies and equipment;
- (4) prizes, other than authorized cash prizes;
- (5) stated rental expenses;
- (6) bookkeeping, legal, or accounting services;
- (7) fees for callers, cashiers, and ushers;
- (8) janitorial services;
- (9) license fees; and
- (10) payment for services provided by a system service provider.

(b) Payment for a service under Subsection (a)(10) may be paid from an organization's gross receipts.

Because liability and worker compensation insurance costs incurred in connection with the conduct of bingo are not identified on the above list in Texas Occupations Code §2001.459, it appears that these costs may be paid from the general account and reimbursed from the bingo account. If the Post chooses to reimburse these expenses from its bingo account, the reimbursement will be a bingo expense rather than a charitable distribution. All bingo expenses must be substantiated. The better practice may be for the Post to write individual checks to separate the costs related to the conduct of bingo from expenses for other functions.

SUMMARY

Because the Post donates use of the auditorium to various organizations at no charge, the Post may not reimburse itself for the rental fees. In regard to making a charitable distribution for clean-up charges, consistent with 16 TAC 402.598(e)(2), the Post could make a distribution for reimbursement of the actual cleaning charges the Post incurred resulting from charitable use of the auditorium. The expense for replacing the air conditioning system may not be paid with bingo account funds as a reasonable and necessary expense because it is not in connection with the conduct of bingo. However, bingo funds could be used for part of the expense of replacing the air conditioner based on the use of the auditorium for charitable purposes. The portions of the liability and worker compensation insurance costs incurred in connection with the conduct of bingo may be reasonable and necessary expenses that may be paid from the general account and reimbursed from the bingo account.

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, Senior Audit Manager

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