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| BAO 2005-0601-0048 | Date Issued: 08/08/2005 | View Request RQ 2005-0601-0048 |
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| Summary: | Neither the Bingo Enabling Act (Tex. Occ. Code Chapter 2001) nor the Charitable Bingo Administrative Rules (16 TAC Chapter 402) permits a licensed bingo conductor to give bingo players a thank-you card with a gift certificate enclosed for the purpose of advertising. An advertisement about a particular bingo occasion is not required to include the tax identification number of the licensed authorized organization. |
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CERTIFIED MAIL NO. 7001 2510 0001 4202 4173

August 8, 2005

BAO # 2005-0601-0048

Jerry Howard
P.O. Box 936
China, TX 77613

Re: Bingo Activities

Dear Mr. Howard:

On June 1, 2005, the Texas Lottery Commission (Commission) received your request for a bingo advisory opinion. In response to a request from this office, you provided additional information on June 8, 2005. Below are your questions followed by the Commission's responses.

Your request sets out two questions:

#1: Would it be legal to hand a "thank you" card out to all the bingo players with a \$1 certificate inside as appreciation, with the specification that the certificate could only be used to purchase a tear sheet or concession stand item?

#2: We are having a special bingo night with one of our temporary licenses. We would like to place an article in the paper regarding this. The licensee has asked and was told as long as all the information from the license was included in the article. Does that mean I have to include our tax payer number in the ad?

ANSWERS:

Your first question is about the provision of thank-you cards that include gift certificates for concessions. In response to a request from this office for additional information, you

stated that you would personally provide the cards and that “the \$1 appreciation gifts can come from the bar.”

Only a licensed authorized organization, licensed commercial lessor, or the Texas Lottery Commission may advertise bingo. Tex. Occupations Code § 2001.415. One way in which a licensed authorized organization may advertise bingo is by paying to have gift certificates printed. Id. § 2001.458. See 16 T.A.C. § 402.503 (rules regarding bingo gift certificates). A licensed authorized organization may not, however, advertise bingo by paying the underlying costs of a gift certificate. BAO # 2004-0602-015 (2004).

In response to our questions, you indicate that “the bar” would be covering the underlying costs of the gift certificates. You do not, however, identify whether the bar is operated by the licensed authorized organization, a commercial lessor, or a third party.

If the bar is operated by the licensed authorized organization, the bar may not cover the underlying costs of the gift certificates if the purpose is to advertise bingo. Consistent with BAO # 2004-0602-015, a licensed authorized organization may not advertise bingo by paying the underlying costs of gift certificates. However, there is no such prohibition for commercial lessors, regardless whether the purpose of doing so is to advertise bingo.

Further, since the Bingo Enabling Act only permits licensed authorized organizations, commercial lessors and the Commission to advertise bingo, a third party may not pay the underlying costs of the gift certificates if the purpose of doing so is to advertise bingo.

Your second question is whether you must include the tax identification number of the licensed authorized organization in an advertisement about a particular bingo occasion. There is nothing in the applicable statute or rules that requires the inclusion of the tax identification number of the licensed authorized organization in an advertisement about a particular bingo occasion. See 16 T.A.C. § 402.200(a) (advertising of a bingo occasion must identify conductor by name).

SUMMARY

Neither the Bingo Enabling Act (Tex. Occ. Code Chapter 2001) nor the Charitable Bingo Administrative Rules (16 TAC Chapter 402) permits a licensed bingo conductor to give bingo players a thank-you card with a gift certificate enclosed for the purpose of advertising. An advertisement about a particular bingo occasion is not required to include the tax identification number of the licensed authorized organization.

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