

BAO 2005-0616-0049	Date Issued: 08/15/2005	View Request RQ 2005-0616-0049
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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) prohibit a licensed commercial lessor from leasing commercial space from a landlord. However a licensed commercial lessor may not conduct bingo unless it is also licensed as an authorized organization. Tex. Occ. Code §2001.161. A licensed authorized organization that is a licensed commercial lessor may lease to other authorized organizations for the conduct of bingo. Tex. Occ. Code § 2001.152. Rent for lease of premises for the conduct of bingo may not be paid to an unlicensed organization even though it has the same ownership as a licensed commercial lessor.
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BAO # 2005-0616-0049

August 15, 2005

J. Michael Black
1177 W. Loop S.
Suite 700
Houston, Texas 77027

Re: Commercial Lessor Leasing

Dear Mr. Black:

On June 16, 2005, the Texas Lottery Commission (Commission) received your advisory opinion request.^[1] Below is your question followed by the Commission's answer.

If I own (a) a Commercial Lessor (Company A), and (b) another company, that is not licensed to conduct Bingo or to do anything related to Bingo, (Company B), can I lease commercial space from a landlord under the name of Company A, for the purpose of conducting Bingo and operating a game room, and then sub-lease the space I leased from the landlord to Company A, so Company A can (a) lease to various licensed authorized organizations and (b) pay rent to Company B, my other company?

ANSWER:

For ease of discussion, we are addressing your question in three parts.

1. Can Company A, a commercial lessor, lease commercial space from a landlord for the purpose of conducting Bingo?

2. Can Company A sub-lease to various licensed authorized organizations?
3. Can licensed authorized organizations pay rent to Company B, an unlicensed company under the same ownership as Company A?

1. Neither the Bingo Enabling Act, Tex. Occ. Code 2001, (BEA) nor Charitable Bingo Administrative Rules (16 TAC Chapter 402) prohibit a licensed commercial lessor from leasing commercial space from a landlord. However a licensed commercial lessor may not conduct bingo unless it is also licensed as an authorized organization. Tex. Occ. Code §2001.161 provides

- (a) An authorized organization that holds a commercial lessor license to lease a premises on which bingo is conducted must hold a license to conduct bingo at the same premises.
- (b) A licensed authorized organization may obtain only one commercial lessor license.
- (c) The commission may issue a commercial lessor license to a licensed authorized organization only for the same premises where the organization is licensed to conduct bingo.

2. Can Company A sub-lease to various licensed authorized organizations?

A licensed commercial lessor may lease to a licensed authorized organization. Tex. Occ. Code § 2001.151 provides

A person who leases premises on which bingo is conducted directly to a licensed authorized organization must be a licensed commercial lessor.

Further, a licensed authorized organization that is a licensed commercial lessor may lease to other authorized organizations for the conduct of bingo. Tex. Occ. Code § 2001.152 provides

- (a) The commission may issue a commercial lessor license only to:
 - (1) a licensed authorized organization that . . . leases a premises where bingo is or will be conducted . . . and that the organization . . . leases or offers for lease to one or more other authorized organizations for the conduct of bingo;

. . .

3. Can licensed authorized organizations pay rent to Company B, an unlicensed company under the same ownership as Company A?

Rent for lease of premises for the conduct of bingo must be paid to a licensed commercial lessor. Tex. Occ. Code § 2001.401 provides

A person may not, for direct or indirect consideration, lease or otherwise make a premises available for conducting bingo unless the person is:

- (1) a licensed commercial lessor; or
- (2) a person who leases or otherwise makes available premises to an organization that has been issued a temporary license.
(emphasis added)

Moreover, Tex. Occ. Code § 2001.501 provides

- (a) A tax is imposed on the rental of premises for the conduct of bingo under this chapter.
- (b) The tax rate is three percent of the gross rentals received by a licensed commercial lessor or other licensed authorized organization for the rental of premises on which bingo is conducted.
(emphasis added)

Finally, Tex. Occ. Code § 2001.504 provides

- (a) A tax . . . imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission

Thus, a licensed commercial lessor or an authorized organization is responsible for paying rental tax. Therefore, the Bingo Enabling Act clearly implies that rental expenses must be paid to a license holder. This requirement is necessary to prevent circumvention of the payment of rental tax.

Read as a whole, the clear intent of the Bingo Enabling Act is that an authorized organization will pay rent to a licensed commercial lessor. Tex. Occ. Code § 2001.406 provides the following additional requirements related to rent:

- (a) The rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo may not exceed \$600 for each bingo occasion conducted on the lessor's premises unless the organization subleases the premises to one or more other licensed authorized organizations to conduct bingo, in which event the rent charged by the licensed commercial lessor may not exceed \$600 for each day.
- (b) Rent for premises used for the conduct of bingo must be paid in a lump sum. The lump sum must include all expenses authorized by Section 2001.458 that are paid by the licensed authorized organization to the lessor in connection with the use of the premises.
. . .

SUMMARY

Neither the Bingo Enabling Act (Tex. Occ. Code Chapter 2001) nor the Charitable Bingo Administrative Rules (16 TAC Chapter 402) prohibit a licensed commercial lessor from leasing commercial space from a landlord. However a licensed commercial lessor may

not conduct bingo unless it is also licensed as an authorized organization. Tex. Occ. Code §2001.161. A licensed authorized organization that is a licensed commercial lessor may lease to other authorized organizations for the conduct of bingo. Tex. Occ. Code § 2001.152. Rent for lease of premises for the conduct of bingo may not be paid to an unlicensed organization even though it has the same ownership as a licensed commercial lessor.

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

[\[1\]](#) This opinion addresses the question your request presented rather than the fact scenario that appears inconsistent with the question. In addition, this response assumes that the commercial lessor (Company A) in your question has been licensed by the Texas Lottery Commission. Furthermore, your question includes reference to “operating a game room.” The Commission has no jurisdiction over operation of a game room and this opinion does not address that aspect of your question.