

|                    |                         |  |
|--------------------|-------------------------|--|
| BAO 2005-1222-0038 | Date Issued: 02/18/2005 | View Request <a href="#">RQ 2005-1222-0038</a> |
|--------------------|-------------------------|--|

|          |   |
|----------|---|
| Summary: | While meeting the requirement of Section 2001.452(a), a notation of "payroll" may or may not be sufficient to meet the burden of showing that an expense is reasonable and necessary under Section 2001.458(a) or the requirement of Section 2001.505 to maintain records to substantiate the contents of a quarterly report giving a detailed description of expenditures. |
|----------|---|

CERTIFIED MAIL NO. 7001 2510 001 4202 4470  
RETURN RECEIPT REQUESTED

BAO # 2005-1222-0038

February 18, 2005

Ms. Patricia Greenfield  
Greenfield Bingo Services  
220 Rob Lane  
Hudson Oaks, Texas 78087

Re: Records of Bingo Expenditures

Dear Ms. Greenfield:

On December 22, 2004, the Texas Lottery Commission (the "Commission") received your e-mail requesting an advisory opinion related to records of bingo expenditures. Below is your question followed by the Commission's response.

I am requesting an advisory opinion concerning Section 2001.452 (a) of the Bingo Enabling Act. It states that "A check or withdrawal slip may not be made payable to "cash," "bearer," or a fictitious payee. The nature of payment made must also be noted on the face of the check or withdrawal slip.

Please advise me if writing "payroll" is sufficient for an explanation of the nature of payment for a payroll check. And if it is not, please explain why.

**ANSWER:**

Tex. Occ. Code Section 2001.452(a) provides:

. . . The nature of the payment made must also be noted on the face of the check or withdrawal slip.

The issue is whether the notation "payroll" satisfies the requirement of providing the

“nature of the payment.” In the context of Section 2001.452(a), “nature” may be defined as “. . . the inherent character or basic constitution of a . . . thing: essence.”<sup>[1]</sup>

A notation of “payroll” does provide the essence of a payment. To determine whether the notation of “payroll” is sufficient, the purpose of the requirement in section 2001.452(a) must be considered as well as the availability and content of other records. Additional statutory and rule provisions provide guidance.

Tex. Occ. Code Section 2001.453 provides

- (a) A licensed authorized organization may draw a check on its bingo account only for:
  - (1) the payment of necessary and reasonable bona fide expenses, including compensation of personnel, as permitted under Section 2001.458 incurred and paid in connection with the conduct of bingo;

Tex. Occ. Code Section 2001.458(a) limits the items of expense that may be incurred or paid in connection with the conduct of bingo to:

. . . an expense that is reasonable or necessary to conduct bingo, including an expense for:

- ...
- (2) security
- (3) repairs to premises and equipment
- ...
- (7) bookkeeping, legal, or accounting services related to bingo;
- (8) fees for callers, cashiers, ushers, janitorial services . . .

Tex. Occ. Code Section 2001.505 provides:

- (a) A licensed authorized organization conducting bingo shall submit quarterly to the commission and to the comptroller a report under oath stating:
  - ...
  - (3) each item of expenditure made or to be made, the name and address of each person to whom each item has been paid or is to be paid, and a detailed description of the merchandise purchased or the services rendered;
  - ...
- (b) A license holder shall:
  - (1) maintain records to substantiate the contents of each report;
  - ...

In addition, Commission rule 16 TAC 402.590(d) provides that a licensee must provide records pertaining to expenditures in sufficient detail to substantiate compliance with Tex. Occ. Code, Chapter 2001 (Bingo Enabling Act). The rule describes the type of information an organization must maintain to identify its charitable purpose and to substantiate its charitable distributions.

...  
Section 2001.051(b) of the BEA provides a general statement of authority and purpose for the Commission. It states:

The commission has broad authority and shall exercise strict control and close supervision over all bingo conducted in this state so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose.

Thus, it is clear that the Commission must look closely at all activities related to the conduct of bingo and use of bingo proceeds. While meeting the requirement of Section 2001.452(a), a notation of “payroll” may or may not be sufficient to meet the burden of showing that an expense is reasonable and necessary under Section 2001.458(a) or the requirement of Section 2001.505 to maintain records to substantiate the contents of a quarterly report giving a detailed description of expenditures. “Payroll” does not describe job responsibilities or whether a specific salary is a reasonable and necessary expense.

---

### **SUMMARY**

While meeting the requirement of Section 2001.452(a), a notation of “payroll” may or may not be sufficient to meet the burden of showing that an expense is reasonable and necessary under Section 2001.458(a) or the requirement of Section 2001.505 to maintain records to substantiate the contents of a quarterly report giving a detailed description of expenditures.

---

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

---

<sup>[1]</sup> Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> ed., Merriam-Webster, Inc., 1993.