

BAO 2006-0113-0007	Date Issued: 03/10/2006	View Request RQ 2006-0113-0007
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Summary:	Issuance of a license to a group is permissible under the Bingo Enabling Act and Charitable Bingo Administrative Rules. Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules provides licensing requirements for a group that are different from the licensing requirements for any other person. Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules directly specifies whether or not the members of a group must be under the same ownership and control.
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CERTIFIED MAIL NO. 7001 2510 0001 4202 4555

BAO # 2006-0113-0007

March 10, 2006

Stephen Hieronymus
Trend Gaming Systems, LLC
8868 Research Blvd., Suite 500
Austin, Texas 78758

Re: Bingo License

Dear Mr. Hieronymus:

This advisory opinion responds to your request which was received by the Texas Lottery Commission (Commission) on January 13, 2006. Below are your questions followed by the Commission's answer.

1. Does Section 2001.002(20) provide for a separate category of licensing, specifically a group license?
2. If so, do all the various entities contained in or part of the licensed group have to be under the same ownership and control?

ANSWER:

Tex. Occ. Code §§ 2001.201 and 2001.206 require manufacturers and distributors to be licensed. In addition, Tex. Occ. Code §§ 2001.002(9) and (16) provide that "distributor" and "manufacturer" mean a "person." Furthermore, Tex. Occ. Code § 2001.002(20) defines "person" as "an individual, partnership, corporation, **or other group.**" (Emphasis added). In accordance with these statutory provisions, a manufacturer or distributor may be a group other than a partnership or corporation.^[1] Thus, although there is not a separate category of licensing for groups, a group other than a partnership or corporation is a type of person that may be licensed.

The Code Construction Act, Tex. Gov't Code § 311, provides
§ 311.011. COMMON AND TECHNICAL USAGE OF WORDS.

- (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.
- (b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules defines “group.” Because the term has not been specifically defined by the legislature or the agency, it is appropriate to refer to the common meaning of the term. The common definition of “group” is broad. “Group” has been defined to include “any number of entities (members) considered as a unit.” wordnet.princeton.edu/perl/webwn; www.wordreference.com/definition/group. There is no limiting language in the BEA’s definition of “person” to suggest that “group” is to be defined more narrowly. In comparison, the definition of “person” in the Code Construction Act may be more limited. ^[2]

The Commission has utilized a broad definition of “group” since 1995 when it processed the first two applications for licenses from groups other than partnerships or corporations. At that time the BEA defined “person” as “an individual, partnership, corporation, or other group, **however organized.**” (Emphasis added). In 1999 the 76th Legislature recodified numerous licensing statutes including the BEA. Although the words “however organized” were omitted from the definition of “person” in the recodification, the recodification was not intended to make substantive changes. ^[3] Furthermore, the omission of the words did not appear to alter the meaning of the statute. A broad definition of “group” is not inconsistent with the recodified statute. Therefore, the Commission has continued to use the same definition of group. ^[4]

Courts give serious consideration to an agency’s interpretation of a statute as long as the construction is reasonable and does not contradict the plain language of the statute. *Tarrant Appraisal Dist. v. Moore*, 845 S.W.2d 820, 823 (Tex. 1993) (quoting *Standford v. Butler*, 181 S.W.2d 269, 273 (Tex. 1944)).

The Commission’s “Instructions for Texas Application for a License to Manufacture Bingo Supplies, Devices and Equipment” (Form # B-AP-122-I) Item 3 provides that “[a] group license is defined as two or more separate legal entities that operate in alliance to manufacture bingo supplies, devices, or equipment.”

Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules directly address whether or not the members of a group must be under common ownership and control. Previous applications submitted by groups and approved for a manufacturer’s license have reflected some form or degree of common ownership, common officers, shareholders and/or management oversight. The Charitable Bingo Operations Division reviews license applications submitted by groups on a case-by-case basis to determine whether the group complies with licensing requirements. ^[5]

SUMMARY

Issuance of a license to a group is permissible under the Bingo Enabling Act and Charitable Bingo Administrative Rules. Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules provides licensing requirements for a group that are different from the licensing requirements for any other person. Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules directly specifies whether or not the members of a group must be under the same ownership and control.

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
Kimberly L. Kiplin, General Counsel

^[1] To date, no group has submitted an application for a distributor license.

^[2] Tex. Gov't Code § 311.005(2).

Tex. Gov't Code § 311.005.

GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(2) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other **legal entity**. (Emphasis added). "Person" includes corporation, organization,

government

or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

[3] Act effective September 1, 1999, 76th Leg., R.S., ch. 388, 1999 Tex. Gen. Laws 1431.

[4] Texas Ethics Commission, Campaign Finance Guide for Political Committees, p. 1 provides an example of another agency that has read “group” to include casual associations. It states

A political committee, commonly referred to as a “PAC,” is “a group of persons that has as a principal purpose accepting political contributions or making political expenditures.” Simply stated, a political committee is a group of two or more people that accepts political contributions and/or makes political expenditures. A political committee may be a large group such as an organization that collects money to support many different candidates. A political committee may also be a small group such as two people who get together to raise funds for an old friend who is a candidate for a local office.

[5] For example, background investigations are conducted on the individual group members’ officers, directors, and owners (with a greater than 10% interest) to determine eligibility for a manufacturer’s license in accordance with Tex. Occ. Code § 2001.202.