

BAO 2006-0403-0012	Date Issued: 06/01/2006	View Request RQ 2006-0403-0012
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Summary:	An organization may use bingo funds to help an employee in need who is not a member pay for medical bills if the organization can prove that those costs are directed to a cause, deed or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. § 501 and are consistent with the Texas Occupations Code § 2001.002 definition of non-profit organization. Whether the organization donates to the non-member employee directly or pays the non-member employee's doctor or hospital on behalf of the employee, the organization must maintain records necessary to substantiate that the use of funds was for charitable purposes consistent with the federal tax exemption of the organization, Tex. Occ. Code § 2001.002, and Charitable Bingo Administrative Rule 402.502. The organization may not use bingo funds to help an employee in need pay for medical bills if the employee is a member of the organization.
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CERTIFIED MAIL NO. 7001 2510 0001 4202 4609

BAO # 2006-0403-0012

June 2, 2006

Patricia Greenfield
Greenfield Bingo Services
P.O. Box 2065
Weatherford, TX 76086

Re: Use of Bingo Funds

Dear Ms. Greenfield:

This advisory opinion responds to your request which was received by the Texas Lottery Commission (Commission) on April 3, 2006. Below is your request, followed by the Commission's response.

If part of an organization's charitable purpose is to help deserving citizens and the organization's members in need, can an organization use their charitable distributions to help an employee in need pay for medical bills? Does it matter if they donate to the employee directly or write a check directly to the doctor/hospital? If this employee is a member of the organization can they make a charitable distribution to her/him or on her/his behalf?

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. The issue presented by this request is whether the proposed uses of bingo funds would qualify as disbursements for charitable purposes.

Texas Occupations Code § 2001.454 provides:

(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 and under which the organization qualifies as a nonprofit organization as defined by Texas Occupations Code § 2001.002. Section 2001.002(19) provides as follows:

'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:

(A) may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services; and

(B) must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.

Texas Occupations Code § 2001.455 states:

A person given bingo proceeds for a charitable purpose may not use the donation:

...

(2) for a purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.

Charitable Bingo Administrative Rule 16 TAC § 402.502 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 in pertinent part:

(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 of bingo proceeds was for the benefit of an individual listed in subsection (e)(1), if the organization did not 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 an allowable charitable distribution of proceeds derived from the conduct of bingo.

Therefore, an organization may use bingo funds to help an employee in need who is not a member pay for medical bills if the organization can prove that those costs are directed to a cause, deed or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. § 501 and are consistent with the Texas Occupations Code § 2001.002 definition of non-profit organization. Whether the organization donates to the non-member employee directly or pays the non-member employee's doctor or hospital on behalf of the employee, the organization must maintain records necessary to substantiate that the use of funds was for charitable purposes consistent with the federal tax exemption of the organization, Tex. Occ. Code § 2001.002, and Charitable Bingo Administrative Rule 402.502.

To meet the § 2001.002 definition of non-profit organization, the organization may not distribute income to its own members except for reasonable compensation for services. Furthermore, Charitable Bingo Administrative Rule 402.502 provides that a use of net proceeds for the benefit of any member except as reasonable compensation for services rendered would not be considered as dedicated to the charitable purposes of the organization. Therefore, the organization may not use bingo funds to help an employee in need pay for medical bills if the employee is a member of the organization.

SUMMARY

An organization may use bingo funds to help an employee in need who is not a member pay for medical bills if the organization can prove that those costs are directed to a cause, deed or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. § 501 and are consistent with the Texas Occupations Code § 2001.002 definition of non-profit organization. Whether the organization donates to the non-member employee directly or pays the non-member employee's doctor or hospital on behalf of the employee, the organization must maintain records necessary to substantiate that the use of funds was for charitable purposes consistent with the federal tax exemption of the organization, Tex. Occ. Code § 2001.002, and Charitable Bingo Administrative Rule 402.502. The organization may not use bingo funds to help an employee in need pay for medical bills if the employee is a member of the 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
Kimberly L. Kiplin, General Counsel