

BAO 2006-0421-0020	Date Issued: 06/23/2006	View Request RQ 2006-0421-0020
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Summary:	Consistent with Tex. Occ. Code §2001.458(a)(6), an organization may use funds derived from the conduct of bingo to make loan payments as items of expense for a facility in which bingo is conducted so long as the costs are reasonable and necessary to the conduct of bingo and the costs are paid out of the bingo account. If the facility is not used to conduct bingo, then an organization may not claim that the loan payments are reasonable and necessary costs to conduct bingo. If the facility is used to conduct bingo and non-bingo activities, then it would be necessary to separate the loan costs related to the conduct of bingo from the loan expenses related to the non-bingo activities. In addition, consistent with Tex. Occ. Code §2001.454, if the organization can prove that the loan costs associated with non-bingo activities are 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 with the Tex. Occ. Code § 2001.002 definition of non-profit organization, then those costs may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo.
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BAO # 2006-0421-0020

June 23, 2006

Al Cervantes, Project Chairman
San Felipe Lions Club
P.O. Box 281
Del Rio, TX 78840

Re: Use of Bingo Proceeds

Dear Mr. Cervantes:

This advisory opinion responds to your request which was received by the Texas Lottery Commission (Commission) on April 21, 2006. You requested an opinion about whether the San Felipe Lions Club may use bingo proceeds to pay off a loan acquired to build a new facility.

ANSWER:

Tex. Occ. Code §2001.453(a) provides that an organization may withdraw funds from the bingo account only for payment of necessary and reasonable expenses incurred and paid in connection with the conduct of bingo, charitable purposes, or deposit into a bingo savings account. If the organization designates funds to pay for reasonable and necessary expenses related to the conduct of bingo pursuant to Tex. Occ. Code §2001.458, then payment should be made out of the organization's bingo account.

Tex. Occ. Code §2001.458(a)(6) provides in pertinent part:

(a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

...

(6) stated rental or mortgage and insurance expenses.

If the facility identified in your letter is used to conduct licensed bingo occasions, then your organization may choose to make loan payments out of its bingo account. If the facility is not used to conduct licensed bingo occasions, then your organization may not claim that the loan payments are reasonable and necessary costs to conduct bingo. Thus, those costs would not be allowable as an item of expense under Tex. Occ.

Code, §2001.458. If the facility is used to conduct licensed bingo and non-bingo activities, then it would be necessary to separate the loan costs related to the conduct of bingo from the loan expenses related to the non-bingo activities. In addition, the organization must maintain records necessary to substantiate the loan payment items of expense related to the conduct of bingo.

It may be possible that the loan costs related to non-bingo activities may be paid with funds derived from bingo. Tex. Occ. 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 with the Tex. Occ. Code § 2001.002 definition of non-profit organization. If the organization can prove that the loan costs associated with non-bingo activities are 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 with the Tex. Occ. Code § 2001.002 definition of non-profit organization, then those costs may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo. The organization must maintain records necessary to substantiate that the use of funds is directed to a cause, deed or activity that is consistent with the federal tax exemption of the organization and with the Tex. Occ. Code § 2001.002 definition of non-profit organization.

SUMMARY

Consistent with Tex. Occ. Code §2001.458(a)(6), an organization may use funds derived from the conduct of bingo to make loan payments as items of expense for a facility in which bingo is conducted so long as the costs are reasonable and necessary to the conduct of bingo and the costs are paid out of the bingo account. If the facility is not used to conduct bingo, then an organization may not claim that the loan payments are reasonable and necessary costs to conduct bingo. If the facility is used to conduct bingo and non-bingo activities, then it would be necessary to separate the loan costs related to the conduct of bingo from the loan expenses related to the non-bingo activities. In addition, consistent with Tex. Occ. Code §2001.454, if the organization can prove that the loan costs associated with non-bingo activities are 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 with the Tex. Occ. Code § 2001.002 definition of non-profit organization, then those costs may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo.

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

