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RETURN RECEIPT REQUESTED

BAO # 2007-0921-0001

November 28, 2006

Mr. Din Dillingham
Elks Lodge #1480
Box 352
Breckenridge, TX 76424

Re: Use of Bingo Funds

Dear Mr. Dillingham:

This advisory opinion responds to your request, which was received by the Texas Lottery Commission (Commission) on September 21, 2006. Below is your request, followed by the Commission's response.

I am a new bingo operator for Breckenridge Elks Lodge #1480 in Breckenridge, Texas; License #1-75-0693805-3. We have a woman having major surgery and no insurance asking us to help with her medical bills. Can we pay out of our bingo fund? Also, the National Elks Organization has a fund called the Elks National Foundation. This fund finances activities for handicapped children. Can we donate to that from bingo funds?

ANSWER:

Texas Occupations Code § 2001.453(a) provides that a licensed 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.

A licensed authorized 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 licensed authorized organization and under which the licensed authorized organization qualifies as a nonprofit organization as defined by Texas Occupations Code § 2001.002(19).¹ Under this definition, 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.

The Texas Constitution requires that all proceeds from bingo be spent in Texas for the charitable purposes of the organization. Tex. Const. art. III, § 47(b)(1). Additionally, a person given bingo proceeds for a charitable purpose may not use the donation “for a purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.” Tex. Occ. Code § 2001.455. Charitable Bingo Administrative Rule 16 TAC §402.502 describes the type of information a licensed authorized organization must maintain to identify its charitable purpose and to substantiate its charitable distributions. The rule further clarifies the uses of proceeds that would not be considered dedicated to charitable purposes.

You first ask whether you may use bingo funds to assist someone with medical expenses. Upon review of the provisions set out above, the Commission determined in Bingo Advisory Opinion #2006-0403-0012 that:

¹ Section 2001.002(19) defines “nonprofit organization” to mean “an unincorporated association” or “a corporation that is incorporated or holds a certificate of authority under the Texas Non-profit Corporation Act.” The provisions of that act have been recodified in the Texas Business Organization Code.

[A]n organization may use bingo funds to help an employee 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.

Because the use of proceeds to benefit members of a licensed authorized organization is strictly prohibited, however, the opinion specifically stated: "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."

Although your request does not indicate whether the person seeking assistance with medical bills is an employee, the analysis is the same. As long as the person is not a member of the licensed authorized organization and the use of the funds is consistent with the charitable purposes of the organization under its federal tax exemption, bingo funds may be used to help pay the person's medical bills. Applicable reporting requirements will still apply.

You next ask if donations from bingo funds may be made to the Elks National Foundation. Although we do not know the particular nature of the National Foundation, it is possible that bingo funds could be donated to the Foundation as a charitable distribution if the following criteria are met:

- (1) the licensed authorized organization can prove that the expenses are directed to a cause, deed or activity that is consistent with the federal tax exemption the licensed authorized organization obtained under 26 U.S.C. Section 501;
- (2) the expenses are consistent with the Section 2001.002 definition of non-profit organization; and
- (3) the licensed authorized organization can document that the National Foundation distributes funds in an amount equal or greater to the amount of funds donated from bingo proceeds for its charitable purposes in Texas.

As noted above, the licensed authorized organization must maintain records necessary to substantiate (1) that the use of funds is directed to a cause, deed or activity that is consistent with the federal tax exemption of the licensed authorized organization, and (2) that the proceeds are ultimately used for its charitable purposes in Texas.

SUMMARY

If the licensed authorized organization can prove that the use of bingo funds is directed to a cause, deed or activity that is consistent with the federal tax exemption the licensed authorized organization obtained under 26 U.S.C. § 501 and is consistent with the Texas Occupations Code § 2001.002 definition of non-profit organization, the licensed authorized organization may pay the medical expenses for a person who is not a member and can make a donation to a National Foundation to help disabled children. The licensed authorized organization must maintain records necessary to substantiate 1) that the use of funds was for charitable purposes consistent with the federal tax exemption of the licensed authorized organization, and (2) that the proceeds were ultimately used to support the licensed authorized organization's charitable purposes in Texas. Tex. Const. art. III, § 47(b)(1); Tex. Occ. Code § 2001.002; Charitable Bingo Administrative Rule 402.502.

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,

Philip D. Sanderson, Assistant Director
Charitable Bingo Operations Division

cc: C. Tom Clowe, Jr., Chairman
James A. Cox, Jr., Commissioner
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel