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TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

December 20, 2012

Joyce Arnold
2904 Trinity Dr.
Pearland, TX 77584

Re: Bingo Advisory Opinion Request No. 2013-1031-0002

Dear Ms. Arnold:

This is in response to your October 31, 2012, letter requesting a bingo advisory opinion. Specifically, you stated in your request:

Sec. 2001.459(b) Payment for a service under Subsection (a)(10) may be paid from an organization's gross receipts.

Question 1: I have not found the subsection (a)(10) - Where is it located?

Question 2: If a person is paid to cook for food sales at a Bingo games, can the cook be paid from Bingo funds?

ANSWER:

In response to your first question, Tex. Occ. Code 2001.459(a)(10) was repealed in 2009. (Acts 2009, 81st Leg., ch. 636, § 36, eff. Oct.1, 2009.) The repealed provision stated "payment for services provided by a system service provider."

Your second question concerns use of bingo funds for paying a cook. The Bingo Enabling Act (Act) (Tex. Occ. Code ch. 2001) provides in Section 2001.453 that expenses paid from an organization's Bingo Account must be necessary or reasonable expenses incurred and paid in connection with the conduct of bingo. Section 2001.458 of the Act provides that an expense may not be paid except one that is reasonable or necessary to conduct bingo. Determination of whether or not a specific expense is an allowable expenditure of funds would depend on an evaluation of specific facts relating to the expenditure.

Charitable Bingo Administrative Rule (Rule) 402.505 addresses permissible expense. Subsection (a) (2) defines a necessary expense as a type of expense essential for the conduct of bingo. Paragraph (c) provides that the Commission will consider the following in determining the necessity of an expense:

- (1) Whether the goods or services provided were justifiably required to support the conduct of bingo;
- (2) Whether the expense was of a type generally recognized as an expense for the conduct of bingo; and
- (3) Whether the expense might contribute to an increase in the proceeds available for charitable distribution.

Subsection (a) (1) of the Rule provides the following definition for reasonable expense:

An amount of expense appropriate as it relates to the conduct of bingo; an expense that is moderate or fair in the amount, not extreme or excessive; an amount paid that does not substantially exceed the current rate or average retail cost of items or services purchased.

Section 402.505 provides the following guidance on the determination of a reasonable expense:

(b) The Commission will consider the following in determining the reasonableness of an expense:

(1) Whether the amount of the expense incurred exceeds that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs;

(2) Whether the individuals authorizing the amount of the expense acted with prudence in the circumstances, considering their responsibilities to the organization;

(3) Whether there was significant deviation from the established practices of the organization which unjustifiably increased the amount of the expense incurred; and

(4) Whether the licensed authorized organization engaged in arms-length transactions and generally accepted sound business practices.

In addition, Section 402.505 (e) provides:

The licensed authorized organization is responsible for maintaining documentation to substantiate the permissibility of expenses incurred for the conduct, administration and operation of bingo. Detailed records, including receipts or copies of invoices that fully document and substantiate the bingo expenses must be complete, true, and accurate, and be maintained for 4 years.

Paying a cook for food sales at a bingo game is not a type of expense generally recognized as an expense required to support the conduct of bingo. If claiming that such an expense might contribute to an increase in the proceeds available for charitable distribution, the licensed authorized organization must maintain documentation supporting the claim.

SUMMARY

Determination of whether or not a specific expense is an allowable expenditure of funds would depend on an evaluation of specific facts relating to the expenditure. The expense must be necessary or reasonable for the conduct of bingo. Rule 402.505 provides guidance on the determination of a permissible expense and on the requirement that an organization maintain documentation to substantiate the permissibility of expenses.

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,



Bruce Miner, Acting Director
Charitable Bingo Operations Division

cc: Mary Ann Williamson, Chairman
J. Winston Krause, Commissioner
Cynthia Tauss Delgado, Commissioner
Gary Grief, Executive Director
Bob Biard, General Counsel