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CERTIFIED MAIL NO. 7004 0750 0001 3238 3128
RETURN RECEIPT REQUESTED

June 9, 2010

Jeffrey L. Minch
President, CEO
Littlefield Corporation
2501 N. Lamar Blvd.
Austin, TX 78705

Re: Bingo Advisory Opinion Request No. 2010-0413-0007

Dear Mr. Minch:

This advisory opinion responds to your request for a bingo advisory opinion received on April 13, 2010. Specifically, you asked:

Can an employee of a licensed commercial lessor simultaneously be a charity employee and receive compensation for conducting bingo for charities in the bingo hall operated by the commercial lessor?

ANSWER:

Neither the Bingo Enabling Act (Act) nor the Bingo Administrative rules prohibit an employee of a licensed commercial lessor from simultaneously being an employee of licensed authorized organizations and receiving compensation from the licensed authorized organizations for conducting bingo in the bingo hall leased by the commercial lessor. However, determination of whether or not a specific cost is an allowable expense would depend on evaluation of specific facts relating to the expenditure. Section 402.505 provides the following guidance on the determination of a permissible 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.

(c) 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.

...

In addition §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.

Furthermore, it should be noted that §2001.411(a) the Act provides:

Except as provided by this section, a person other than a bona fide member of a licensed authorized organization may not conduct, promote, or administer, or assist in conducting, promoting, or administering, bingo.

SUMMARY


Neither the Bingo Enabling Act nor the Bingo Administrative Rules prohibit an employee of a licensed commercial lessor from simultaneously being a charity employee and receiving compensation from the licensed authorized organizations for conducting bingo in the bingo hall leased by the commercial lessor. However, determination of whether or not a specific expense is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure. Furthermore, § 2001.411(a) of the Act provides that “[e]xcept as provided by this section, a person other than a bona fide member of a licensed authorized organization may not conduct, promote, or administer, or assist in conducting, promoting, or administering, 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,



Philip D. Sanderson, Director
Charitable Bingo Operations Division

cc: Mary Ann Williamson, Chairman
David J. Schenck, Commissioner
J. Winston Krause, Commissioner
Gary Grief, Executive Director
Kimberly L. Kiplin, General Counsel