WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 47-20-23 & 11-10-5

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Bingo

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Joseph M. Palmer

Joseph M. Palmer, Secretary of Tax & Revenue

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

TITLE 110
LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE

SERIES 16
BINGO

§ 110-16-1. General.

1.1. **Scope.** -- The West Virginia Bingo law allows bingo and super bingo games to be lawfully operated by licensed qualified charitable or public service organizations under certain specified restrictions and conditions. The purpose of this legislative rule is to provide the clarification and guidance necessary for lawful implementation and application of the so-called "Bingo Act".

1.2. **Authority.** -- W. Va. Code §§ 47-20-23 and 11-10-5.

1.3. **Filing Date.** --

1.4. **Effective Date.** --

§ 110-16-2. Definitions.

2.1. When used in this rule and unless the context clearly requires a different meaning, the following terms ~~shall~~ have the meaning ascribed ~~herein~~ in this section, and ~~shall~~ apply in the singular or in the plural.

2.1.1. **"Act" or "Bingo Act"** means the Act contained in Article twenty, Chapter forty-seven of the West Virginia Code (W. Va. Code § 47-20-1 et seq.).

2.1.2. **"Bingo" or "bingo game"** means the game ~~wherein~~ in which participants pay consideration for the use of one or more cards bearing several rows of numbers or other designations no two (2) of which cards played in any one (1) game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one (1) by one (1), and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using.

2.1.3. **"Bingo Card"** means a card bearing numbers or other designations, five or more in each line.

2.1.4. **"Bingo Occasion" or "Occasion"** means a single gathering or session at which a series of one or more successive bingo games are played pursuant to an annual license, a super-bingo license, a limited occasion license or a state fair license. During ~~such~~ a series, only one game at a time may be played.

2.1.5. **"Bona Fide Senior Citizen Organization"** means any nonprofit organization that is organized and operated solely to provide service to persons who are fifty-five (55) or older. These organizations must be described, and qualified under I.R.C.

Section 501(c)(3) and have a determination letter to that effect from the Internal Revenue Service.

2.1.6. **"Charitable or Public Service Activity or Endeavor"** means any bona fide activity or endeavor which directly benefits a number of people by:

2.1.6.1. assisting them to establish themselves in life as contributing members of society through education or religion; ~~or~~

2.1.6.2. relieving them from disease, distress, suffering, constraint, or the effects of poverty; ~~or~~

2.1.6.3. increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; ~~or~~

2.1.6.4. making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at influencing legislation or supporting or participating in the campaign of any candidate for public office; ~~or~~

2.1.6.5. by lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; ~~or~~

2.1.6.6. providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or

2.1.6.7. providing or supporting nonprofit cultural or artistic activities.

2.1.6.7.a. Occasionally questions will arise as to whether a particular activity is a "charitable or public service activity or endeavor." The ~~above~~ criteria in this subdivision should provide some guidance. ~~For~~ Further references and explanations ~~See~~ are contained in Appendix A of this rule.

2.1.7. **"Charitable or public service organization"** means a bona fide, nonprofit, tax exempt organization which is either benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary. ~~These~~ An organization~~s must~~ shall obtain an I.R.C. § 501 tax exempt status determination letter from the Internal Revenue Service finding that ~~they are~~ it is exempt from the federal income taxes under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code of 1954, as amended. However, an organization~~s which are~~ that is a subdivision~~s of~~ the federal, state and local governments does not need to obtain an I.R.C. § 501 tax exempt status determination letter from the Internal Revenue Service. "Charitable or public service organization~~s~~" also includes volunteer fire departments, rescue units or other similar volunteer community service organizations. These organizations do not need to obtain an I.R.C. Section 501 tax exempt status determination letter from the Internal Revenue Service. The term "charitable or public service organization" does not include social or political organizations.

2.1.7.1. **Test for determining tax exempt status.** - In every instance, a charitable organization~~s~~ wishing to obtain a bingo license ~~must~~ shall file with ~~their~~ its application a copy of ~~their~~ its current determination letter from the Internal Revenue Service stating that the organization is exempt from taxes under certain Internal Revenue Code provisions. Requirements for each tax exempt status are set ~~forth below~~ in this paragraph:

2.1.7.1.a. I.R.C. Section 501(c)(3) exempts from federal taxation corporations, community chests, funds or foundations which are organized and operated only for:

2.1.7.1.a.1. religious purposes~~,~~;

2.1.7.1.a.2. charitable purposes~~,~~;

2.1.7.1.a.3. scientific purposes~~,~~;

2.1.7.1.a.4. testing for public safety purposes~~,~~;

2.1.7.1.a.5. literary or educational purposes~~,~~;

2.1.7.1.a.6. the fostering of national or international amateur sports competition (no part of these organizations activities can involve the provision of athletic equipment or facilities)~~,~~; or

2.1.7.1.a.7. the prevention of cruelty to children or animals~~.~~ :Provided, that

~~2.1.7.1.a.8.~~ ~~Additionally,~~ for an organization to be considered tax exempt under this section no portion of its net earnings can be given to or benefit any private shareholder or individual~~;~~, no substantial propagandizing can be carried on~~;~~, no attempts to influence legislation can be carried on~~;~~, and no participation or intervention in political campaigns for candidates can be maintained.

2.1.7.1.b. I.R.C. Section 501(c)(4) exempts from federal taxation nonprofit civic leagues or organizations operated solely for the promotion of social welfare. It also exempts a local employee association in which:

2.1.7.1.b.1. membership is limited to employees of a designated person in a particular municipality~~,~~; and

2.1.7.1.b.2. all net earnings are given or used solely for charitable, educational or recreational purposes.

2.1.7.1.c. I.R.C. Section 501(c)(8) exempts from federal taxation fraternal beneficiary societies that operate under the lodge system (parent organization which charters local branches), or societies operating for the sole benefit of members of a lodge system fraternity. These organizations must also provide for the payment of benefits (life, sick, accident or other) to the members or their dependents.

2.1.7.1.d. I.R.C. Section 501(c)(10) exempts from federal taxation domestic fraternal societies that operate under the lodge system, do not pay benefits and devote their net earnings solely to charitable, religious, scientific, literary, educational and fraternal purposes.

2.1.7.1.e. I.R.C. Section 501(c)(19) exempts from federal taxation organizations, auxiliary units, and trusts of foundations for war veterans. ~~These~~ They must be organized in the United States, and no part of their net earnings may benefit any shareholder or individual. Seventy-five percent (75%) of the members must be war veterans and substantially all of the other members must be veterans, cadets, or spouses, widowers or widows of war veterans.

2.1.7.1.f. I.R.C. Section 501(d) exempts from federal taxation religious or apostolic associations if they have a common treasury. These associations may engage in business which commonly benefits all members if the members include their share as gross income on their income tax returns. These amounts are to be considered dividends received.

2.1.7.2. ~~For~~ Further references and explanations ~~See~~ are contained are contained in Appendix B of this rule.

2.1.8. **"Commissioner" or "Tax Commissioner"** means the West Virginia State Tax Commissioner or his or her duly appointed representative except as otherwise required by law.

2.1.9. **"Concession"** means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual or individuals operating the concession. In no case is the sale or the consumption of alcoholic beverages, beer or nonintoxicating beer permitted in any area where bingo is being played.

2.1.9.1. **Clarification of the term "Area".** - For illustrative purposes, several examples ~~will be~~ are set forth in this paragraph to help ~~in the determination of~~ determine what constitutes "any area where bingo is being played."

2.1.9.1.a. Example 1. - Organization X is holding a bingo occasion in their organization headquarters' large meeting room. The lounge next to this meeting room contains a bar. This bar is not considered to be in an "area where bingo is being played," and alcoholic beverages, beer and nonintoxicating beer may be sold and consumed in the lounge. But, no alcoholic beverages, beer or nonintoxicating beer may be taken into the bingo area from the lounge.

2.1.9.1.b. Example 2. - Organization Y is holding a open air street fair at which they plan to play bingo and sell alcoholic beverages, beer and nonintoxicating beer. These beverages may not be sold at the tables where bingo games are being conducted, and may not be consumed by persons at the tables or by the operators of bingo games.

2.1.9.1.c. Example 3. - Organization Z is sponsoring a picnic where bingo is to be played. The organization sets up a tent to cover and contain the gaming space. This covered space thus constitutes the "area where bingo is being played," and alcoholic beverages, beer and nonintoxicating beer may not be sold or consumed within this space.

2.1.10. **"Conduct"** means to direct the actual playing of a bingo game by activities including, but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the numbers, posting the numbers, verifying winners and awarding prizes.

2.1.11. **"Consideration"** means more than five cents (5¢). ~~It should also be noted that no~~ <u>The licensing may not charge any</u> other fee~~s may be charged~~ in conjunction with the fee for the use of the cards if the organization intends to play bingo without a license~~ under this exception~~.

2.1.11.1. Example 1. - X society plays bingo and charges two cents (2¢) per card. There is no door fee. Therefore, X society does not need to obtain a bingo license.

2.1.11.2. Example 2. - Y organization plays bingo and charges one cent (1¢) per card. The door fee is one dollar ($1.00). Y organization must obtain a bingo license.

<u>2.1.12. **"De minimis violations"** includes a violation the Commissioner finds to not be a material violation if, having regard to the nature of the conduct charged to constitute a violation, and the nature of the attendant circumstances, the Commissioner finds that the violator's conduct:</u>

<u>2.1.12.1. Was within a customary license or tolerance, neither expressly negated by the Commissioner nor inconsistent with the purpose of the law defining the violation;</u>

<u>2.1.12.2. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the violation or did so only to an extent too trivial to warrant the condemnation of the law;</u>

2.1.12.3. Considered with regard to the totality of the facts and circumstances, cannot reasonably be regarded as envisaged by the Legislature in forbidding the violation; or

2.1.12.4. Resulted from mistake or inadvertent omissions, and was not deliberately committed for the purpose of evading the statutory requirements and restrictions applicable to licensees.

2.1.13. **"Employee"** means an individual who is an "employee" for purposes of federal income tax withholding, as defined in 26 U.S.C. § 3401;

2.1.~~12~~14. **"Expend net proceeds for charitable or public service purposes"** means to devote the net proceeds of a bingo occasion or occasions to a qualified recipient organization.

2.1.15. **"Immediate family member"** means a person's spouse, mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law, father-in-law or step-child. A legally adopted child of a person is treated for these purposes as a child of the individual by birth.

2.1.~~13~~16. **"Licensee"** means any organization or association granted an annual, limited occasion, super-bingo or State Fair bingo license.

2.1.~~14~~17. **"Material violation"** includes any of the following listed acts or omissions, set forth in West Virginia Code § 47-20-1, et seq., (except violations found to be de minimis violations by the Commissioner in accordance with this section), committed by a licensee, or an officer, director, employee, designee, agent or representative of a licensee:

2.1.17.1. Conducting charitable bingo occasions at times or at a location inconsistent with the license application;

2.1.17.2. Failing to timely amend or modify the charitable bingo license in accordance with section 9 of this rule;

2.1.17.3. Not having the bingo license posted at the occasion;

2.1.17.4. Allowing charitable bingo workers to play bingo;

2.1.17.5. Utilizing charitable bingo workers who fail to qualify under West Virginia Code § 47-20-1 et seq and this rule;

2.1.17.6. Allowing individuals under the age of eighteen years (with the exception of junior firefighters, in accordance with the provisions of section 6 of this rule) to participate in the conduct of charitable bingo activities;

2.1.17.7. Allowing individuals under the age of eighteen to participate in the playing of bingo;

2.1.17.8. Expending or using charitable bingo proceeds for unauthorized expenses;

2.1.17.9. Distributing charitable bingo net proceeds for purposes other than qualified charitable or public service purposes or for unauthorized purposes;

2.1.17.10. Continuing failure to maintain accurate records;

2.1.17.11. Continuing violations of any nature, subsequent to the licensee having been notified in writing of a violation;

2.1.17.12. Conducting fraudulent charitable bingo occasions; or

2.1.17.13. Obtaining a charitable bingo license under false pretenses or deceptive or fraudulent circumstances.

2.1.~~15~~18. **"Meaningfully associated with the licensee"** means persons who are members of the licensee organization, family members of members of the licensee organization, clients of licensee organizations, supporters of the licensee organization, volunteers and employees of the licensee organization.

2.1.19. **"Member"** means a person who, under the rules or practices of the licensee, may participate in the selection of persons authorized to manage the affairs of the licensee or in the development of policy of the licensee.

2.1.~~14~~20. **"Net proceeds"** means the gross receipts (i.e. all moneys connected with participation in bingo games, the sale of supplies and other miscellaneous receipts) from all bingo occasions held during a license period minus the reasonable, necessary and actual expenses. Expenses of holding the game may not exceed twenty-five percent (25%) of the gross receipts collected during the entire license period, and expenses for prizes for any bingo occasion may not exceed seventy-five hundred dollars ($7,500) in value.

2.1.21. **"Non-membership organization" or "organization that is not a bona fide membership organization"** means an organization which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, but does not have bona fide members, or which has bona fide members, the majority of whom cannot operate charitable bingo games over a sustained period of time by reason of physical disability or legal disability or any other bona fide disability.

2.1.21.1. Example 1: An organization which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the

Internal Revenue Code of 1986, as amended, has only a board of directors. The organization carries out its operations through volunteer workers. The organization is a non-membership organization for purposes of this definition.

2.1.21.2. Example 2: A young persons club (appropriately supported and sponsored by adults, parents and others) is a section 501(c)(3) organization which has members, all of whom are young persons under the age of 16. The members are prevented by law from participating in charitable bingo operations because of their ages (W. Va. Code §§ 47-20-4 and 5). This young persons club is an organization which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, and the organization's bona fide members cannot operate charitable bingo games by reason of a legal disability. This organization qualifies as a "non-membership" organization or an organization that is "not a bona fide membership organization" for the limited purposes of this definition.

2.1.~~15~~22. **"Person"** means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

2.1.~~16~~23. **"Qualified recipient organization"** means charitable or public service organizations ~~(See Section 2.1.6 of this Rule)~~, which are organized and function solely to benefit people by charitable or public service activities or endeavors. ~~(See Section 2.1.5. of this Rule).~~

2.1.24. **"Residents of this State meaningfully associated with a licensee"** means individuals that are residents of West Virginia, are associated with a licensee that is a non-membership organization, are age eighteen years or older (or junior firefighters qualified to participate in bingo operations under W. Va. Code § 47-20-4), including the immediate family members of any resident of this State meaningfully associated with a licensee, provided that the family members are residents of West Virginia, and fulfill one or more of the following criteria:

2.1.24.1. Who are clients of the licensee for one or more years prior to the date of the applicant's application for a bingo license, or for renewal of a bingo license, whichever is the latter, and have regularly or routinely utilized the services of the licensee organization,

2.1.24.2. Who are regular financial supporters of the licensee organization,

2.1.24.3. Who are employees of the licensee organization, or

2.1.24.4. Who are volunteers that regularly assist the licensee in delivering its services.

2.1.~~17~~25. **"Super-bingo"** means bingo where larger prizes are authorized in accordance with W. Va. Code § 47-20-6a. (~~See~~ Section 6a of this Rule ~~for~~ provides additional information.)

2.1.26. **"Supporters"** of the licensee organization includes persons who promote the charitable interests of a licensee through monetary or volunteer assistance, and who uphold and advocate the charitable interests and charitable causes of the licensee.

2.1.27. **"Volunteers"** of a licensee organization means persons who give their services of their own free will to accomplish the charitable purposes of the organization, to furnish the services provided by the licensee organization or to support the charitable bingo operations of the licensee without any express or implied promise of direct or indirect payment, remuneration or gratuity, and having no direct or indirect monetary or legal interest or concern in the licensee organization's charitable purposes, services or charitable raffle operations. For purposes of this definition, a person does not qualify as a volunteer if that person's services are rendered pursuant to any mandate decision or action of a court, appeals board, parole board or other judicial or administrative body as part of an alternative sentencing program, parole program, sentence, judgement, settlement, plea bargain, or other administrative or judicial action or judgement; and a person does not qualify as a volunteer if that person's services are rendered pursuant to any state, local, county or administrative requirement for graduation from any high school or other school or institution of learning.

2.1.~~18~~28. All other terms defined in the Act have the same meaning when used in ~~these regulations~~ this rule.

§ 110-16-3. Bingo Operations.

3.1. The following ~~rules~~ requirements are imposed upon licensees for the conduct of a bingo occasion.

3.1.1. Persons may not solicit gifts or donations during the conduct of a bingo occasion.

3.1.2. No games of chance other than bingo, super-bingo and charitable raffles authorized in W. Va. Code Article 47-21 and charitable raffle boards and games authorized in W. Va. Code Article 47-23 may be conducted or allowed at any bingo occasion.

3.1.3. Bingo cards ~~must~~ shall have bingo numbers printed only on one side.

3.1.4. No push out bingo cards may be used.

3.1.5. Bingo cards may not be switched during bingo games being called.

3.1.6. Cards may not be transferred between players.

3.1.7. Bingo workers and operators may not play in games of bingo in which they are working or assisting.

3.1.8. The combinations required to win a game ~~must~~ shall be clearly announced before each game~~s~~ is begun.

3.1.9. No checks or money orders may be accepted in payment for a bingo game: **Provided**, That a licensee conducting a bingo event under the authority of an annual license may receive and cash no more than one (1) personal check from any player during only one (1) game for each occasion in an amount not in excess of $100.00 which is made payable to the licensee and clearly marked on the face of each ~~such~~ check with the term "Bingo."

3.1.10. No checks other than those provided in ~~the immediately preceding Section~~ Subdivision 3.1.9 of this Subsection may be cashed out of bingo funds.

3.1.11. Any player may request a verification of the numbers drawn at the time a winner is determined.

3.1.12. The numbers appearing on the winning card ~~must~~ shall be verified at the time that the winner is determined.

3.1.13. If more than one player is verified a winner on the call of the same number, the designated prize shall be divided equally to the nearest dollar. If the prize cannot be divided, substitute prizes may be given but, the value of the sum of the substitute prizes shall not exceed the value of the original prize.

3.1.14. Every player ~~must~~ shall be given an equal opportunity to win.

§ 110-16-4. Licensing.

4.1. Who may hold bingo games.

4.1.1. Any charitable or public service organization, as defined in ~~Section~~ Subdivision 2.1.6 of this Rule, may hold bingo games under a valid license if ~~they have~~ it has been in existence in this state for two (2) years prior to ~~their~~ its filing for a bingo license.

4.1.2. If the applicant is a charitable organization it ~~must~~ shall have an I.R.C. Section 501 determination letter before it may file for a bingo or super-bingo license.

4.1.3. Before any organization may hold a bingo or super-bingo game, the organization ~~must~~ shall register with the Secretary of State under the Solicitation of Charitable Funds Act. (~~See~~ Section 30 of this Rule provides additional information).

4.2. **Application for bingo license.**

4.2.1. The applicant shall file its application ~~is to be made to~~ with the tax commissioner on the provided form.

4.2.2. Filing of applications.

4.2.2.1. "Filing" means that the complete application is delivered to the West Virginia State Tax Division, Registration Unit, P. O. Box 2666, Charleston, West Virginia 25330, by regular mail, certified mail or in-person delivery at 1001 Lee Street, Charleston, West Virginia. The filing date of an application is the date of its receipt.

4.2.2.2. ~~Any~~ An application shall not be considered as filed if it ~~which~~ is not complete, does not have all required documentation or does not have the appropriate license fee attached ~~will not be considered "filed"~~.

4.2.2.3. ~~Filing must be made~~ The applicant shall file its application at least sixty (60) days before the date specified in the application for the holding of the first bingo occasion. If the filing is not made at least sixty (60) days prior to the date scheduled for the first bingo game, the license ~~will~~ shall be automatically denied. If the properly filed application is not denied within thirty (30) days after receipt, the application is considered approved. Within five (5) days after approval the commissioner shall send the applicant its license.

4.3. **Transferability.** - No bingo license issued under the Act may be transferred.

§ 110-16-5. Annual License.

5.1. A charitable or public service organization may apply for an annual license which is valid for one (1) year from the date of issuance and allows the licensee to hold no more than two (2) bingo occasions per week. Each occasion may not exceed six (6) hours in duration.

5.2. Only one (1) license per year may be granted to the major organization and all of its auxiliaries, affiliates, chapters or lodges. If the major organization does not obtain a license, the auxiliary, affiliate, chapter or lodge may obtain a license.

5.2.1. Example 1. - X is a national charitable organization with its headquarters in another state. Chapter B is located in Morgantown. This Chapter wishes to hold bingo occasions. Chapter B may apply for and obtain a license.

5.2.2. Example 2. - X is a national charitable organization with its headquarters in another state. X applies for and obtains a bingo license. X also has two (2) chapters in this State. Chapter A is located in Beckley and Chapter B in Morgantown.

Both Chapter A and Chapter B wish to hold bingo occasions. Both may apply for and obtain a license.

5.2.3. Example 3. - C is a West Virginia volunteer fire department with two auxiliaries in the state. If C applies for and obtains a bingo license, neither of the auxiliaries may ~~do so~~ apply for and obtain a license. However, the auxiliaries may play on C's license if they comply with all provisions of the Act and ~~these regulations~~ this rule. (e.g. the total number of bingo occasions conducted by C and its auxiliaries may not exceed two (2) per week or one hundred four (104) per year, etc.).

5.3. Branches, chapters or lodges of any national association or organization are not considered affiliates or auxiliaries of each other. Nor are local churches of a nationally organized church considered to be affiliates or auxiliaries of each other. In addition every school is ~~to be~~ considered a major organization for purposes of this Act.

5.4. No two (2) or more organizations may hold a joint bingo occasion under any annual license.

5.5. The licensee shall conspicuously display its Bingo license~~s~~ ~~shall be conspicuously displayed~~ at the location where the bingo occasions are held.

5.6. All bingo occasions ~~must~~ shall be open to the public. A person ~~must~~ shall be at least eighteen (18) years of age to play in or conduct any bingo game: **Provided**, That a junior volunteer firefighter sixteen (16) years of age or older may assist the volunteer fire company of which ~~such~~ the junior volunteer firefighter is a member in the conduct of a bingo event when ~~such~~ the junior volunteer firefighter is supervised by a senior member of the same volunteer fire company who is over the age of twenty-one (21) years. A person under eighteen (18) may attend the playing of a bingo game if accompanied by or under the supervision of an adult relative or a legal guardian of the person. Additionally, a person ~~must~~ shall be at least eighteen (18) to purchase a charitable raffle board ticket authorized under W. Va. Code § 47-23-1 et seq. and Tax Department rule Charitable Raffle Boards and Games, 110 C.S.R. 35.

§ 110-16-6. Limited Occasion License.

6.1. A charitable or public service organization may apply for a limited occasion license which is valid only for the time period specified in the application. This time period may not exceed two (2) weeks and bingo occasions may be held only once every twenty-four (24) hours during the time period. No bingo occasion held in accordance with a limited occasion license may exceed twelve (12) hours in duration.

6.2. Only three (3) limited occasion licenses a year may be granted to the major organization and all of its auxiliaries, affiliates, chapters or lodges. If the major organization does not obtain a license, the auxiliary, affiliate, chapter or lodge may obtain a license. If an organization holds an annual license and ~~they wish~~ it wishes to hold bingo occasions as provided for in this section, ~~they must~~ it shall also obtain a limited occasion license. But, no licensee that holds an annual license may obtain more than one (1) limited occasion license.

6.3. For purposes of this section, branches, chapters or lodges of any national association or organization are not considered affiliates or auxiliaries of each other. Nor are local churches of a nationally organized church considered to be affiliates or auxiliaries of each other. In addition, every school is ~~to be~~ considered a major organization for purposes of this Act.

6.4. Two (2) or more organizations may hold a joint bingo occasion if each ~~such~~ organization has a valid limited occasion license for ~~such~~ jointly held occasion.

6.5. The licensee shall conspicuously display its Limited occasion bingo license~~s~~ ~~must be conspicuously displayed~~ at the location where the bingo occasions are held.

6.6. All bingo occasions held under a limited occasion license shall be open to the public. A person ~~must~~ shall be at least eighteen (18) years of age to play in or conduct a limited occasion bingo game. A person under eighteen (18) may attend the playing of a bingo game if accompanied by or under the supervision of an adult relative or a legal guardian of the person. Additionally, a person ~~must~~ shall be at least eighteen (18) to purchase a charitable raffle board ticket authorized by W. Va. Code § 47-23-1 et seq. and Tax Department rule Charitable Raffle Boards and Games, 110 C.S.R. 35.

§ 110-16-6a. Super-Bingo License.

6a.1. Any charitable or public service organization that is eligible to apply for a regular or limited occasion bingo license may, upon payment of the super-bingo license fee, apply to the Tax Commissioner for an annual license to conduct super-bingo occasions. ~~For license years ending after July 9, 1993, the~~ The holder of a super-bingo license may conduct one super-bingo occasion each month during the period of the license. No super-bingo occasion may last longer than six (6) hours, regardless of whether it is held separately or in conjunction with a regular or limited occasion bingo license.

6a.2. A holder of a regular or limited occasion bingo license may apply to the Commissioner for a super-bingo license. However, possession of a regular of limited occasion bingo license is not required in order to obtain a super-bingo license.

6a.3. Only one (1) super-bingo license per year may be granted to the major organization and all of its auxiliaries, affiliates, chapters or lodges. If the major organization does not obtain a license, the auxiliary, affiliate, chapter or lodge may obtain a license.

6a.3.1. Example 1. - X is a national charitable organization with its headquarters in another state. Chapter B is located in Morgantown. This Chapter wishes to hold super-bingo bingo occasions. Chapter B may apply for and obtain a license.

6a.3.2. Example 2. - X is a national charitable organization with its headquarters in another state. X applies for and obtains a super-bingo bingo license. X also has two (2) chapters in this State. Chapter A is located in Beckley and Chapter B in Morgantown. Both Chapter A and Chapter B wish to hold super-bingo bingo occasions. Both may apply for and obtain a license.

6a.3.3. Example 3. - C is a West Virginia volunteer fire department with two auxiliaries in the state. If C applies for and obtains a super-bingo bingo license, neither of the auxiliaries may ~~do so~~ apply for and obtain a license. However, the auxiliaries may play on C's license if they comply with all provisions of the Act and this rule.

6a.4. Branches, chapters or lodges of any national association or organization are not considered affiliates or auxiliaries of each other. Nor are local churches of a nationally organized church considered to be affiliates or auxiliaries of each other. In addition, every school is ~~to be~~ considered a major organization for purposes of this Act.

6a.5. No two (2) or more organizations may hold a joint super-bingo occasion under any annual super-bingo license.

6a.6. The licensee shall conspicuously display its Super-bingo license~~s~~ ~~must be conspicuously displayed~~ at the location where the bingo occasions are held.

6a.7. All super-bingo occasions ~~must~~ shall be open to the public. A person ~~must~~ shall be at least eighteen (18) years of age to play in or conduct any super-bingo game. Any person under eighteen (18) may attend the playing of a super-bingo game if accompanied by or under the supervision of an adult relative or a legal guardian of the person. Additionally, a person ~~must~~ shall be at least eighteen (18) to purchase a charitable raffle board ticket authorized by W. Va. Code § 47-23-1 et seq. and Tax Department rule Charitable Raffle Boards and Games, 110 C.S.R. 35.

§ 110-16-7. License Fees and Exemption From Taxes.

7.1. **License fees.**

7.1.1. Annual License. - $500.00.

7.1.2. Annual license for a volunteer or nonprofit group which grosses less than $20,000. - $200.00.

7.1.3. Bona fide senior citizens organization annual license. - $50.00.

7.1.4. Limited occasion license. - $100.00.

7.1.5. State Fair license. - $500.00.

7.1.6. Super-bingo license. - $5,000.00.

7.1.7. The applicant for a license shall pay ~~A~~ all fees ~~must be paid~~ to the tax commissioner and the payment ~~must~~ shall accompany the application for license. If no license fee accompanies the application, the application ~~will~~ shall not be considered to be filed. License fee amounts, if mailed, ~~must~~ shall be remitted in the form of a check or money order except the license fee for the State Fair must be made either by certified check or money order. If payment is made in person to the West Virginia State Tax Division, Registration Unit, it may be made in cash.

7.2. **Exemption from taxes.**

7.2.1. **Franchise taxes.**

7.2.1.1. The license fee imposed is in lieu of all other license or franchise taxes or fees of this state.

7.2.1.2. ~~No~~ A political subdivision of the state may not impose, in regard to any bingo occasion, any license or franchise taxes or fees.

7.2.2. **Consumers sales taxes.**

7.2.2.1. The licensee is not required to pay consumers sales tax on purchases to be used or consumed in the conduct of a bingo game. This exemption does not apply to State Fair licensees.

7.2.2.2. The licensee is not required to collect consumers sales tax on any admission fees or any sales of bingo cards. This exemption does not apply to State Fair licensees.

7.2.3. **Other taxes.** - The gross proceeds derived from the conduct of bingo occasions, except proceeds from State Fair bingo, are exempt from:

7.2.3.1. state and local business and occupation taxes;

7.2.3.2. income taxes;

7.2.3.3. excise taxes; and

7.2.3.4. all special taxes.

~~7.2.3.5. This Subsection does not apply to State Fair bingo proceeds.~~

§ 110-16-8. Information Required in Applications.

8.1. **All applications for bingo licenses ~~must~~ shall contain:**

8.1.1. The name of the applicant and whether the applicant is the major organization, such as, for example, a national headquarters of a fraternal or religious association, or an affiliate, subsidiary, chapter or lodge of a major organization;

8.1.2. The name of the state or national organization~~.~~;

8.1.3. The headquarters' address of the state or national organization~~.~~;

8.1.4. The address of the applicant organization~~.~~;

8.1.5. The telephone number of the applicant organization. If there is no telephone number for the applicant organization, then the address and telephone number of the person applying on behalf of the organization ~~must~~ shall be listed~~.~~;

8.1.6. The address or location where bingo games are to be held~~.~~;

8.1.7. For charitable organizations, a copy of an Internal Revenue Service determination letter which states that the organization is exempt from taxation under Internal Revenue Code Section 501(a) and is described in Internal Revenue Code Sections 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d)~~.~~;

8.1.8. A copy of the organization's charter, articles of incorporation or other evidence showing that the organization has been in existence for at least two (2) years prior to the making of ~~this~~ the application~~.~~;

8.1.9. The day or days of the week and the time or times when the bingo occasions will be held. The date of the first bingo occasion ~~must~~ shall also be included~~.~~;

8.1.10. The name of the owner of the premises where the bingo occasions are to be held~~.~~;

8.1.11. A copy of all rental agreements involved if the premises where the bingo occasions are to be held are leased or subleased~~.~~;

8.1.12. A statement as to whether the applicant has ever had a previous application for any bingo license refused, or whether any previous license has been revoked or suspended. This ~~Subsection~~ Subdivision applies to bingo licenses applied for or issued by other states~~.~~;

8.1.13. A detailed statement of the charitable or public service purpose or purposes for which the bingo proceeds will be spent~~.~~;

8.1.14. A list and description of all expenses estimated to be incurred in connection with the holding of bingo occasions and any concessions operated. The name and address of each payee ~~is also to~~ shall also be included~~.~~;

8.1.15. If a concession is to be operated by an individual or organization other than the applicant organization, a copy of any written agreement or an explanation of any oral agreement ~~made must~~ shall be attached. ~~This must~~ The agreement shall include ~~agreements providing for any type of~~ the remuneration to be received by the concession operator~~.~~ ;

8.1.16. A statement stating that the individuals specified in ~~Section~~ Subdivisions 8.1.18, 8.1.19 or 8.1.20 of this rule and the officers of the applicant organization understand that:

8.1.16.1. Allowing anyone, other than authorized individuals, to conduct any portion of the bingo occasion or operate any concessions is a violation of the Act~~.~~ ;

8.1.16.2. Reports ~~must~~ shall be filed and records ~~must~~ shall be kept as required in the Act~~.~~ ;

8.1.16.3. ~~That it~~ It is a crime to violate any provision of the Act~~.~~ ; and

8.1.16.4. ~~That any~~ Any violations may result in suspension or revocation of its license and denial of applications for subsequent licenses~~.~~ ;

8.1.17. A sworn statement by an authorized representative of the applicant organization that the information contained in the application is true to the best of his or her knowledge~~.~~ ;

8.1.18. A list of the names and addresses of all officers and members of the board of directors, governors or trustees of the applicant organization.

~~8.1.19.~~ 8.2. **Limited occasion licenses.** - In addition to the ~~preceding~~ requirements in Subsection 8.1 of this section, the application must also include:

~~8.1.19.1.~~ 8.2.1. The names and addresses of two (2) or more bona fide active members of the organization. These members ~~must~~ shall have the overall responsibility for the organizations bingo operations. One (1) of these members ~~must~~ shall be present at all times when bingo is conducted~~.~~ ; and

~~8.1.19.2.~~ 8.2.2. The names and addresses of the highest elected officer of the applicant organization and his or her officially appointed designee. One (1) of these members ~~must~~ shall also be present at all times when bingo is conducted.

~~8.1.20.~~ 8.3. **Annual licenses.** - In addition to the ~~preceding~~ requirements in Subsection 8.1 of this section, the application for an annual license ~~must~~ shall also include:

~~8.1.20.1.~~ 8.3.1. The names, addresses and telephone numbers of three (3) or more bona fide active members of the organization. These members ~~must~~ shall have the overall responsibility for the organizations bingo operations. One (1) of these members ~~must~~ shall be present at all times when bingo is conducted. ; and

~~8.1.20.2.~~ 8.3.2. The names, addresses and telephone numbers of the highest elected officer of the applicant organization and his or her officially appointed designee. One (1) of these members ~~must~~ shall also be present at all times when bingo is conducted.

~~8.1.21.~~ 8.4 **Super-bingo licenses.** - In addition to the ~~preceding~~ requirements in Subsection 8.1 of this section, the application for a super-bingo license ~~must~~ shall also include:

~~8.1.21.1.~~ 8.4.1. The names, addresses and telephone numbers of three (3) or more bona fide active members of the organization. These members ~~must~~ shall have the overall responsibility for the organizations super-bingo operations. One (1) of these members ~~must~~ shall be present at all times when super-bingo is conducted~~.~~ ; and

~~8.1.21.2.~~ 8.4.2. The names, addresses and telephone numbers of the highest elected officer of the applicant organization and his or her officially appointed designee. One (1) of these members ~~must~~ shall also be present at all times when super-bingo is conducted.

§ 110-16-9. Amendment of License.

9.1. If any circumstances, which are beyond the licensees' control, arise that ~~would~~ make the information in the original application inaccurate or ~~would~~ prevent the licensee from holding a bingo occasion in accordance with the information in the application, then before holding any bingo occasion under those circumstances the licensee ~~must~~ shall request approval from the tax commissioner to amend or modify its license: **Provided**, That a super-bingo license may not be amended to allow more than one (1) super-bingo occasion during each calendar month of the licensed period or to extend the period of time for which the super-bingo license is issued.

9.2. Application for amendment or modification shall be made to the tax commissioner. The commissioner shall provide application forms for this purpose. The commissioner, upon receipt of ~~such~~ the application, may:

9.2.1. modify the license to reflect changes in the holding of one (1) or more bingo occasions under an annual license if these changes are temporary; ~~or~~

9.2.2. modify the license to reflect changes affecting fewer than one-third (1/3) of the bingo occasions to be held under a limited occasion license; or, 9.2.3. amend the license if the changes under an annual license are permanent or if the changes under a limited occasion license affect one-third (1/3) or more of the occasions scheduled.

9.3. ~~Notification by the~~ The tax commissioner shall notify the licensee of amendments or modifications ~~will be made to the licensee~~ by regular mail within sixty (60) days after receipt of the application by the Tax Commissioner.

§ 110-16-10. Licensee Rules ~~and Regulations~~.

10.1. Each licensee may adopt rules ~~and regulations~~ so long as they are not inconsistent with or in violation of the Bingo Act or these rules ~~and regulations~~. this rule.

10.2. ~~No~~ A licensee may not allow an individual not present to play any bingo games.

10.3. Any rules ~~and regulations~~ adopted by a licensee ~~must~~ shall be made available for inspection at all bingo occasions.

10.4. Any rules ~~and regulations~~ adopted are a part of the records required to be kept.

10.5. ~~A~~ The licensee shall file a copy of licensee promulgated rules ~~and regulations must be filed~~ with the tax commissioner.

§ 110-16-11. Limits on Prizes Awarded: State Fair Excepted.

~~Effective June 9, 1995, during~~ During the period of a license, the average total prizes awarded for any single bingo occasion, whether held by one (1) licensee or by two (2) or more limited occasion licensees' holding a joint bingo occasion, may not exceed ~~seven thousand five hundred dollars ($7,500.00)~~ ten thousand dollars ($10,000.00) in value: **Provided**, That if a properly licensed licensee holds a super-bingo occasion during a bingo occasion, regular bingo prizes awarded during that occasion may not exceed ~~seven thousand five hundred dollars ($7,500.00)~~ ten thousand dollars ($10,000.00) and the super-bingo prizes awarded during that occasion may not exceed ~~thirty~~ fifty thousand dollars ($~~30,000~~ 50,000.00).

11.2.1. Example. - B organization holds bingo occasions on Tuesday and Thursday under a valid license. On Tuesday, prizes totaling five thousand dollars ($5,000) are awarded. B may award ten thousand dollars ($10,000) on Thursday or any subsequent night. The average total prizes for any bingo occasion may not exceed ~~seven thousand five hundred~~ ten thousand dollars ($~~7,500~~ 10,000.00).

11.3. Prizes ~~must~~ shall be valued at fair market value on the day they are awarded.

11.4. Prizes may be money or merchandise, but they may not be beer, nonintoxicating beer, wine, spirits or alcoholic liquor.

11.5. If an individual, group or association plans to play bingo without a license because there is no consideration paid for the use of bingo cards and no other fees are charged to play, the prizes awarded for each game may not exceed ten dollars ($10.00) in cash or merchandise.

11.5.1. Example 1. - X family has a reunion every year at which bingo is played. No consideration is charged for the bingo cards and no door fee is charged. The prize for each game is an ice cream gift certificate worth five dollars ($5.00). X family does not need to obtain a license to play bingo.

11.6. This section does not apply to State Fair bingo licenses.

§ 110-16-12. Operators of Bingo Games and Related Concessions; State Fair Excepted.

12.1. Only persons who are residents of West Virginia and who are active members of the licensee organization or its authorized auxiliary may participate in the conduct of any bingo game or operate any concession in conjunction with a bingo occasion. This Subsection does not apply to State Fair bingo licenses.

12.2. In no instance may an individual, under eighteen (18) years of age, participate in the conduct of a bingo occasion: **Provided**, That a junior volunteer firefighter sixteen (16) years of age or older may assist the volunteer fire company of which ~~such~~ the junior volunteer firefighter is a member in the conduct of a bingo event under an annual license when ~~such~~ the junior volunteer firefighter is supervised by a senior member of the same volunteer fire company who is over the age of twenty-one (21) years.

§ 110-16-12a. Compensation of Bingo Operator.

12a.1. A bingo licensee, ~~is authorized~~ under certain circumstances, may ~~to~~ pay a salary, not to exceed the federal minimum wage, to operators of bingo games who are active members of the licensee organization.

12a.1.1. If the licensee's gross receipts from bingo occasions equal or exceed $100,000.00 for the licensee's most recently filed annual financial report, a salary may be paid to not more than ~~five (5)~~ eight 8 operators.

12a.1.2. If the licensee's gross receipts from bingo occasions are less than $100,000.00 but equal or exceed $50,000.00 for the licensee's most recently filed annual financial report, a salary may be paid to no more than ~~three (3)~~ five 5 operators.

12a.1.3. If the licensee's gross receipts from bingo occasions are less than $50,000.00 for the licensee's most recently filed annual financial report, a salary may be paid to no more than ~~two (2)~~ three (3) operators.

12a.2. The amount of work time for which an operator may be compensated may not exceed 20 hours a week.

§ 110-16-13. Compensation~~: State Fair Excepted~~.

13.1. ~~Except as otherwise authorized in Section 110-16-12a of this rule, no~~ The licensee may not pay any monetary consideration ~~may be paid~~ to any individual who participates in the conduct of a bingo occasion, except as otherwise authorized in Section 12a of this rule.

§ 110-16-14. Concessions Exception.

14.1. The only exceptions to the ~~statement~~ prohibition in Section 13 of this rule that no monetary consideration may be paid to any individual who participates in the conduct of a bingo occasion are:

14.1.1. That a licensee may allow another to operate concessions in conjunction with bingo occasions if the following conditions are met:

14.1.1.1. the licensee holds regular meetings or functions other than bingo occasions;

14.1.1.2. the concession is regularly operated at these regular meetings;

14.1.1.3. the individual, firm or corporation who operates the concession at regular meetings is to be the concessionaire for bingo occasions;

14.1.1.4. the agreement terms are the same for both regular meetings and for bingo occasions. ~~This~~ The licensee shall file the agreement ~~must be filed~~ with the application for license, and ~~if~~ any changes are made in the agreement ~~they~~ must be filed with the tax commissioner within ten (10) days.

14.1.1.4.a. In this ~~instance~~ circumstance, the concessionaire may be compensated from the bingo occasion proceeds for his or her services. This compensation is ~~to be~~ considered a reasonable and necessary expense as provided for in Section 16 of this rule.

14.1.2. The licensee may also allow any charitable or public service organization to act as concessionaire if the net proceeds it receives from the concession are used solely for charitable or public service purposes of that organization.

§ 110-16-15. Use of Facilities for Bingo.

15.1. The property owner~~(s)~~ may not allow his or her facilities to be used for the playing of bingo or super-bingo for more than six (6) consecutive hours during any calendar day. The rent paid for using the facilities for the playing of bingo and super-bingo may not exceed fair market value rent of the facilities.

15.2. The property owner~~(s)~~ may not allow his or her facilities to be used by more than four (4) super-bingo licensees for the playing of super-bingo during any period of four (4) consecutive calendar weeks. Additionally, super-bingo may be played during two (2) consecutive days during a conventional weekend (Saturday and Sunday); **Provided**, That ~~such~~ <u>the</u> super-bingo occasions may occur at the same facility no more often than on alternating weekends during a calendar month.

§ 110-16-16. Payment of Reasonable Expenses: Disbursements and Net Proceeds.

16.1. <u>The licensee may pay</u> reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions ~~may be paid~~ from the proceeds of the conduct of bingo, but the payments cannot exceed twenty-five percent (25%) of the gross receipts collected during a license period measured at the end of that license period and not at the end of any single bingo occasion or at the end of any applicable quarterly reporting period: **Provided,** That so long as the licensee's records can provide sufficient supporting information, ~~such~~ <u>the</u> percentage limitations may be applied separately with respect to each separate bingo license a given licensee organization holds. These payments may be made for:

16.1.1. rent paid for the use of any premises that does not exceed the fair market value for ~~such~~ <u>the</u> premises, prorated for the days on which bingo occasions are conducted, but only if a copy of the rental agreement was filed with the application for license and any changes to the agreement were filed within ten (10) days of being made;

16.1.2. custodial services;

16.1.3. costs to the licensee for equipment and supplies used to hold the bingo occasion;

16.1.4. costs to the licensee for advertising the bingo occasion, but only to the extent ~~such~~ <u>the</u> advertising is authorized in West Virginia Code § 47-20-17 and Section 18 of this rule;

16.1.5. hiring security personnel but only if ~~such~~ <u>the</u> personnel are licensed in accordance with W. Va. Code § 30-18-1 et seq;

16.1.6. the cost of providing child care services to bingo patrons: **Provided,** That any proceeds received from the provision of child care services shall be handled in the same manner as bingo proceeds;

16.1.7. the actual cost to the licensee for prizes; and

16.1.8. other reasonable, necessary and actual expenses such as the reasonable legal fees incurred to obtain bingo licensing, accounting fees incurred to provide ~~to~~ reports required by virtue of holding bingo licenses, license fees, authorized salaries paid to bingo operators and the prorata cost of utilities.

16.2. The cost of refreshments, souvenirs or any other items sold or provided through any concession may not be paid for out of the gross proceeds from bingo.

16.3. The net bingo proceeds, including any interest earned thereon, ~~must~~ shall be expended for the charitable or public service purpose stated in the application within one (1) year after the expiration of the license.

16.4. None of the bingo proceeds may be used for construction or acquisition, of real or personal property unless ~~such~~ the property is used exclusively for charitable or public service purposes.

16.4.1. Example 1. - Bingo proceeds may not be used to build a clubhouse for X charitable organization.

16.4.2. Example 2. - Bingo proceeds may be used to build a camp for the underprivileged.

16.4.3. Example 3. - Bingo proceeds may be used to maintain X club's barbecue pit.

16.4.4. Example 4. - Bingo proceeds may be used to repair a bus that transports children from the inner city to a church day camp.

16.5. If a licensee, in good faith, finds that it cannot meet or comply with any of the above requirements or wishes to use the proceeds of bingo games for a long range charitable or public service purpose, such as, for example, building a fire hall, then application must be made to tax commissioner for permission to:

16.5.1. spend the net proceeds for charitable or public service purpose not listed in the application, or

16.5.2. spend the net proceeds later than the one (1) year time period. If this permission is granted, the licensee must file quarterly reports with the tax commissioner until the proceeds are spent. This application must be filed no later than sixty (60) days prior to the end of the one (1) year time period.

§ 110-16-17. Records.

17.1. Separate accounting and bookkeeping procedures for bingo operations ~~must~~ shall be maintained by each licensee. This ~~shall~~ means, at the minimum, that a separate bank account ~~must~~ shall be maintained for bingo and only the preprinted serially numbered checks used in conjunction with this account may be used for the payment of expenses. ~~Such~~ The checks ~~must~~ shall be made payable to a specific person, firm or corporation and at no time may ~~such~~ a check be made payable to cash. The licensee shall keep Detailed books of receipts and disbursements ~~must~~ ~~also be kept~~.

17.2. The licensee shall maintain ~~All~~ all records ~~must be maintained~~ for at least three (3) years or for such longer period as the tax commissioner shall, in writing, order and these records ~~must~~ shall be held open for reasonable inspection by the commissioner. Results of these inspections may be used as grounds for performing an audit of the licensee's books.

17.3. Audits of the licensee's books may be performed by the tax commissioner if he or she has reasonable cause to believe that the licensee has violated the act.

17.4. The Tax Commissioner shall perform, or cause to be performed, an audit of the books and records of any licensee that has awarded during the previous license year total prizes in excess of one hundred seventy-five thousand dollars ($175,000.00). The Tax Commissioner shall file a copy of the completed audit with the county commissioner of the county wherein the license holds bingo occasions.

§ 110-16-18. Advertising.

18.1. A licensee may advertise its bingo occasions in a reasonable manner; **Provided**, That ~~such~~ the advertisements ~~must~~ shall include the name of the licensee holding the bingo occasion. However, a licensee may not hire any person to develop or conduct an advertising campaign to promote any bingo occasion. Advertising is considered a reasonable and necessary expense as provided for in Section 16 of this rule.

§ 110-16-19. Fraud; Penalties.

19.1. Any person or licensee that knowingly conducts or participates in a fraudulently or deceptively conducted bingo game with intent to defraud is guilty of a felony.

19.2. The penalties upon conviction are:

19.2.1. A fine of not less than five hundred ($500) or more than ten thousand dollars ($10,000); and/or

19.2.2. imprisonment in the penitentiary for not less than one (1) or more than five (5) years.

§ 110-16-20. Obtaining License Fraudulently; Penalties.

20.1. Any individual, association, organization or corporation than knowingly uses false, deceptive or fraudulent methods to obtain a license for themselves or others is guilty of a misdemeanor.

20.2. The penalty upon conviction is a fine of not less than five hundred ($500) or more than ten thousand dollars ($10,000).

§ 110-16-21. Violation of Provisions; Penalties.

21.1. Any person who violates the provisions of the bingo act (other than the provisions concerning fraud and fraudulently obtaining a license) is guilty of a misdemeanor.

21.2. The penalty upon conviction is a fine of not less than one hundred ($100) or more than one thousand dollars ($1,000). The penalties upon a second conviction are:

21.2.1. a fine of not less than one hundred ($100) or more than one thousand dollars ($1,000); and/or

21.2.2. imprisonment for not more than one (1) year.

§ 110-16-22. Proceeds of State Fair.

22.1. All proceeds which accrue to the West Virginia State Fair are considered used for charitable or public service purposes. Proceeds that the State Fair Board pays to or allows the licensee to retain are expenses incurred by the State Fair Board.

§ 11-16-23. State Fair.

23.1. ~~These sections allow bingo~~ Bingo occasions to be held at the State Fair: **Provided**, That super-bingo occasions may not be held at the State Fair. To obtain a State Fair bingo license a person ~~must~~ shall:

23.1.1. have held regular bingo games for a period of two (2) years prior to the filing of the application~~.~~ ;

23.1.2. file an application for a license which ~~must~~ shall include a copy of any license or agreement entered into between the State Fair Board or its licensee and the applicant; and

23.1.3. pay a license fee of five hundred dollars ($500.00). This payment ~~must~~ shall be made by certified check or money order, or, if the payment is made in person at the State Tax Division, it may be made in cash.

23.2. The State Fair Board may adopt reasonable rules ~~and regulations~~ to govern the holding of bingo games at the State Fair. These rules ~~and regulations~~ may not be inconsistent with or in violation of the Act.

23.3. ~~In~~ Section 7.2 of this rule provides information regarding ~~to~~ the taxability of persons holding bingo occasions at the State Fair~~, See Section 7.2 of this Rule~~.

§ 110-16-24. Administration.

24.1. The tax commissioner ~~has the power to~~ may:

24.1.1. deny an application for license if the issuance of the license would be in violation of ~~W. Va. Code § 47-20-1 et seq.~~ the Act.

24.1.1.1. The applicant may protest the denial of the application. Any protest ~~must~~ shall be made in writing and ~~must~~ shall state the reason for the protest. ~~This must~~ The protest shall be filed with the tax commissioner within sixty (60) days of the receipt of the denial of the license.

24.1.1.2. The Commissioner, upon receipt of ~~When~~ the protest, shall set ~~is received by the Commissioner,~~ a time and place ~~will be set~~ for a hearing on the matter.

24.1.1.3. The Commissioner shall send a notice to the applicant containing~~;~~ :

24.1.1.3.a. the date of hearing;

24.1.1.3.b. the time of hearing;

24.1.1.3.c. the place where the hearing will be held; and

24.1.1.3.d. a short, plain statement of the matters asserted.

24.1.1.4. ~~Notice must~~ The notice shall be service by certified mail, or by personal or substituted service.

24.1.1.5. At the hearing the applicant may:

24.1.1.5.a. produce evidence in its behalf; and

24.1.1.5.b. be represented by counsel.

24.1.1.6. A decision by the commissioner upholding the denial of the license is subject to judicial review on appeal by the applicant.

24.1.1.7. The burden of proof is on the applicant~~.~~ ;

24.1.2. revoke, suspend or refuse to renew a license if:

24.1.2.1. The licensee or any member of the licensee's organization has been convicted under W. Va. Code §§ 47-20-18 or 47-20-19, and the commissioner finds it would be in the public interest to do so;

24.1.2.2. the licensee has violated any of the provisions of the Act;

24.1.2.3. the licensee has failed to maintain records or file reports as required. Licenses will only be revoked, suspended or refused under this ~~section~~ paragraph if the commissioner finds that the failure to record or report ~~will~~ impairs the commissioner's ability to administer the act~~.~~ : Provided,

~~24.1.2.4.~~ 24.1.2.3.a ~~Before~~ That before revocation or suspension of a license, the commissioner ~~must~~ shall give ten (10) days notice to annual licensees or three (3) days notice to limited occasion and State Fair licensees. This notice ~~must~~ shall be written, ~~must~~ shall state reasons for the action and ~~must~~ shall specify a time and place where the licensee may show why the action should not be taken. Notice may be served by:

24.1.2.~~4.a.~~ 3.a.1 certified mail to the licensee's address;

24.1.2.~~4.b.~~ 3.a.2 certified mail to the person who applied for the license on behalf of the organization; or

24.1.2.~~4.c.~~ 3.a.3 personal or substituted service on the person who applied for the license on behalf of the organization.

~~24.1.2.5.~~ 24.1.2.3.b ~~At~~ That at the time designated for any hearing the licensee may:

24.1.2.~~5.a.~~ 3.b.1 produce evidence in its behalf; and

24.1.2.~~5.b.~~ 3.b.2 be represented by counsel~~.~~ ;

~~24.1.2.6.~~ 24.1.2.3.c ~~A~~ That a decision of the commissioner suspending or revoking a license is subject to judicial review on appeal by the licensee.

24.1.3. conduct hearings according to the provisions of the State Administrative Procedures Act (W. Va. Code § 29A-5-1 et seq.). The burden of proof in ~~such~~ the hearings ~~shall be~~ is upon the licensee~~.~~ ;

24.1.4. issue emergency orders suspending a license when~~.~~:

~~24.1.4.1. These orders may be issued when:~~

24.1.4.1.~~a.~~ The commissioner believes that a criminal violation of the act has occurred;

24.1.4.~~1.b.~~ 2 the commissioner believes that the suspension is necessary to prevent a criminal violation of the act; or

24.1.4.~~1.c.~~ 3 the commissioner believes that the suspension is necessary to preserve the public peace, health, safety, morals, good order or general welfare~~.~~;

24.1.~~4.2.~~ 5 ~~These~~ The orders ~~must~~ authorization in Subdivision 24.1.4 of this rule shall set forth the grounds for issuance. This includes a statement of facts of the alleged emergency. The order ~~must~~ shall be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee~~.~~ ;

24.1.~~4.3.~~ 6 ~~These~~ The orders authorized in Subdivision 24.1.4 of this rule shall become effective immediately upon issuance and service.

24.1.~~4.4.~~ 7 ~~After~~ After the issuance of an emergency order authorized under Subdivision 24.1.4 of this rule, the commissioner ~~must~~ shall set a time and place for hearing within five days. At this hearing the licensee may show cause why its license should not be revoked.

§ 110-16-25. Filing of Reports.

25.1. Annual licensees and super-bingo licensees ~~must~~ shall file, quarterly and annually, financial reports on forms provided by the commissioner. These reports ~~must~~ shall summarize the financial activity of the licensee for the reported time period. ~~These~~ The quarterly reports ~~must~~ shall be filed no later than twenty (20) days after the end of the quarter which it covers. Annual reports ~~must~~ shall be filed no later than thirty (30) days after the expiration of the license. The time period covered by the annual report is the full license year or, at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year. With the annual report, the licensee ~~must~~ shall include its expired license.

25.1.1. Example 1. - Y organization obtains a license and starts bingo operations on November 1. Its quarterly reports are due on January 20 (twenty (20) days after the end of this quarter ~~which is~~ on December 31), April 20, July 20 and October 20. The annual report ~~will be~~ is due on November 30 (thirty (30) days after the expiration of the license ~~which will expire~~ on October 31).

25.1.2. Quarters ~~will be~~ are on standard basis. In other words January 1 - March 31, is the first quarter, April 1 - June 30, is the second quarter July 1 - September 30, is the third quarter, and October - December 1, is the fourth quarter.

25.2. Limited occasion licensees and State Fair licensees ~~must~~ shall file a financial report on forms provided by the commissioner. These reports ~~will~~ shall summarize financial activity for the license period. This report ~~must~~ shall be filed within thirty (30) days after the expiration of the license and the expired license ~~must~~ shall accompany such report.

25.3. Final reports for annual licensees and limited occasion licensees ~~must~~ shall contain the name, address and social security number of any person who receives prizes with an aggregate value of over one hundred dollars ($100).

25.4. Any licensee failing to file a required report when due ~~shall be~~ is liable for a penalty of $ 25.00 for each month, or fraction thereof, during which the failure continues, ~~such~~ the penalty not to exceed $100.00 for each delinquent report.

25.5. The annual financial reports required to be filed for each license year ~~ending after June 9, 1995 must~~ shall contain a compilation and review of ~~such~~ the financial report, as defined by the American Institute of Certified Public Accountants, if for the license year just completed the licensee's gross receipts exceed $50,000.00.

§ 110-16-26. Filing of Copy of License.

26.1. When the commissioner grants a license, he ~~must~~ or she shall file a copy of the license with the clerk of the county commission of the county in which the bingo occasions are to be held. The clerk shall record this copy.

26.2. The commissioner ~~must~~ shall make a copy of the application available for public inspection.

§ 110-16-27. County Option Election.

27.1. The county commission may call a local option election to determine if the provisions of this act will continue in their county. But, no local option election can be called to disapprove the playing of bingo games at the State Fair. ~~Note that bingo will~~ Bingo shall be permitted in all counties unless and until a local option election is held which results in a majority of voters determining that the provisions of ~~this~~ the act will not continue in force and effect in that county.

27.2. ~~To call the election, a~~ A petition for election ~~must be made~~ shall be filed with the county commission. The form ~~must~~ shall be substantially as follows:

PETITION ON LOCAL OPTION ELECTION
RESPECTING THE CONDUCT OF
BINGO AND SUPER BINGO GAMES FOR
CHARITABLE PURPOSES
IN ______________ COUNTY

WEST VIRGINIA

Each of undersigned certifies that he or she is a person residing in ____________________ county, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at: (1) a special or (2) the next primary, general or special election (the petition shall specify (1) or (2) upon the following question: Shall the provisions of Article twenty (20), Chapter forty-seven (47) of the Code of West Virginia, one thousand nine hundred thirty-one (1931), as amended, continue in effect in ____________________ county, West Virginia.

NAME ADDRESS DATE

________________ (Each person signing must specify either his post office address or his street number).

At least ten percent (10%) of the persons qualified to vote within the county ~~must~~ shall sign this petition before the election may be called.

27.3. If the petition is filed as specified in this section, the county commission ~~must~~ shall enter an order calling a local option election, and ~~must~~ shall publicize notice of ~~such~~ the local option election by publication of a Class II-O legal advertisement with a county publication area. This notice ~~must~~ shall be published within fourteen (14) consecutive days before the election.

27.4. Any person qualified to vote in the county at any primary, general or special election may vote at the local option election.

27.5. Election officers appointed and qualified to serve at any primary, general or special election ~~must~~ shall conduct the local option election. These election officers shall count the ballots and make a return which shall be certified by the commissioners of election to the county commission. The county commission shall canvass the ballots and certify the result without delay.

27.6. Local option elections may be held at the same time as any primary, general or special elections, but, it must be held in connection with and as a part of ~~such~~ the election if it is held at the same time.

27.7. The form for the ballot ~~must~~ shall be substantially as follows:

"Shall the playing of bingo to raise money for charitable or public service organizations continue in effect in ____________ county of West Virginia? (Place a cross mark in the square opposite your choice)." Yes No

27.8. If a majority vote no, then ~~this~~ the act no longer continues in effect in that county.

27.9. There ~~must~~ shall be five (5) years between local option elections on this question, whether the question was approved or disapproved at the previous local option election.

§ 110-16-28. Prohibited Acts.

28.1. Any person~~, individual, organization, association or corporation~~ convicted of a felony, or misdemeanor for a gambling offense:

28.1.1. may not obtain, either directly or indirectly, a bingo license;

28.1.2. may not conduct a bingo game;

28.1.3. may not operate a concession; and

28.1.4. may not lease or provide to any licensee organization any premise where bingo occasions may be held.

28.2. This restriction applies for ten (10) years from the date of conviction.

Example 1. - X was convicted of a misdemeanor gambling offense in 1972. During the year 1981, X may not participate in the operation of bingo in any way. But, in 1983, X would be permitted to participate, if he or she had obtained a valid license.

§ 110-16-28a. Smoking and Nonsmoking Sections.

28a.1. If smoking is permitted during the conduct of any bingo, super-bingo or limited occasion bingo occasion, any bingo operator who distributes more than 100 bingo cards and/or bingo sheets at ~~such an~~ the occasion ~~must~~ shall provide smoking and nonsmoking sections.

§ 110-15-29. Restriction on Use of Bingo Equipment.

29.1. A licensee may only use bingo equipment:

29.2. which it owns;

29.3. which it borrows without compensation from another licensee, or

29.4. which it leases from another licensee for a reasonable and customary amount.

Example 1. - Bill's Bingo Equipment Rental, an organized for profit company, may not rent bingo equipment to licensees in this state.

29.5. Rental or purchase of bingo equipment ~~shall be~~ is considered a reasonable and necessary expense as provided for in Section 16 of this rule.

§ 110-16-30. Requirement for a Registration Statement.

30.1. Unless exempt, every charitable or public service organization that obtains a bingo license ~~must~~ shall file an annual registration statement with the Secretary of State's Office, under the Solicitation of Charitable Funds Act.

30.2. These registration statements ~~must~~ shall be filed on forms provided by the Secretary of State and ~~these must~~ shall be filed before any bingo occasions are held.

§ 110-16-31. Additional Remedies for the Tax Commissioner, Administrative Procedures; Deposit of Money Penalties.

31.1. For any material violation of the Bingo act or this rule, the Tax Commissioner may:

31.1.1. Revoke or refuse to renew any charitable bingo license;

31.1.2. Suspend the charitable bingo license of any licensee for the period of time the Tax commissioner considers appropriate. A suspension may not be for less than one week nor more than twelve months for each material violation;

31.1.3. Place a charitable bingo licensee on probation for a period of not less than six months nor for more than five years for each material violation;

31.1.3.1. In the event a licensee is placed on probation, then, as a condition of the probation, the licensee shall pay to the Tax Commissioner a Probation Supervision Fee in an amount equal to two thousand dollars or two percent of the gross proceeds derived by the licensee from the conduct of bingo occasions during the period of the probation, whichever is greater.

31.1.3.2. No Probation Supervision Fee paid in accordance with this section may be claimed by the licensee as a reasonable, necessary or actual expense incurred in connection with the conduct of a bingo occasion under the authority of West Virginia Code § 47-20-15.

31.1.3.3. The imposition of probation shall be used, when warranted, to insure the charitable bingo licensee's continued adherence to the applicable statutes and legislative rules. After due consideration of the severity of the violation, probationary terms and conditions shall be determined by the Tax Commissioner;

31.1.4. Require a charitable bingo licensee to replace any officer who knew or because of the officer's responsibilities within the licensee organization should have known of a material violation.

31.1.4.1. The Tax Commissioner shall suspend for a period of not less than one month nor more than twenty-four months the license of a licensee that refuses to replace any officer as directed by the Tax Commissioner. The Tax Commissioner shall consider the severity of the violation and whether the violation was a one-time or repeated occurrence when implementing this disciplinary action;

31.1.5. Require a charitable bingo licensee to prohibit one or more members, supporters, volunteers or employees of the licensee involved in material violations from participating in, or being present at or on the premises of all future bingo occasions held under the charitable bingo license, or for the period of time specified by the Tax Commissioner.

31.1.5.1. The Tax Commissioner shall suspend for a period of not less than one month nor more than twelve months the license or licenses of a licensee that refuses to prohibit the participation of identified members, supporters, volunteers or employees as directed by the Tax Commissioner. The Tax Commissioner shall consider the severity of the violation and whether the violation was a one-time or repeated occurrence when applying this disciplinary action; and

31.1.6. Impose a civil money penalty of not less than one hundred dollars nor more than two times the annual gross proceeds derived by the charitable bingo licensee from the conduct of bingo, for each material violation:

31.1.6.1. In setting any monetary penalty for a first violation, the Tax Commissioner shall take into consideration the ability of the licensee to continue to exist and operate.

31.1.6.2. No money penalty paid in accordance with this section may be claimed by the licensee as a reasonable, necessary or actual expense incurred in connection with the conduct of a bingo occasion.

31.1.6.3. For each material violation that is a second or succeeding violation, the amount of the civil penalty that may be imposed may not be less than five hundred dollars and may not exceed the greater of one hundred thousand dollars or two times the annual gross proceeds of the licensee from the conduct of bingo.

31.1.6.4. Any charitable bingo licensee aggrieved by the amount of the civil penalty may in lieu of paying the penalty surrender its charitable bingo license for a minimum period of twelve consecutive months.

31.1.6.5. If the licensee refuses to pay the penalty or surrender its license, the license shall be revoked:

31.1.6.6. After the licensee has exhausted all administrative remedies provided in subsection 31.4 of this rule, the licensee may have the issue of whether a material violation was committed by the licensee reviewed in the circuit court of the county where the violation giving rise to the civil penalty occurred.

31.1.6.7. The imposition of civil penalties shall be implemented in accordance with the criteria set forth in subsection 31.2 of this rule.

31.1.6.8. For purposes of this rule, surrender of the charitable bingo license or surrender of the license means and includes surrender of all regular, limited occasion and super bingo licenses held by the licensee, unless specifically otherwise directed by the Tax Commissioner.

31.2. The imposition of civil money penalties shall be in accordance with the following criteria:

31.2.1. For conducting charitable bingo occasions at times or at a location inconsistent with the license application, the money penalty is:

First violation	$100
Second or succeeding violation	$500 but not more than $3,000

31.2.2. For failure to timely amend or modify the charitable bingo license in accordance with section 9 of this rule, the money penalty is:

First violation	$100
Second or succeeding violation	$500 but not more than $3,000

31.2.3. For not having the bingo license posted at the occasion; and allowing charitable bingo workers to play bingo, the money penalty is:

First violation	$100
Second or succeeding violation	$500 but not more than $3,000

31.2.4. For utilizing charitable bingo workers who fail to qualify under West Virginia Code § 47-20-1 et seq. and this rule, the money penalty is:

First violation	$100 but not more than $500
Second or succeeding violation	$500 but not more than $2500

31.2.5. For allowing individuals under the age of eighteen years (with the exception of junior firefighters, in accordance with the provisions of section 6 of this rule) to participate in the conduct of charitable bingo activities, the monetary penalty is:

First violation	$100 but not more than $500

Second or succeeding violation $500 but not more than $2500

31.2.6. For allowing individuals under the age of eighteen years (with the exception of junior firefighters, in accordance with the provisions of section 6 of this rule) to participate in the playing of bingo in violation of West Virginia Code § 47-20-5, the monetary penalty is:

First violation	$100 but not more than $500
Second or succeeding violation	$500 but not more than $2500

31.2.7. For expending or using charitable bingo proceeds for unauthorized expenses, the money penalty is:

First violation	$500 but not more than 2 x Gross Proceeds
Second or succeeding violation	$500 but not more than 2 x Gross Proceeds

31.2.8. For distributing charitable bingo net proceeds for purposes other than qualified charitable or public service purposes or for unauthorized purposes, the money penalty is:

First violation	$500 but not more than 2 x Gross Proceeds
Second or succeeding violation	$500 but not more than 2 x Gross Proceeds

31.2.9. For continuing failure to maintain accurate records, the money penalty is:

First violation	$500 but not more than 2 x Gross Proceeds
Second or succeeding violation	$500 but not more than 2 x Gross Proceeds

31.2.10. For continuing violations of any nature, subsequent to the licensee having been notified in writing of a violation, the monetary penalty is:

First violation	$500 but not more than 2 x Gross Proceeds
Second or succeeding violation	$500 but not more than 2 x Gross Proceeds

31.2.10.a The penalty for violations occurring subsequent to written notice is in addition to the penalty that may be applied for a second or succeeding violation under any other provision of this rule.

31.2.11. For conducting fraudulent charitable bingo occasions, or obtaining a charitable bingo license under false pretenses or deceptive or fraudulent circumstances, the monetary penalty is:

First violation	$500 but not more than 2 x Gross Proceeds
Second or succeeding violation	$500 but not more than 2 x Gross Proceeds

31.2.12. The Tax Commissioner may impose any one or more, or any combination, of the penalties provided for in this subsection.

31.3. No sanctions or other penalty shall be imposed under subdivision 31.2.4 on a charitable bingo licensee for failure to operate charitable bingo occasions with members when:

31.3.1. The licensee is exempt from federal income taxation under Internal Revenue Code § 501 (c)(3) or 501 (c)(4); and

31.3.2. The licensee is a non-membership organization that does not have bona fide members, and

31.3.3. The bingo occasions are operated by residents of this State who have been employed by the licensee or who have been meaningfully associated with the licensee for one or more years before the date of the licensee's application for a license under the Act, or for one or more years before the date of the licensee's most recent application for renewal of a license under the Act, whichever is later.

31.3.3.1. Use of non-members of the licensee to operate a bingo occasion may not include allowing individuals under the age of eighteen years (with the exception of junior firefighters, in accordance with the provisions of section 6 of this rule) to participate in the conduct of charitable bingo activities.

31.4. Administrative procedures.

31.4.1. An order issued under this section shall be served by certified mail or in the manner provided in rule 4(d) of the West Virginia Rules of Civil Procedures

31.4.2. A charitable bingo licensee may appeal an order of the Tax Commissioner issued under this section by filing a written protest with the Tax Commissioner, either in person or by certified mail, properly addressed and postage prepaid, within twenty days after the licensee is served with a copy of the order. Appeals shall be filed in the form or forms as the Tax Commissioner furnishes with the order.

31.4.3. When a timely written protest is filed, the procedures for contested cases set forth in West Virginia Code § 29A-5-1 et seq. apply.

31.4.4. The burden of proof in any administrative or court proceeding is on the charitable bingo licensee to show cause why the order of the Tax Commissioner under this section should be modified, in whole or in part, or set aside.

31.5. Nothing contained in this rule shall be construed to prohibit, limit, alter or amend the Tax Commissioner's power under West Virginia Code § 47-20-23 to issue an emergency order suspending a bingo licensee.

APPENDIX A

UNITED STATES TREASURY REGULATIONS
(Reg. Section 1.501(c)(3)-1)

The regulation below is intended to provide guidance to the public in the determination of what a charitable or public service activity or endeavor is.

§ 1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(a) Organization and operational tests.

(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

(2) The term "Exempt Purpose or Purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

(b) Organizational test.

(1) In general.

(A) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

(i) Limit the purposes of such organization to one or more exempt purposes; and

(ii) Do not expressly empower the organization to engage, otherwise, than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(B) In meeting the organizational test, the organization's purpose, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes within the meaning of section 501(c)(3) of the Code shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation under section 501(a)" are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "Charitable Purposes", such articles ordinarily shall be sufficient for purposes of the organizational test (See subparagraph (5) of this paragraph for rules relating to construction of terms).

(C) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business," or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of Section 501(c)(3) of the Code."

(D) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(E) An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption (See paragraph (b) of § 1.501(a)-1).

(2) **Articles of organization.** - For purposes of this section, the term "articles of organization" or "articles" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

(3) **Authorization of legislative or political activities.** - An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

(A) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

(B) Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(C) To have objectives and to engage in activities which characterize it as an "action" organization as defined in paragraph (c)(3) of this section. The terms used in subdivisions (A), (B), and (C) of this subparagraph shall have the meanings provided in paragraph (c)(3) of this section.

(4) **Distribution of assets on dissolution.** - An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

(5) **Construction of terms.** - The law of the State in which an organization is created shall be controlling in construing the terms of its articles. However, any organization which contends that such terms have under State law a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the State attorney general, or other evidence of applicable State law.

(6) **Applicability of the organizational test.** - A determination by the Commissioner or a district director that an organization is described in section 501(c)(3) and exempt under section 501(a) will not be granted after July 26, 1959 (regardless of when the application is filed), unless such organization meets the organizational test prescribed by this paragraph. If, before July 27, 1959, an organization has been determined by the Commissioner or district director to be exempt as an organization described in section 501(c)(3) or in corresponding provision of prior law and such determination has not been revoked before such date, the fact that such organization does not meet the organizational test prescribed by this paragraph shall not be a basis for revoking such determination. Accordingly, an organization which has been determined to be exempt before July 27, 1959, and which does not seek a new determination of exemption is not required to amend its articles of organization to conform to the rules of this paragraph, but any organization which seeks a determination of exemption after July 26, 1959, must have articles of organization which meet the rules of this paragraph. For the rules relating to whether an organization determined to be exempt before July 27, 1959, is organized exclusively for one or more exempt purposes, See 26 CFR (1939 39.101(5)-1 (Regulation 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167; C.B. 1954-2, 47).

(c) Operational test.

(1) **Primary activities.** - An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(2) **Distribution of earnings.** - An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words "private shareholders or individual", See paragraph (c) of § 1.501(a)-1.

(3) "Action" organization.

(A) An organization is not operated exclusively for one or more exempt purposes if it is an "Action" organization as defined in subdivisions (B), (C), or (D) of this subparagraph.

(B) An organization is an "Action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization -

(i) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(ii) Advocates the adoption or rejection of legislation. The term "legislation", as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(C) An organization is an "Action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "Candidate for Public Office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(D) An organization is an "Action" organization if it has the following two characteristics:

(i) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

(ii) It advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(E) An "Action" organization, described in subdivisions (ii) or (iv) of this subparagraph, though it cannot qualify under section 501(c)(3) may nevertheless qualify as a social welfare organization under section 501(c)(4) if it meets the requirements set out in paragraph (a) of § 1.501(c)(4)-1.

(d) Exempt purposes.

(1) In general.

(A) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

(i) Religious,

(ii) Charitable,

(iii) Scientific,

(iv) Testing for public safety,

(v) Literary,

(vi) Educational, or

(vii) Prevention of cruelty to children or animals.

(B) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (A) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organizations, or persons controlled, directly or indirectly, by such private interest.

(C) Since each of the purposes specified in subdivision (A) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "Educational", exemption will not be denied if, in fact, it is "Charitable".

(2) **"Charitable" defined.** - The term "Charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "Charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection of maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or

(A) to lessen neighborhood tensions;

(B) to eliminate prejudice and discrimination;

(C) to defend human and civil rights secured by law; or

(D) to combat community deterioration and juvenile delinquency.

The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "Action" organization of any one of the types described in paragraph (c)(3) of this section.

(3) "Educational" defined.

(A) **In general.** - The term "Educational", as used in section 501(c)(3), relates to -

(i) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even thought it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(B) **Examples of educational organizations.** - The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example 1. - An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example 2. - An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example 3. - An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example 4. - Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

(4) **"Testing for Public Safety" defined.** - The term "Testing for Public Safety", as used in section 501(c)(3), includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

(5) "Scientific" defined.

(A) Since an organization may meet the requirements of section 501(c)(3) only if its serves a public rather than a private interest, a "Scientific" organization must be organized and operated in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "Scientific"; and the nature of particular research upon the purpose which it serves. For research to be "Scientific", within the meaning of section 501(c)(3), it must be carried on in furtherance of a "Scientific" purpose. The determination as to whether research is "Scientific" does not depend on whether such research is classified as "Fundamental" or "Basic" as contrasted with "Applied" or "Practical". On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on "Fundamental", as contrasted with "Applied", research.

(B) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

(C) Scientific research will be regarded as carried on in the public interest -

(i) If the results of such research (including any patents, copyrights, processes, or formula resulting from such research) are made available to the public on a nondiscriminatory basis;

(ii) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or

(iii) If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

(a) Scientific research carried on for the purpose of aiding in the scientific education of college or university students;

(b) Scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication or in any other form that is available to the interested public;

(c) Scientific research carried on for the purpose of discovering a cure for a disease; or

(d) Scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this subdivision (c) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formula resulting from such research.

(D) An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under section 501(c)(3) as a "Scientific" organization, if -

(i) Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in section 501(c)(3), or

(ii) Such organization retain (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formula resulting from its research and does not make patents, copyrights, processes, or formula available to the public. For purposes of this subdivision, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copy right, process, or formula, such patent, copyright, process, or formula shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be utilized to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of subdivision (C) of this subparagraph) only if it is carried on for a person described in subdivision (C)(ii) of this subparagraph of if it is scientific research described in subdivision (C)(iii) of this subparagraph.

(E) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in section 501(c)(3) will not preclude such organization from meeting the requirements of section 501(c)(3) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (See paragraph (e) of this section, relating to organizations carrying on a trade or business). See paragraphs (a)(5) of § 1.513-2, with respect to research which constitutes an unrelated trade or business, and section 512(b)(7)(8), and (9), with respect to income derived from research which is excludable from the tax on unrelated business income.

(F) The regulations in this subparagraph are applicable with respect to taxable years beginning after December 31, 1960.

(e) Organizations carrying on trade or business.

(1) **In general.** - An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the

benefit of individual members of the organization. See, however, section 501(d) and § 1.501(d)-1, relating to religious and apostolic organizations.

(2) **Taxation of unrelated business income.** - For provisions relating to the taxation of unrelated business income of certain organizations described in section 501(c)(3), See sections 511 to 515, inclusive, and the regulations thereunder.

(f) **Applicability of regulations in this section.** - The regulations in this section are, except as otherwise expressly provided, applicable with respect to taxable years beginning after July 26, 1959. For the rules applicable with respect to taxable years beginning before July 27, 1959, See 26 CFR (1939) 39.101(6)-1 (Regulations 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167; C. B. 1954-2, 47). Reg. Section 1.501(c)(3)-1.

APPENDIX B

This list of nonprofit charitable organizations which may be exempt from taxation under the Internal Revenue Code is intended to illustrate application of these terms and is not intended to be a comprehensive listing.

(A) **501(c)(3) Organizations.**

(1) Religious
Churches
Church affiliated colleges
Sermon publishing organizations that apply proceeds to purchase of materials for theology school libraries.

(2) Educational, literary or scientific.
Primary and secondary schools
Colleges or universities
Professional or trade schools
Private schools (Must have a racially nondiscriminatory admissions policy)
Teachers travel study groups
Historical exposition organizations
Engineering societies engaged in scientific research
Abortion counseling organizations
Sterilization information organizations
Credit union educational organizations
School Accreditation organizations
Organizations formed to provide work experience to students
Anthropological research organizations
Educational, cultural and public interest television programming organizations
Training program product sales organizations
Educational day care organizations
Political educational organizations (must not solicit for or endorse candidates)

(3) Public safety.
Traffic safety organizations
Organizations which inspect and test for public safety

(4) Prevention of cruelty to children or animals.

(5) Fostering national or international amateur sports competition.

(6) Charitable.
Nonprofit hospitals

Health care and maintenance organizations
Drug Clinics
Alcoholic treatment organizations
Organizations that provide aid to the blind
Public interest law firms
Nonprofit legal aid societies
Prisoner rehabilitation organizations
Housing organizations which provide specially designed housing for the elderly or handicapped
Honor Societies
Volunteer fire company
Disaster service organizations
Racial discrimination prevention organizations
Aid to senior citizen organizations
Aid to immigrants organizations
Organizations formed to promote civic pride

(b) **501(c)(4) Organizations.**

(1) Civil leagues.
Homeowner's association
Garden clubs
Women's vacation and rest home
Bus transportation organizations (providing relief for regular bus service)
Environmental protection organizations
Organization involved in processing of consumer complaints

(2) Nonprofit local employees' associations.

(c) **501(c)(8) Organizations.** - Fraternal beneficiary societies (must operate) under the lodge system and have an established system for payment of benefits.

(d) **501(c)(10) Organization.**

(1) Fraternal beneficiary societies (must operate) under the lodge system and give its net earnings solely for religious, charitable, scientific, literary, educational and fraternal purposes.

(e) **501(C)(19) Organizations.** - Veteran's organizations (membership must consist of seventy-five (75%) war veterans and substantially all of the remainder must be veterans, cadets, or spouses, widows or widowers of war veterans. They must also be organized in the United States).

(f) **501(d) Organizations.** - Religious and apostolic organizations.