

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

AUG 13 3 07 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: State Tax Division TITLE NUMBER: 110

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

AMENDMENT TO AN EXISTING RULE: YES  NO

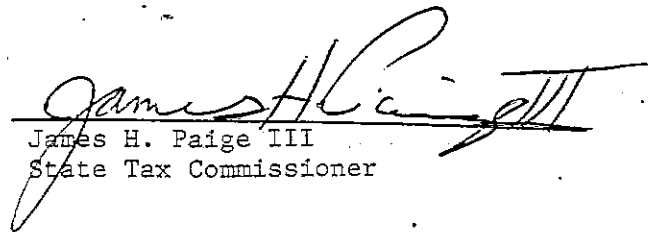
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

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 HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
James H. Paige III  
State Tax Commissioner

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State of West Virginia  
Department of Tax and Revenue

TAX DIVISION

P. O. Box 2389

Charleston, WV 25328-2389

GASTON CAPERTON  
GOVERNOR

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OFFICE OF JAMES H. PAIGE III  
SECRETARY OF STATE

CONSENT TO FILE RULE

August 13, 1993

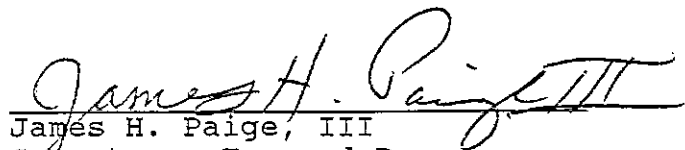
To Whom It May Concern:

Title of Rule: . . . Bingo  
Title Number: . . . 110  
Series Number: . . . 16

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Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 13th day of August, 1993.

  
James H. Paige, III  
Secretary, Tax and Revenue

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### STATEMENT OF CIRCUMSTANCES

When the Legislature enacted Senate Bill 463 during the regular session and Senate Bill 6 in the First Extraordinary Session, it substantially amended the Bingo laws: enacted age limits for players, increased from 75% to 85% the maximum amount of gross proceeds that may be paid in prizes and authorizes the payment of salaries in certain circumstances; changes the frequency and prize amounts for superbingo; change the license fees; required security personnel to be licensed; expanded financial reporting requirements; and authorized child care services. The rules are amended accordingly.

DATE: August 13, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: Bingo

1. Authorizing statute(s) citation W.Va. Code §§ 11-10-5 and  
47-20-23

2. a. Date filed in State Register with Notice of Public  
Comment Period: July 9, 1993

b. What other notice, including advertising, did you give of  
the public comment period?

None

c. Date of Public Comment Period: July 9, 1993 -

August 9, 1993

d. Attach list of persons who appeared at hearing, comments  
received, amendments, reasons for amendments.

Attached  No Comments received

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public comment  
period: (be exact)

August 9, 1993

f. Name and phone number(s) of agency person(s) to contact  
for additional information:

John Montgomery - 558-5330

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

\_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

\_\_\_\_\_

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Bingo

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Tax Division

Address: State Capitol  
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no change in expenses resulting from the amendments to the Bingo rule.

3. Objectives of these rules:

The amendments to the Bingo rule bring the rule into compliance with the Bingo laws as amended by the Legislature in S.B. 463 in the regular session and S.B. 6 in the First Extraordinary Session.

Rule Title: Bingo

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

These amendments should have no impact on state government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

There may be an economic impact on some participating groups but the amount of such impact cannot be determined.

C. Economic Impact on Citizens/Public at Large.

There should be no economic impact resulting from this rule.

Date: August 13, 1993

Signature of Agency Head or Authorized Representative

  
James H. Paige III  
State Tax Commissioner

FILED

PUBLIC COMMENTS AND RESPONSES THERETO ON

AUG 13 3 07 PM '93

THE BINGO RULE

Set forth below are public comments received by the State Tax Division pertaining to the proposed Bingo Rule. OFFICE OF THE STATE SECRETARY OF STATE

COMMENT: Only the daily rental paid by a licensee, for the days on which it conducts a bingo occasion, should be countable against the 15% of gross bingo receipts maximum allowed for expenses, and the rental paid for the other days, that the licensee occupies the same leased premises, should not be chargeable against that maximum expense amount.

RESPONSE: The State Tax Division agrees. The expense chargeable against the 15% maximum are only those expenses reasonable and necessary to the conduct of bingo occasions. Section 110-16-16.1.1 is amended accordingly.

COMMENT: A lessor may receive rent for leased premises from one or more annual licensees for no more than a combined total of two bingo occasions conducted pursuant to the licensee(s)' annual bingo licenses in each calendar week, and may receive rent from one or more super bingo licensees for conducting no more than one super bingo occasion in each calendar month, so long as the total number of bingo occasions, conducted under either an annual license or a super bingo license, for which the lessor receives rent for the leased premises from all such licensees, does not exceed one hundred and sixteen in any twelve month period.

RESPONSE: The State Tax Division agrees. Section 110-16-15.4 is changed accordingly.

COMMENT: Subject to the \$7,500 per occasion limit, a licensee, which holds both annual and super bingo licenses, may pay out prizes in connection with its conduct of regular bingo occasions under its annual bingo license not to exceed 85% of the gross proceeds from its conduct of such regular bingo occasions measured at the end of its one year license period, and not at the end of each bingo occasion or quarterly reporting period. Likewise, subject to the \$30,000 per occasion limit, that same licensee may also pay out prizes not to exceed 85% of the gross proceeds received from its conduct of super bingo occasions measured at the end of its one year super bingo license period, and not at the end of any given super bingo occasion or quarterly reporting period.

RESPONSE: The State Tax Division agrees. Section 110-16-11.1 is changed accordingly.

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OFFICE OF THE DIRECTOR

COMMENT: A licensee, which holds both annual and super bingo licenses, may pay authorized expenses in connection with its conduct of regular bingo occasions, under its annual bingo license, not to exceed 15% of the gross proceeds from its conduct of such regular bingo occasions, measured at the end of its one year license period, and not at the end of each bingo occasion or quarterly reporting period. Likewise, such licensee may also pay other authorized expenses, not to exceed 15% of the gross proceeds received from its conduct of super bingo occasions, measured at the end of its one year super bingo license period, and not at the end of any given super bingo occasion or quarterly reporting period.

RESPONSE: The State Tax Division agrees. Section 110-16-16.1 is changed accordingly.

COMMENT: A holder of both an annual bingo license and a super bingo license may conduct occasions under both licenses concurrently at the same location, so long as the separate prize amount and occasion frequency limitations, applicable under the two different licenses, are observed.

RESPONSE: The State Tax Division agrees. Section 110-16-11.2 is changed accordingly.

COMMENT: Within the 15% limitation, a licensee may also pay for, from the gross proceeds of its bingo occasions, in addition to the enumerated expenditures for custodial services, advertising, bingo supplies and equipment, security personnel and child care services, various other miscellaneous goods and services which are of a nature so that, if the licensee were a taxable, for-profit organization, the expenditures for such items would give rise to deductions for purposes of calculating its taxable income.

RESPONSE: The State Tax Division does not necessarily agree. To the extent the expenses are reasonable, necessary and actual, and to the extent the expenses are incurred in connection with the conduct of bingo occasions, and to the extent the expenses do not exceed the percentage limitations, they may be paid out of the gross proceeds. However, it is not appropriate to utilize "ordinary and necessary expenses" from Internal Revenue Code §§ 162(a) and 212 as those sections relate to profit making organizations when making a determination of "reasonable, necessary and actual expenses" in the conduct of charitable bingo. (Emphasis added).

To the extent reasonable legal fees are actually incurred to obtain a license but not to defend legal actions resulting from the conduct of bingo occasions, and to the

extent reasonable accounting fees are actually incurred to provide required reports, such expenses, as well as other appropriate expenses, are classified as "reasonable, necessary and actual." Section 110-16-16.1.8 is changed accordingly.

COMMENT: A licensee may conduct, through the volunteer, uncompensated efforts of its members, the concessions activities in connection with the conduct of its bingo occasions, and may also do so during the conduct of bingo occasions by another licensee so long as the net proceeds from the operation of such concessions are applied to the charitable, etc. purposes for which the concession-operating licensee was established.

RESPONSE: West Virginia Code § 47-20-13 authorizes a charitable or public service organization, as defined in West Virginia Code § 47-20-2 to operate a concession at a bingo occasion. This may or may not include those auxiliaries or other organizations affiliated with such charitable or public service organizations and which may obtain a separate license. As a result, Section 110-16-14.1.2 is amended to reflect the Code but not necessarily the comment.

BOWLES RICE  
McDAVID GRAFF & LOVE

ATTORNEYS AT LAW

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TELEPHONE 304-485-8500  
FACSIMILE 304-485-7973

August 6, 1993

West Virginia Department of Tax and Revenue  
Legal Division  
P. O. Box 1005  
Charleston, W.Va. 25324-1005

Re: Proposed Changes to Bingo Regulations

Dear Ladies and Gentlemen:

This is to respectfully comment on certain enumerated issues relating to the changes in the charitable bingo regulations which were proposed on July 9, 1993.

General Comments

The 1993 legislative amendments to the charitable bingo laws not only require specific changes in the directly affected portions of the implementing regulations (to accurately state the substance of the new governing statute), but the new law also raises various interpretative issues which are not fully addressed in other portions of the existing rules. Specifically, the elimination of a set dollar amount for maximum annual prizes, and the increased frequency by which super bingo occasions may be conducted, have practical implications for the implementation of several other bingo rules which were not directly amended by this year's legislation.

Specific Comment No. 1

ONLY THE DAILY RENTAL PAID BY A LICENSEE, FOR THE DAYS ON WHICH IT CONDUCTS A BINGO OCCASION, SHOULD BE COUNTABLE AGAINST THE 15% OF GROSS BINGO RECEIPTS MAXIMUM ALLOWED FOR EXPENSES, AND THE RENTAL PAID FOR THE OTHER DAYS, THAT THE LICENSEE OCCUPIES THE SAME LEASED PREMISES, SHOULD NOT BE CHARGEABLE AGAINST THAT MAXIMUM EXPENSE AMOUNT.

Discussion

The governing provisions of the West Virginia Code provide, in pertinent part, that, among the reasonable, necessary and actual expenses, incurred in connection with the conduct of bingo occasions, which may be paid out of the gross proceeds of the conduct of bingo, is "rent paid for the use of the premises . . ."

W.Va. Code §47-20-15(a)(1).

If, on the days it is not conducting bingo occasions, a licensee uses leased premises for its other charitable, etc. purposes, and the rent paid for those other days comes from its share of the net proceeds from the conduct of its bingo occasions, such rent is not being paid for the use of the premises to conduct bingo occasions. Accordingly, the rule should expressly state that such rent is not chargeable against the 15% of the gross proceeds which may be used for certain reasonable, necessary and actual expenses incurred in connection with the conduct of bingo.

Specifically, subsection 16.1.1 of the regulation should be amended to read:

"16.1.1 rent, 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;"

Specific Comment No. 2

A LESSOR MAY RECEIVE RENT FOR LEASED PREMISES FROM ONE OR MORE ANNUAL LICENSEES FOR NO MORE THAN A COMBINED TOTAL OF TWO BINGO OCCASIONS CONDUCTED PURSUANT TO THE LICENSEE(S)' ANNUAL BINGO LICENSES IN EACH CALENDAR WEEK, AND MAY RECEIVE RENT FROM ONE OR MORE SUPER BINGO LICENSEES FOR CONDUCTING NO MORE THAN ONE SUPER BINGO OCCASION IN EACH CALENDAR MONTH, SO LONG AS THE TOTAL NUMBER OF BINGO OCCASIONS, CONDUCTED UNDER EITHER AN ANNUAL LICENSE OR A SUPER BINGO LICENSE, FOR WHICH THE LESSOR RECEIVES RENT FOR THE LEASED PREMISES FROM ALL SUCH LICENSEES, DOES NOT EXCEED ONE HUNDRED AND SIXTEEN IN ANY TWELVE MONTH PERIOD.

Discussion

The governing provisions of West Virginia Code provide in pertinent part:

"No owner . . . of premises on which bingo occasions are held by one or more licensees holding annual bingo licenses may receive rent . . . for the holding of more than two bingo occasions per week on his premises." W.Va. Code §47-20-14(a) (emphasis added)

Although there is no equivalent provision in the statute similarly limiting the number of super bingo occasions which may be conducted on a particular landlord's premises, the regulations have previously interpreted a subsequent provision of the same Code

subsection, limiting the total number of bingo occasions for which an owner may receive rent, to no more than the maximum number of bingo occasions which can be conducted under an annual license as stated above, to-wit: two (2) per week times 52 weeks or 104, plus the number of bingo occasions allowed in a year to one licensee holding a super bingo license.

Specifically, the finally adopted legislative rules, applicable prior to the 1993 statutory amendments to the bingo law, provided in pertinent part:

"The total number of bingo occasions for which any owner, lessee or agent may receive rent or other fee in any one year may not exceed one hundred eight 108." CSR §110-16-15.4

Such rule is consistent with the then-applicable statutory provisions allowing quarterly or four-per-year super bingo occasions by licensees authorized to conduct the same. Now that the statute has been amended to permit monthly super bingo occasions by authorized licensees, the regulations should provide that the total number of bingo occasions, for which any owner can receive rent in any twelve-month period, is not more than 116 (2 x 52 + 12).

Specifically, subsection 15.4 should be amended to read:

"15.4 The total number of bingo occasions for which any owner, lessee, or agent may receive rent or other fee in any one year may not exceed one hundred eight sixteen ~~108~~ (116)."

#### Specific Comment No. 3

SUBJECT TO THE \$7,500 PER OCCASION LIMIT, A LICENSEE, WHICH HOLDS BOTH ANNUAL AND SUPER BINGO LICENSES, MAY PAY OUT PRIZES IN CONNECTION WITH ITS CONDUCT OF REGULAR BINGO OCCASIONS UNDER ITS ANNUAL BINGO LICENSE NOT TO EXCEED 85% OF THE GROSS PROCEEDS FROM ITS CONDUCT OF SUCH REGULAR BINGO OCCASIONS MEASURED AT THE END OF ITS ONE YEAR LICENSE PERIOD, AND NOT AT THE END OF EACH BINGO OCCASION OR QUARTERLY REPORTING PERIOD. LIKEWISE, SUBJECT TO THE \$30,000 PER OCCASION LIMIT, THAT SAME LICENSEE MAY ALSO PAY OUT PRIZES NOT TO EXCEED 85% OF THE GROSS PROCEEDS RECEIVED FROM ITS CONDUCT OF SUPER BINGO OCCASIONS MEASURED AT THE END OF ITS ONE YEAR SUPER BINGO LICENSE PERIOD, AND NOT AT THE END OF ANY GIVEN SUPER BINGO OCCASION OR QUARTERLY REPORTING PERIOD.

## Discussion

The governing provisions of the West Virginia Code provide in pertinent part:

" . . . the total value of all prizes awarded by a licensee during the period of a license, may not exceed in value eighty five percent of the gross proceeds collected during that period: Provided, That notwithstanding the foregoing limitation, the total prizes awarded by a licensee, . . . for any bingo occasion held pursuant to an annual . . . license, may not exceed seven thousand five hundred dollars in value." W.Va. Code §47-20-10 (emphasis added)

"A holder of a super bingo license may conduct one super bingo occasion each month during the period of a license at which up to thirty thousand dollars in prizes may be awarded, notwithstanding the seven thousand five hundred dollars limitation on prizes specified in section ten of this article." W.Va. Code §47-20-6a

As shown by the underlined language, the 85% limitation, on the amount of prizes which may be paid out, is determined on an annual license period basis and is to be determined with respect to each separate license that a particular licensee may hold.

Therefore, section 11.1 of the regulations should be amended to read:

"11.1 Total prizes awarded during an annual or limited occasion license period may not exceed in value the lesser of seventy-five percent (75%) of the gross proceeds (See Section 2.1.10.1) collected during the license period or one hundred seventy-five thousand dollars (\$175,000): Provided, That for license years that end after June 4, 1992, the total prizes awarded during an annual, super-bingo or limited occasion license period, or any combination of such licenses, may not exceed in value the lesser of seventy-five percent (75%) of the gross proceeds collected during the license period or four hundred thousand dollars (\$400,000.00): Provided, however, That for license periods that end after July 9, 1993, the total prizes awarded during any annual, super-bingo or limited occasion license period may not exceed eighty-

five percent (85%) of the gross proceeds collected during that 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, further, That such percentage limitation shall be applied separately with respect to each separate bingo license that a given licensee organization holds.

#### Specific Comment No. 4

A LICENSEE, WHICH HOLDS BOTH ANNUAL AND SUPER BINGO LICENSES, MAY PAY AUTHORIZED EXPENSES IN CONNECTION WITH ITS CONDUCT OF REGULAR BINGO OCCASIONS, UNDER ITS ANNUAL BINGO LICENSE, NOT TO EXCEED 15% OF THE GROSS PROCEEDS FROM ITS CONDUCT OF SUCH REGULAR BINGO OCCASIONS, MEASURED AT THE END OF ITS ONE YEAR LICENSE PERIOD, AND NOT AT THE END OF EACH BINGO OCCASION OR QUARTERLY REPORTING PERIOD. LIKEWISE, SUCH LICENSEE MAY ALSO PAY OTHER AUTHORIZED EXPENSES, NOT TO EXCEED 15% OF THE GROSS PROCEEDS RECEIVED FROM ITS CONDUCT OF SUPER BINGO OCCASIONS, MEASURED AT THE END OF ITS ONE YEAR SUPER BINGO LICENSE PERIOD, AND NOT AT THE END OF ANY GIVEN SUPER BINGO OCCASION OR QUARTERLY REPORTING PERIOD.

#### Discussion

The governing provisions of the West Virginia Code provide in pertinent part:

"The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed fifteen percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo . . ." W.Va. Code §47-20-15(a) (emphasis added)

Given the start-up nature of any new licensees' proposed bingo activities, it will be necessary for them to make heavier expenditures for advertising, equipment and supplies in the earlier portions of their first annual and/or super bingo license periods than in the latter portions. Based on the above quoted language, such "front end" loading of these authorized expenditures is permissible so long as, at the end of the applicable license period, those expenses, together with other authorized expenditures, do not exceed 15% of the gross proceeds from the conduct of the regular or super bingo to which they relate.

Moreover, the 15% limitation on expenditures is separately determined with respect to the gross proceeds from a given licensee

organization's conduct of regular bingo occasions under its annual bingo license and with respect to the gross proceeds from its conduct of super bingo occasions under its super bingo license, if it holds both.

Therefore, section 16.1 of the regulation should be amended to read:

"16.1 Reasonable, necessary and actual expenses may be paid from the proceeds of the conduct of bingo, but the payments cannot exceed ~~ten~~ fifteen percent (~~±0~~ 15%) 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, however, That such percentage limitation shall be applied separately with respect to each separate bingo license that a given licensee organization holds. These payments may be made for:"

#### Specific Comment No. 5

A HOLDER OF BOTH AN ANNUAL BINGO LICENSE AND A SUPER BINGO LICENSE MAY CONDUCT OCCASIONS UNDER BOTH LICENSES CONCURRENTLY AT THE SAME LOCATION, SO LONG AS THE SEPARATE PRIZE AMOUNT AND OCCASION FREQUENCY LIMITATIONS, APPLICABLE UNDER THE TWO DIFFERENT LICENSES, ARE OBSERVED.

#### Discussion

The governing provisions of West Virginia Code provides in pertinent part:

"Joint bingo occasion means a single gathering or session at which a series of one or more successive bingo games is conducted by two or more licensees." W.Va. Code §47-20-20(j) (emphasis added)

"No two or more organizations may hold a joint bingo occasion under any annual licenses." W.Va. Code §47-20-4 (emphasis added)

Nothing contained in the foregoing statutory language appears to prohibit the concurrent conduct of a regular bingo occasion and a super bingo occasion by a single licensee holding licenses to conduct both. Additionally, so long as a licensee organization, holding both annual and super bingo licenses, does not hold more than two regular bingo occasions per calendar week, and does not

award prizes of more than \$7,500 at such occasions, and so long as it holds no more than one super bingo occasion per calendar month, and does not award prizes of more than \$30,000 at such occasions, it can conduct such regular and super bingo occasions concurrently at the same premises.

Therefore, section 11.2 of the regulations should be amended to provide, in pertinent part:

"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) and the super-bingo prizes awarded during that occasion may not exceed thirty five thousand dollars (\$35,000): Provided, however, That for license years that end after July 9, 1993, the total super bingo prizes that may be awarded during a super-bingo occasion may not exceed thirty thousand dollars (\$30,000)."

#### Specific Comment No. 6

WITHIN THE 15% LIMITATION, A LICENSEE MAY ALSO PAY FOR, FROM THE GROSS PROCEEDS OF ITS BINGO OCCASIONS, IN ADDITION TO THE ENUMERATED EXPENDITURES FOR CUSTODIAL SERVICES, ADVERTISING, BINGO SUPPLIES AND EQUIPMENT, SECURITY PERSONNEL AND CHILD CARE SERVICES, VARIOUS OTHER MISCELLANEOUS GOODS AND SERVICES WHICH ARE OF A NATURE SO THAT, IF THE LICENSEE WERE A TAXABLE, FOR-PROFIT ORGANIZATION, THE EXPENDITURES FOR SUCH ITEMS WOULD GIVE RISE TO DEDUCTIONS FOR PURPOSES OF CALCULATING ITS TAXABLE INCOME.

#### Discussion

The governing provisions of West Virginia Code provide in pertinent part:

"The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed fifteen percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to . . ." W.Va. Code §47-20-15(a) (emphasis added)

By using the underlined words, the Legislature recognized that other expenditures, besides those enumerated, would be legitimately

incurred in connection with the conduct of bingo occasions, but it simply did not attempt to list all of them.

Given the similarity of the terminology found in the Internal Revenue Code with respect to the deductibility of various expenditures in determining taxable income, to-wit: "ordinary and necessary expenses" [IRC §§162(a) and 212], it would appear that the terms in the state bingo law should be given a similar meaning. Specifically, because of the well-developed and objective interpretations surrounding the use of the Internal Revenue Code terminology cited above, it provides an administratively workable standard by which to interpret similar provisions of the West Virginia bingo statute.

Thus, a licensee's expenditures for other miscellaneous goods and services, which are ordinary and necessary for the conduct of its bingo occasions, as well as such things as the legal fees it incurs in connection with obtaining and maintaining compliance with the requirements of its bingo licenses, and the accounting fees it must incur to provide the reports required of it by virtue of holding those licenses, are all expenditures which may be paid out of the gross proceeds of its bingo occasions so long as the aggregate of such expenditures does not exceed the 15% limitation.

Therefore, section 16.1.8 of the proposed regulations should be amended to read:

"16.1.8 other reasonable, necessary and actual expenses, which include those that, as to the licensee, satisfy the definition of 'ordinary and necessary expenses' as contained in sections 162(a) and 212 of the Internal Revenue Code, applied as if the licensee were subject to federal income tax."

#### Specific Comment No. 7

A LICENSEE MAY CONDUCT, THROUGH THE VOLUNTEER, UNCOMPENSATED EFFORTS OF ITS MEMBERS, THE CONCESSIONS ACTIVITIES IN CONNECTION WITH THE CONDUCT OF ITS BINGO OCCASIONS, AND MAY ALSO DO SO DURING THE CONDUCT OF BINGO OCCASIONS BY ANOTHER LICENSEE SO LONG AS THE NET PROCEEDS FROM THE OPERATION OF SUCH CONCESSIONS ARE APPLIED TO THE CHARITABLE, ETC. PURPOSES FOR WHICH THE CONCESSION-OPERATING LICENSEE WAS ESTABLISHED.

#### Discussion

The governing provisions of the West Virginia Code provide in pertinent part:

"Except as provided in sections thirteen, . . .  
. . . of this article, only individuals who are

active members of the licensee organization may . . . operate any concession in conjunction with a bingo occasion . . ." W.Va. Code §47-20-11.

"Charitable or public service organization means a bona fide, not for profit, tax exempt, benevolent, . . . fraternal . . . unincorporated association or organization . . .

An organization or association is tax exempt if it is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection . . . 501(c)(10) . . . of the Internal Revenue Code." W.Va. Code §47-20-2(d)

". . . any charitable or public service organization as defined by section two of this article may operate a concession at any bingo occasions held by a licensee provided the net proceeds it receives from that concession are used solely for the . . . purposes of that organization." W.Va. Code §47-20-13

Clearly, based upon the above quoted language, members of a licensee may, without compensation, operate the concessions during the bingo occasions it conducts, and may also operate the concessions during the bingo occasions conducted by another licensee so long as the net proceeds, in either case, are applied to the purposes for which the first licensee was organized.

Therefore, section 14.1.2 should be amended to read:

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

Conclusion

While some of the foregoing comments suggest amendments to existing provisions of the regulations, their necessity is prompted, in all cases, by the practical implications of the 1993 legislative amendments. Moreover, they are intended in all cases to improve and clarify the application of the regulations to the new charitable bingo policies enacted by the Legislature in 1993.

Very truly yours,

  
Michael E. Caryl

168805