

Title 110
Legislative Rule

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

~~STATE TAX DEPARTMENT~~

~~LEGISLATIVE~~

~~Chapter 47-20~~
~~Series XVII 16~~
~~(1981)~~

Subject: West Virginia Bingo Rules and Regulations

Section 1. General.

1.01. Type of Regulations. -- These regulations are "legislative rules" as defined in West Virginia Code § 29A-1-2(d) (1982).

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

1.03. Authority. -- These regulations are issued under authority of West Virginia Code, Chapter 47, Article 20, Section 23.
W.V. Code § 47-20-23

1.04. Filing Date. -- These regulations are promulgated on the 17th day of August, 1981, and filed on the 16th day of December, 1981 in the Secretary of State's Office. In compliance with West Virginia Code § 29A-2-5 (1982), these regulations were refiled with the Secretary of State on December 29, 1982.

1.05. Effective Date. -- These regulations became effective on the 1st day of March, 1982.

1.06. Citation. -- These regulations may be cited as W.
Va. Leg. Reg. (Bingo) 47-20, Series XVI § ____, page ____ (1981).

Section 2.01

Section 2. Definitions.

2.01. When used in these regulations:

(a) "Act" means the Bingo Act being Ch. 47, Art. 20 of the W. Va. Code.

(b) "Bingo" means the game wherein participants pay consideration for the use of one or more cards bearing several rows of numbers or other designations no two of which cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he has covered a pre-determined sequence or pattern which had been preannounced for that game is, upon verification of such, declared the winner of that game.

- (1) Clarification of the term "consideration". -- For the purposes of these regulations, the term consideration shall mean more than five cents (5¢). It should also be noted that no other fees 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.

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.

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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.

(2) Limits on prizes awarded under this exception. --

If an individual, group or association plans to play bingo without a license under the exception noted in Section 2.01(b)(1), the prizes it awards for each game may not exceed ten dollars (\$10.00) in cash or merchandise.

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.

(c) "Bingo card" means a card bearing numbers or other designations, five or more in one line.

(d) "Bingo occasion" or "occasion" means a single gathering or session at which a series of one or more successive bingo games is played. During such a series, only one game at a time may be played.

(e) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits

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a number of people by:

- (1) assisting them to establish themselves in life as contributing members of society through education or religion; or
- (2) relieving them from disease, distress, suffering, constraint, or the effects of poverty; or
- (3) increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; or
- (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
- (5) by lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or
- (6) providing or supporting non-profit community activities for youth, senior citizens or the disabled; or
- (7) providing or supporting non-profit cultural or artistic activities.

Occasionally questions will arise as to whether a particular activity is a "charitable or public service activity or

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endeavor." The above criteria should provide some guidance. For further reference and explanation see Appendix A.

(f) "Charitable or public service organization" means a bona fide, non-profit, tax exempt organization which is either benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary. These organizations must obtain an I.R.C. § 501 tax exempt status determination letter from the Internal Revenue Service finding that they are exempt from 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, organizations which are subdivisions of the federal, state and local governments do not need to obtain an I.R.C. § 501 tax exempt status determination letter from the Internal Revenue Service. "Charitable or public service organizations" 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. § 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.

- (1) Test for determining tax-exempt status. -- In every instance, charitable organizations wishing to obtain a bingo license must file with their application a copy of their current determination letter from the Internal Revenue Service stating

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that the organization is exempt from taxes under certain Internal Revenue Code provisions. Requirements for each tax exempt status are set forth below:

- (A) I.R.C. § 501(c)(3). -- This section exempts from federal taxation corporations, community chests, funds or foundations which are organized and operated only for:
- (i) religious purposes,
 - (ii) charitable purposes,
 - (iii) scientific purposes,
 - (iv) testing for public safety purposes,
 - (v) literary or educational purposes,
 - (vi) 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
 - (vii) the prevention of cruelty to children or animals.

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

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carried on; no attempts to influence legislation can be carried on; and no participation or intervention in political campaigns for candidates can be maintained.

(B) I.R.C. § 501(c)(4). -- This section exempts from federal taxation non-profit civic leagues or organizations operated solely for the promotion of social welfare. It also exempts local employee associations in which:

(i) membership is limited to employees of a designated person in a particular municipality, and

(ii) all net earnings are given or used solely for charitable, educational or recreational purposes.

(C) I.R.C. § 501(c)(8). -- This section 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.

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- (D) I.R.C. § 501(c)(10). -- This section 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.
- (E) I.R.C. § 501(c)(19). -- This section exempts from federal taxation organizations, auxiliary units, trusts or foundations for war veterans. These 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.
- (F) I.R.C. § 501(d). -- This section 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

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are to be considered dividends received.

- (2) For further reference and explanation see Appendix B.

(g) "Commissioner" means the West Virginia State Tax Commissioner or his duly appointed representative except as otherwise required by law.

(h) "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 non-intoxicating beer permitted in any area where bingo is being played.

- (1) Clarification of the term "area". -- For illustrative purposes, several examples will be set forth to help in the determination of what constitutes "an area where bingo is being played."

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 non-intoxicating beer may

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be sold and consumed in the lounge. But, no alcoholic beverages, beer or non-intoxicating beer may be taken into the bingo area from the lounge.

Example 2. -- Organization Y is holding an open air street fair at which they plan to play bingo and sell alcoholic beverages, beer and non-intoxicating 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.

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 non-intoxicating beer may not be sold or consumed within this space.

(i) "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.

Section 2.01(j)

(j) "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.

(1) Clarification of the term net proceeds. -- As used in these regulations, net proceeds shall be the gross receipts (i.e. all moneys connected with participation in bingo games, the sale of supplies and other miscellaneous receipts) from all the bingo occasions held during a license period minus the reasonable, necessary and actual expenses. Expenses of holding the game may not exceed ten percent (10%) of the gross receipts collected during the entire license period, and expenses for prizes may not exceed twenty-five percent (25%) of the gross receipts collected during the entire license period or one hundred thousand dollars (\$100,000), whichever is less.

(2) Clarification of the term qualified recipient organization. -- As used in these regulations, qualified recipient organizations are charitable or public service organizations (See Section 2.01(f)), which are organized and function solely to benefit people by charitable or public service activities or endeavors. (See Section 2.01(e)).

Section 2.01(k)

(k) "Licensee" means any organization or association granted an annual, limited occasion or state fair bingo license.

(l) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(m) All other terms defined in the act have the same meaning when used in these regulations.

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Section 3.01

Section 3. Bingo operation.

3.01. The following rules are imposed upon licensees for the conduct of a bingo occasion.

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

(b) No games of chance other than bingo may be conducted or allowed at any bingo occasion.

(c) Bingo cards must have bingo numbers printed only on one side.

(d) No push out bingo cards may be used.

(e) Bingo cards may not be switched during bingo games being called.

(f) Cards may not be transferred between players.

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

(h) The combinations required to win a game must be clearly announced before each game is begun.

(i) No checks or money orders may be accepted in payment for a bingo game.

(j) No checks may be cashed out of bingo funds.

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

(l) The numbers appearing on the winning card must be verified at the time that the winner is determined.

Section 3.01(m)

(m) 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.

(n) Every player must be given an equal opportunity to win.

Section 4.01

Section 4. Licensing.

4.01. Who may hold bingo games.

(a) Any charitable or public service organization, as defined in Section 2.01(f), may hold bingo games under a valid license if they have been in existence in this state for two years prior to their filing for a bingo license.

(b) If the applicant is a charitable organization it must have an I.R.C. § 501 determination letter before it may file for a bingo license.

(c) Before any organization may hold a bingo game, the organization must register with the Secretary of State under the Solicitation of Charitable Funds Act. (See Section 30.)

4.02. Application for bingo license.

(a) Application is to be made to the tax commissioner on the provided form.

(b) Filing of applications.

(1) These applications must be filed with the state tax commissioner. "Filing" means that the complete application is delivered to the West Virginia State Tax Department, Division of Excise & License Tax, P. O. Box 2666, Charleston, West Virginia, by regular mail, certified mail or in-person delivery. The filing date of an application is the date of its receipt at the place designated by the tax commissioner.

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- (2) Any application which is not complete, does not have all required documentation or does not have the appropriate license fee attached will not be considered "filed".
- (3) Filing must be made at least sixty 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 days prior to the date scheduled for the first bingo game, the license will be automatically denied. If the application is not denied within thirty days after receipt, the application is considered approved. Within five days after approval the commissioner shall send the applicant its license.
- (4) Transition rule. -- If the application is filed any time between August 15, 1981 and February 15, 1982, the application for annual and limited licenses must be filed at least ninety days before the date specified in the application for the holding of the first bingo occasion. If the filing is not made at least ninety days prior to the date scheduled for the first bingo game, the license will be automatically denied. In the case of a state fair application, the application must be filed at least thirty days before the date

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specified for the holding of the first occasion. If this filing is not made at least thirty days prior to the date scheduled for the first bingo game, the license will be automatically denied. If an application filed between these dates is not denied within sixty days after receipt, the application is considered approved. Within ten days after approval the commissioner shall send the applicant its license.

- (5) All annual and limited license applications received before August 15, 1981, will be considered to be filed on August 15, 1981. All state fair license applications will be considered filed on the day the state tax commissioner receives them.

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

Section 5.01

Section 5. Annual license.

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

5.02. Only one 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.

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.

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 chapters in this State. Chapter A is located in Beckley and Chapter B is located in Morgantown. Both Chapter A and Chapter B wish to hold bingo occasions. Both may apply for and obtain a license.

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. However, the auxiliaries may play on C's license if

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they comply with all provisions of the act and these regulations. (e.g. the total number of games-played bingo occasions conducted by C and its auxiliaries may not exceed two per week or one hundred four per year, etc.)

5.03. 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.

5.04. No two or more organizations may hold a joint bingo occasion under any annual license.

5.05. Bingo licenses must be conspicuously displayed at the location where the bingo occasions are held.

5.06. All bingo occasions must be open to the public but no person under the age of eighteen may participate in any bingo game.

Section 6. Limited occasion license.

6.01. 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 weeks and bingo occasions may be held only once every twenty-four hours during the time period. Each bingo occasion may not exceed twelve hours in duration.

6.02. Only three 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. If an organization holds an annual license and they wish to hold bingo occasions as provided for in this section, they must also obtain a limited occasion license. But, no licensee that holds an annual license may obtain more than one limited occasion license.

6.03. 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.

6.04. Two or more organizations may hold a joint bingo occasion if each such organization has a valid limited occasion license for such jointly held occasion.

Section 6.05

6.05. Bingo licenses must be conspicuously displayed at the location where the bingo occasions are held.

6.06. All bingo occasions shall be open to the public but no person under the age of eighteen may participate as a player in any bingo game.

Section 7.01

Section 7. License fees and exemption from taxes.

7.01. License fees.

- (a) Annual License - \$100.00.
- (b) Bona fide senior citizens organization annual license - \$50.00.

(1) Clarification of term "bona fide senior citizen organization. This term means any non-profit organization, that is organized and operated solely to provide service to persons who are fifty-five or older. These organization must be described, and qualified under I.R.C. § 501(c)(3) and have a determination letter to that effect from the Internal Revenue Service.

- (c) Limited occasion license - \$25.00.
- (d) State fair license - \$4,000.00.
- (e) All fees must be paid to the tax commissioner and must accompany the application for license. If no license fee accompanies the application, the application will not be considered to be filed. License fee amounts, if mailed, must be remitted in the form of a check or money order except the license fee for the State Fair license. Payment of the State Fair license fee must be made either by certified check or money order. If payment is made in person to the West Virginia Tax Department, Division of Excise and License Tax, it may be made in cash.

Section 7.02

7.02. Exemption from taxes.

(a) Franchise taxes.

- (1) The license fee imposed is in lieu of all other license or franchise taxes or fees of this state.
- (2) No political subdivision of the state may impose, in regard to any bingo occasion, any license or franchise taxes or fees.

(b) Consumer sales taxes.

- (1) The licensee is not required to pay consumer 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.
- (2) The licensee is not required to collect consumer sales tax on any admission fees or any sales of bingo cards. This does not apply to State Fair licensees.

(c) Other taxes. -- The gross proceeds derived from the conduct of bingo occasions are exempt from:

- (1) state and local business and occupation taxes,
- (2) income taxes,
- (3) excise taxes, and
- (4) all special taxes.

This subsection does not apply to state fair bingo proceeds.

Section 8.01

Section 8. Information required in applications.

8.01. All applications for bingo licenses must contain:

(a) 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.

(b) The name of the state or national organization.

(c) The headquarters' address of the state or national organization.

(d) The address of the applicant organization.

(e) 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 be listed.

(f) The address or location where bingo games are to be held.

(g) 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 § 501(a) and is described in Internal Revenue Code 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d).

(h) 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 years prior to the making of this application.

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(i) 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 also be included.

(j) The name of the owner of the premises where the bingo occasions are to be held.

(k) A copy of all rental agreements involved if the premises are leased or subleased.

(l) 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 applies to bingo licenses applied for or issued by other states.

(m) A detailed statement of the charitable or public service purpose or purposes for which the bingo proceeds will be spent.

(n) 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 be included.

(o) 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 be attached. This must include agreements providing for any type of remuneration to be received by the concession operator.

Section 8.01(p)

(p) A statement stating that the individuals specified in Section 2.07(r), (s) or (t) and the officers of the applicant organization understand that:

- (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.
- (2) Reports must be filed and records must be kept as required in the Act.
- (3) That it is a crime to violate any provision of the Act.
- (4) That any violations may result in suspension or revocation of its license and denial of applications for subsequent licenses.

(q) 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 knowledge.

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

(s) Limited occasion licenses. -- In addition to the preceding requirements, the application must also include:

- (1) The names and addresses of two or more bona fide active members of the organization. These members must have the overall responsibility for the

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organizations bingo operations. On of these members must be present at all times when bingo is conducted.

- (2) The names and addresses of the highest elected officer of the applicant organization and his officially appointed designee. One of these members must also be present at all times when bingo is conducted.

(t) Annual licenses. -- In addition to the preceding requirements, the application for an annual license must also include:

- (1) The names, addresses and telephone numbers of three or more bone fide active members of the organization. These members must have the overall responsibility for the organizations bingo operations. One of these members must be present at all times when bingo is conducted.
- (2) The names, addresses and telephone numbers of the highest elected officer of the applicant organization and his officially appointed designee. One of these members must also be present at all times when bingo is conducted.

Section 9.01

Section 9. Amendment of license.

9.01. 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, the licensee must request approval from the tax commissioner to amend or modify its license.

9.02. 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 application, may:

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

(b) modify the license to reflect changes affecting fewer than one-third of the bingo occasions to be held under a limited occasion license or,

(c) amend the license if the changes under an annual license are permanent or if the changes under a limited occasion license affect one-third or more of the occasions scheduled.

9.03. Notification by the tax commissioner of amendments or modifications will be made to the licensee by regular mail.

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Section 10.01

Section 10. Licensee rules and regulations.

10.01. 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.

10.02. No licensee may allow an individual not present to play any bingo games.

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

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

10.05 A copy of licensee promulgated rules and regulations must be filed with the tax commissioner.

Section 11.01

Section 11. Limits on prizes awarded: state fair excepted.

11.01. Total prizes awarded during an annual or limited occasion license period may not exceed in value the lesser of twenty-five percent (25%) of the gross proceeds (See § 2-01(j)(1)) collected during the license period or one hundred thousand dollars (\$100,000).

11.02. Total prizes awarded for a single bingo occasion, whether held by one licensee or by two or more limited occasion licensees holding a joint bingo occasion, may not exceed one thousand dollars (\$1,000).

EXAMPLE. B organization holds bingo occasions on Tuesday and Thursday under a valid license. On Tuesday, prizes totalling eight hundred dollars (\$800) are awarded. B may not award one thousand two hundred dollars (\$1,200) on Thursday or any subsequent night. Prizes for any bingo occasion may not exceed one thousand dollars (\$1,000).

11.03. Prizes must be valued at fair market value on the day they are awarded.

11.04. Prizes may be money or merchandise, but they may not be beer, non-intoxicating beer, wine, spirits or alcoholic liquor.

11.05. This section does not apply to state fair bingo licenses.

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Section 12.01

Section 12. Operators of bingo games and related concessions;
state fair excepted.

12.01. Only individuals 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.

12.02. In no instance may an individual, under 18 years of age, participate in the conduct of a bingo occasion.

Section 13.01

Section 13. Compensation: state fair excepted.

13.01. No monetary consideration may be paid to any individual who participates in the conduct of a bingo occasion. All net proceeds derived from the operation of a concession under these circumstances become a part of the gross proceeds of the bingo occasion.

13.02. This section does not apply to state fair bingo licenses.

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Section 14.01

Section 14. Concessions exception.

14.01. The only exceptions to the statement that no monetary consideration may be paid to any individual who participates in the conduct of a bingo occasion are:

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

- (1) the licensee holds regular meetings or functions other than bingo occasions;
- (2) the concession is regularly operated at these regular meetings;
- (3) the individual, firm or corporation who operates the concession at regular meetings is to be the concessionaire for the bingo occasions;
- (4) the agreement terms are the same for both regular meetings and for bingo occasions. This 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 days.

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

Section 14.01(b)

(b) That the licensee may also allow any charitable 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.

Section 15.01

Section 15. Rent.

15.01. A licensee may rent premises for the holding of bingo occasions, and these expenses shall be considered a reasonable and necessary expense as provided for in Section 16.

15.02. No owner, lessee or agent of premises may receive rent or other fee from annual licensees for the holding of more than two bingo occasions per week on his premises.

15.03. No owner, lessee or agent of premises may receive rent or other fee from limited occasion licensees for the holding of more than forty-two bingo occasions per year on his premises.

15.04. 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 four.

15.05. If the owner of premises where bingo occasions are held is also a licensee, no rent or other fee for permitting its premises to be used by any person may be paid to that owner. These owners may be reimbursed for reasonable, necessary and actual expenses incurred by such use, but the amount may not exceed fifty dollars (\$50).

Section 16.01

Section 16. Payment of reasonable expenses: disbursements and net proceeds.

16.01. Reasonable, necessary and actual expenses may be paid from the proceeds of the conduct of bingo, but the payments cannot exceed ten percent (10%) of the gross receipts collected during a license period. These payments may be made for:

- (a) rent, 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 days of being made;
- (b) custodial services;
- (c) costs to the licensee for equipment and supplies used to hold the bingo occasion;
- (d) costs to the licensee for advertising the bingo occasion;
- (e) hiring security personnel;
- (f) the actual cost to the licensee for prizes;
- (g) other reasonable, necessary and actual expenses;

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

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

Section 16.04

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

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

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

Example 3. Bingo proceeds may not be used to maintain X club's barbeque pit.

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

16.05. 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

(a) spend the net proceeds for charitable or public service purpose not listed in the application, or

(b) spend the net proceeds later than the one 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 days prior to the end of the one year time period.

Section 17.01

Section 17. Records.

17.01. Separate accounting and bookkeeping procedures for bingo operations must be maintained by each licensee. This shall mean, at the minimum, that a separate bank account must be maintained for bingo and serially numbered checks must be used in conjunction with this account. Detailed books of receipts and disbursements must also be kept.

17.02. All records must be maintained for at least three years or for such longer period as the tax commissioner shall, in writing, order and these records must 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.

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

Section 18.01

Section 18. Advertising.

18.01. A licensee may advertise its bingo occasions in a reasonable manner. This shall be considered a reasonable and necessary expense as provided for in Section 16.

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Section 19.01

Section 19. Fraud; penalties.

19.01. 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.

19.02. The penalties upon conviction are:

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

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

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Section 20.01

Section 20. Obtaining license fraudulently; penalties.

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

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

Section 21.01

Section 21. Violation of provisions; penalties.

21.01. 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.

21.02. 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:

- (a) a fine of not less than one hundred (\$100) or more than one thousand dollars (\$1,000); and/or
- (b) imprisonment for not more than one year.

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Section 22. Proceeds of state fair.

22.01. 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.

Section 23.01

Section 23. State fair.

23.01. These sections allow bingo occasions to be held at the state fair. To obtain a state fair bingo license a person must:

(a) Have held regular bingo games for a period of two years prior to the filing of the application.

(b) file an application for a license which must include a copy of any license or agreement entered into between the state fair board or its licensee and the applicant;

(c) submit a license fee of four thousand dollars. This payment must be made by certified check or money order, or, if the payment is made in person at the Division of Excise and License Taxes, it may be made in cash.

23.02. 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.

23.03. In regard to the taxability of persons holding binog occasions at the state fair, see Section 7.02.

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Section 24. Administration.

24.01. The tax commissioner has the power to:

(a) deny an application for license if the issuance of the license would be in violation of this act.

- (1) The applicant may protest the denial of the application. Any protest must be made in writing and must state the reason for the protest. This must be filed with the Tax Commissioner within sixty days of the receipt of the denial of the license.
- (2) When the protest is received by the commissioner, a time and place will be set for a hearing on the matter.
- (3) The commissioner shall send a notice containing:
 - (A) the date of hearing;
 - (B) the time of hearing;
 - (C) the place where the hearing will be held; and
 - (D) a short, plain statement of the matters asserted.
- (4) Notice must be served by certified mail, personal or substituted service.
- (5) At the hearing the applicant may:
 - (A) produce evidence in its behalf;
 - (B) be represented by counsel.
- (6) A decision by the commissioner upholding the denial of the license is subject to judicial

Section 24.01(b)

review on appeal by the applicant.

(7) The burden of proof is on the applicant.

(b) revoke, suspend or refuse to renew a license if:

(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;

(2) the licensee has violated any of the provisions of the act;

(3) the licensee has failed to maintain records or file reports as required. Licenses will only be revoked, suspended or refused under this section if the commissioner finds that the failure to record or report will impair the commissioner's ability to administer the act.

(4) Before revocation or suspension of a license, the commissioner must give ten days notice to annual licensees or three days notice to limited occasion and state fair licensees. This notice must be written, must state reasons for the action and must specify a time and place where the licensee may show why the action should not be taken. Notice may be served by:

(A) certified mail to the licensee's address;

Section 24.01(c)

- (B) certified mail to the person who applied for the license on behalf of the organization; or
 - (C) personal or substituted service on the person who applied for the license on behalf of the organization.
- (5) At the time designated for any hearing the licensee may:
- (A) produce evidence in its behalf, and
 - (B) be represented by counsel.
- (6) A decision of the commissioner suspending or revoking a license is subject to judicial review on appeal by the licensee.

(c) 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 hearings shall be upon the licensee.

(d) issue emergency orders suspending licenses.

- (1) These orders may be issued when:
- (A) the commissioner believes that a criminal violation of the act has occurred;
 - (B) the commissioner believes that the suspension is necessary to prevent a criminal violation of the act; or

Section 24.01(d)

- (C) the commissioner believes that the suspension is necessary to preserve the public peace, health, safety, morals, good order or general welfare.
- (2) These orders must set forth the grounds for issuance. This includes a statement of facts of the alleged emergency. The order must be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.
- (3) These orders become effective immediately upon issuance and service.
- (4) After issuance of an emergency order the commissioner must 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.

Section 25.01

Section 25. Filing of reports.

25.01. Annual licensees must file, quarterly and annually, financial reports on forms provided by the commissioner. These reports must summarize the financial activity of the licensee for the reported time period. These quarterly reports must be filed no later than twenty days after the end of the quarter which it covers. Annual reports must be filed no later than thirty days after the expiration of the license. With the annual report, the licensee must include its expired license.

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

Quarters will be on a 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 1 - December 31 is the fourth quarter.

25.02. Limited occasion licensees and state fair licensees must file a financial report on forms provided by the commissioner. These reports will summarize financial activity for the license period. This report must be filed within 30 days after

Section 25.03

the expiration of the license and the expired license must accompany such report.

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

Section 26.01

Section 26. Filing of copy of license.

26.01. When the commissioner grants a license, he must 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.

26.02. The commissioner must make a copy of the application available for public inspection.

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Section 27.01

Section 27. County option election.

27.01. 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 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 act will not continue in force and effect in that county.

27.02. To call the election, a petition for election must be made. The form must be substantially as follows:

PETITION ON LOCAL OPTION ELECTION
RESPECTING THE CONDUCT OF
BINGO GAMES FOR
CHARITABLE PURPOSES
IN COUNTY,
WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing incounty, 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

Section 27.03

(1) or (2) upon the following question): Shall the provisions of article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continue in effect incounty, West Virginia?

Name	Address	Date
------	---------	------

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

At least ten percent of the persons qualified to vote within the county must sign this petition before the election may be called.

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

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

27.05. Election officers appointed and qualified to serve at any primary, general or special election must 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.

Section 27.06

27.06. 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 election if it is held at the same time.

27.07. The form for the ballot must 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?

Yes No

(Place a cross mark in the square opposite your choice.)"

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

27.09. There must be five years between local option elections on this question, whether the question was approved or disapproved at the previous local option election.

Section 28.01

Section 28. Prohibited acts.

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

- (a) may not obtain, either directly or indirectly, a bingo license;
- (b) may not conduct a bingo game;
- (c) may not operate a concession;
- (d) may not lease or provide to any licensee organization any premise where bingo occasions may be held.

28.02. This restriction applies for ten 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 had obtained a valid license.

Section 29.01

Section 29. Restrictions on use of bingo equipment.

29.01. A licensee may only use bingo equipment:

- (a) which it owns
- (b) which it borrows without compensation from another licensee, or
- (c) 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.

29.02. Rental or purchase of bingo equipment shall be considered a reasonable and necessary expense as provided for in Section 16.

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Section 30.01

Section 30. Requirement for a registration statement.

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

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

30.03. These statements must contain:

- (a) the name of the organization;
- (b) the purpose or purposes for which it was formed;
- (c) the principal address of the organization;
- (d) the address of any offices in this State; if there is no office in this State, then the address of the person who has the organizations financial records;
- (e) the names and addresses of any chapters, branches or affiliates in this State;
- (f) the place where the organization was legally established;
- (g) the date when the organization was legally established;
- (h) the form of its organization;
- (i) any determination of tax exempt status by the Internal Revenue Service;
- (j) the names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

Section 30.03(k)

(k) the balance sheet and income and expense statement of the organization for the previous fiscal year. This must be audited by an independent public accountant if the organization raised more than fifty thousand dollars in contributions. OR A copy of a financial statement in a consolidated report covering all information about the previous year's fund-raising activities. This statement must be audited by an independent public accountant if the organization raised more than fifty thousand dollars in contributions;

(l) A statement as to whether the organization is going to solicit contributions on its own behalf or have others do the solicitation;

(m) A statement as to whether the organization has authorization from any other government agency to solicit contributions;

(n) A statement as to whether the organization has ever been enjoined from soliciting contributions;

(o) the purposes for which the contributions will be used;

(p) the name or names that it will use to solicit contributions;

(q) the names of individuals or officers who will have custody of the contributions;

(r) the names of individuals or officers who will have responsibility for distribution of the contributions.

These statements must be sworn and verified under oath. They must be signed by an authorized officer of the organization or by

Section 30.04

an independent public accountant and by the chief fiscal officer of the organization.

30.04. The annual fee for registration is ten dollars (\$10).

30.05. An organization is exempt from filing the registration statement if:

(a) They are an educational institution that has a curriculum registered or approved by the State Board of Education;

(b) They are requesting contributions for a named individual and all contributions collected are turned over to that named individual;

(c) They are a charitable organization that does not intend to raise or receive contributions of more than seven thousand five hundred dollars (\$7,500) per year or do not receive contributions from more than ten persons per year. To be exempt here all fund-raising activities must be carried on by persons who are not paid for their services and no part of the organizations assets or income does not benefit any officer or member. But, a registration statement must be filed within thirty days after it has received total contributions of seven thousand five hundred dollars (\$7,500);

(d) They are a non-profit and charitable hospital;

(e) They are an organization which solicits only within its own membership;

(f) They are a local post, camp, other element or county unit of such element of a bona fide veterans organization which

Section 30.05(g)

issues charters to its elements in this State;

(g) They are a bona fide volunteer fireman's organization or a bona fide ambulance association or a bona fide rescue squad association or a bona fide auxiliary or affiliate of any such organization. All fund raising activities must be carried on by organization members and they may not receive compensation for their services;

(h) They are a religious organization or any group affiliated with the religious organization that forms an integral part of it. In this case, none of the net income may benefit any individual and the organization must have a tax-exempt status determination letter from the Internal Revenue Service;

(i) They are a county church congregation or local congregation of a religious affiliation;

(j) They are a municipal or county little league or similar youth athletic organization;

(k) They are a service club.

Although these organizations do not have to file a registration statement, they must file an annual exemption statement with the Secretary of State. This exemption statement must include, the name and address of the organization; the purpose of the organization; a statement setting forth the reason for the claim for exemption. If exempted, the Secretary of State will issue a letter of exemption. No registration fees will be required of exempt organizations.

Section 30.06

30.06. Any professional fund raising organization which receives a state fair bingo license must also annually register with the Secretary of State. Application for registration must be made in writing and under oath on forms prescribed by the Commission on Charitable Organizations. A registration fee of fifty dollars (\$50) is required and a bond of ten thousand dollars (\$10,000) must be filed with and approved by the Secretary of State. The applicant must be the principal obligator on this bond and have one or more sureties that are satisfactory to the Secretary of State. The registration application must be approved by the Secretary of State before the organization may solicit.

APPENDIX A

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

The above regulation 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 purposes, 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 a 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(6)-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 an 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 or 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 though 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 it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest (see subparagraph (1) (B) of this paragraph). Therefore, the term "scientific", as used in section 501(c)(3), includes the carrying on of scientific research 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 depends 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 formulae 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 formulae 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 retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae 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 nondiscrimi-

minatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, 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 or 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 paragraph (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. § 1.501(c)(3)-1.]

APPENDIX B

This list of non-profit 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.

Non-profit hospitals

Health care and maintenance organizations

Drug Clinics

Alcoholic treatment organizations

Organizations that provide aid to the blind

Public interest law firms

Non-profit 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) Civic Leagues.

Homeowners' associations

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) Non-profit 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) Organization. -- Veteran's organizations (membership must consist of 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.