

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #3

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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 47-23-11

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

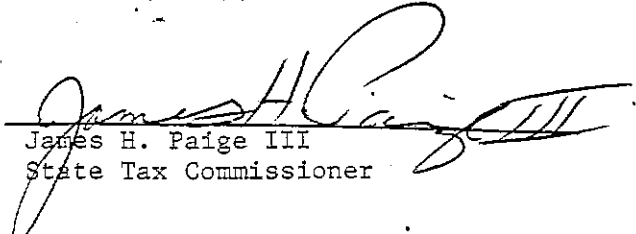
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 35

TITLE OF RULE BEING PROPOSED: Charitable Raffle Boards and Games

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

6.40



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GASTON CAPERTON  
GOVERNOR

State of West Virginia  
Department of Tax and Revenue

TAX DIVISION

P. O. Box 2389  
Charleston, WV 25328-2389

OFFICE OF JAMES H. PAIGE III  
SECRETARY

CONSENT TO FILE RULE

August 13, 1993

To Whom It May Concern:

Title of Rule: Charitable Raffle Boards and Games

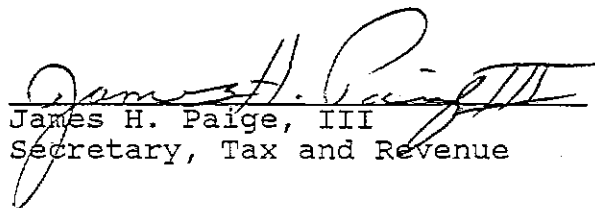
Title Number: 110

Series Number: 35

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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

STATEMENT OF CIRCUMSTANCES

When the Legislature enacted Senate Bill 463 in the regular session and Senate Bill 6 in the First Extraordinary Session, it enacted West Virginia Code § 47-23-1 et seq. which authorizes the sale of charitable raffle boards and games under certain circumstances. This rule provides appropriate regulation for the activity.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Charitable Raffle Boards and Games

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:

The fiscal impact of the rule should not differ from that envisioned by the Legislature when it enacted S.B. 463 in the regular session and S.B. in the First Extraordinary Session.

3. Objectives of these rules:

Regulate charitable raffle boards and games sales and taxes.

Rule Title: Charitable Raffle Boards and Games

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There will be a revenue increase because of fees imposed on the sale of the boards and games.

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

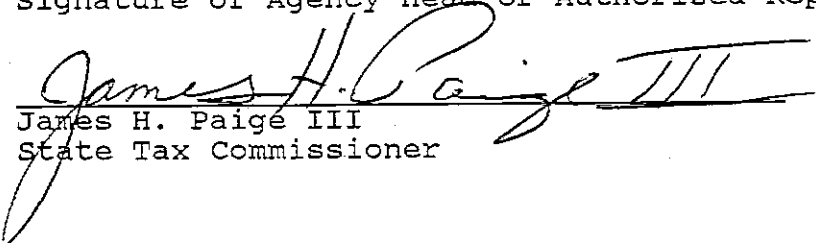
There should be no economic impact resulting from this rule.

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

DATE: August 13, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: Charitable Raffle Boards and Games

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

47-23-11

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  X  No Comments received

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

August 13, 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

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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 \_\_\_\_\_

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AGENCY APPROVED  
WEST VIRGINIA LEGISLATIVE REGULATIONS  
DEPARTMENT OF TAX AND REVENUE  
TITLE 110  
SERIES 35  
1993  
CHARITABLE RAFFLE BOARDS AND GAMES

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§ 110-35-1. GENERAL.

1.1 Scope. - These regulations clarify and implement state law as it relates to the sale of charitable raffle boards and games authorized by West Virginia Code § 47-23-1 et seq.

1.2 Authority. - West Virginia Code § 47-23-11.

1.3 Filing Date. -

1.4 Effective Date. - July 9, 1993.

§110-35-2. Definitions.

As used in these regulations and unless the context clearly requires a different meaning. The following terms shall have the meaning ascribed herein, and shall apply in the singular or in the plural.

2.1 "Commissioner" means Tax Commissioner of the State of West Virginia, or his delegate.

2.2 "Retail value" means the actual consideration paid to the wholesaler by the retailer for any charitable raffle board or game.

2.3 "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, limited liability company or other nongovernmental entity or institution.

2.4 "Retailer" means every person engaged in the business of making retail sales in the State of West Virginia of raffle chances except a charitable or public service organization authorized to conduct raffles pursuant to West Virginia Code Section 47-21-3.

2.4.1 An organization conducting raffles pursuant to Section 47-21-3 is one that is prohibited from awarding any single prize with a value in excess of \$1,000.00. Additionally, the cumulative total gross proceeds from all raffle occasions held by such an organization during any calendar year may not exceed \$7,500.00.

2.5 "Charitable raffle board" or "charitable raffle game" means:

2.5.1 A board or other device that has many folded printed slips to be pulled from or punched out of the board or otherwise distributed without a board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player to a designated prize;

2.5.2 A series of paper cards with perforated break-open tabs, a face value of which is covered or hidden from view to conceal one or more numbers, letters or symbols, which, on payment of a nominal sum, entitles the players to obtain a chance to a designated prize; or

2.5.3 Such other similar game which may be defined by the Tax Commissioner. The activities which are covered by this definition are commonly referred to as tips, tip boards, tip jugs, jar tickets, punch boards, pull tabs, seal cards, as well as the many variations of those games.

2.5.4 Not included in this definition are slips of paper or other printed tickets which may be purchased from an office supply store or printing company sold or distributed as chances on a prize. For example, a raffle licensee may hold a raffle and sell chances which are printed on slips of paper by the licensee. In such a situation, the slips of paper would not fall within the definition of "charitable raffle board" or "charitable raffle game" as provided in Article 47-23. However, if the raffle licensee purchased a tip board for the purpose of conducting a raffle occasion, the tip board would fall within the definition.

2.6 "Sale" means the transfer of the ownership of tangible personal property for a consideration.

2.7 "Verification" means a unique manufacturer identifiable serial number which is required to be printed on each ticket in a charitable raffle board or charitable raffle game or such other form of identification as may be prescribed by the Tax Commissioner upon a showing of undue hardship by the taxpayer under Section 110-35-11 of these regulations.

2.7.1 A unique manufacturer identifiable serial number is a serial number unique to the specific game being sold which is printed on each ticket in a charitable raffle board or charitable raffle game along with the name or logo of the manufacturer of the game.

2.8 "Wholesaler" or "distributor" means any person or entity engaged in the wholesale distribution of charitable raffle boards or games or similar boards or devices, as defined by the Commissioner, and licensed under the provisions of Article 47-23, to distribute said devices to charitable raffle boards or games retailers. Also included is anyone who is engaged in the manufacturing, packaging, preparing or repackaging of charitable raffle boards or games for distribution in this State.

**§110-35-3. Fees.**

3.1 Wholesalers or distributors of charitable raffle boards and games to retailers shall be licensed and a license fee in the amount of \$500 shall be paid to the Commissioner by each wholesaler or distributor for an annual license.

3.1.1 A single license fee of \$500 shall be paid to the Commissioner regardless of whether a person is engaged in multiple activities, e.g. manufacturing, packaging, preparing, repackaging, wholesaling and distributing charitable raffle boards and games.

3.2 Wholesalers and distributors shall pay a fee in the amount of 20% of retail value of each charitable raffle board or game sold to a retailer. This fee shall be in addition to the Consumers Sales and Service Tax imposed by West Virginia Code § 11-15-1 et seq.

3.2.1 A wholesaler or distributor must pay the 20% fee and collect 6% consumers sales and service tax from a retailer unless:

3.2.1.1 The wholesaler or distributor obtains from the retailer a West Virginia sales tax exemption certificate (CST-280) in which case only the 20% fee is paid.

3.2.1.2 The wholesaler or distributor obtains from the retailer a copy of the exemption document (RAF-3) authorized under West Virginia Code Section 47-21-3 in which case only the 6% consumers sales and service tax is collected (unless a West Virginia Sales Tax Exemption Certificate (CST-280) is obtained, in which case no 6% consumers sales and service tax is collected).

3.2.2 Manufacturers who sell charitable raffle boards and games to wholesalers or distributors who are not retailers will not pay the 20% fee on the retail value of such charitable raffle boards and games. However, manufacturers must collect the 6% consumers sales and service tax unless a West Virginia sales tax exemption certificate (CST-280) is obtained from the wholesaler or distributor, or unless the sale does not occur in West Virginia.

3.3 All revenue from the foregoing fees shall be placed in the special revenue account established under the authority of West Virginia Code § 11-9-2a.

**§110-35-4. No fee on charitable raffle boards and games by municipalities or other governmental subdivisions.**

No municipality or governmental subdivision may levy any excise or other tax or fee requiring charitable raffle boards or games to be stamped, or requiring licenses for sale thereof, other than licenses which may be imposed as a result of licenses provided for in West Virginia Code § 11-12-1 et seq.

**§110-35-5. Reserved.**

**§110-35-6. Reserved.**

**§110-35-7. Surety bonds required; release of surety; new bond.**

7.1 Wholesalers and distributors will be required to file a continuous surety bond when ordered to do so by the Tax Commissioner.

7.1.1 The Tax Commissioner may order the filing of a continuous surety bond where non-compliance with the requirements of article twenty-three, chapter forty seven of the West Virginia Code has occurred or the financial instability of the wholesaler or distributor has been documented.

7.1.2 Upon notification of the completion of the filing of a surety bond an annual notice of renewal, only, is required. The surety must be authorized to engage in business within this State. The bond shall be conditioned upon faithfully complying with the provisions of West Virginia Code § 47-23-1 et seq. and these regulations, and the filing of the returns and payment of all fees prescribed by said Section 47-23-1 et seq.

7.3 Any surety on a bond furnished hereunder shall be released and discharged from all liability accruing on such bond after the expiration of 60 days from the date the surety submitted by certified mail, to the Tax Commissioner, a written request to be discharged. The request shall not relieve, release or discharge the surety from liability already accrued or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek release from liability, it shall be the duty of the wholesaler or distributor to supply the Commissioner with another bond which shall become effective on or before the expiration of the aforementioned 60 day period or seek discharge from the order of the Commissioner mandating such surety bond.

**§ 110-35-7a. Requirement of wholesalers and distributors to be licensed to do business in State; resident agent requirement.**

7a.1 In addition to being licensed in accordance with West Virginia Code § 47-23-3 and Section 3 of these regulations, any wholesaler or distributor supplying charitable raffle boards or games to retailers in this State must be registered to do business in this State pursuant to the provisions of West Virginia Code § 11-12-1 et seq.

7a.2 Nonresidents otherwise complying with the provisions of Article 47-23 may be licensed as wholesalers or distributors of charitable raffle boards or games upon designating to the Tax Commissioner a resident agent upon whom notices, orders or other communications issued pursuant to such article may be served and upon whom process may be served.

**§110-35-8. How fee paid; reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.**

8.1 The retail value fee imposed by West Virginia Code § 47-23-3 and these regulations shall be paid by each licensed wholesaler or distributor to the Commissioner on or before the twentieth day of April, July, October and January for the immediately preceding three calendar months.

8.2 The measure of the fee on the retail value of charitable raffle boards and games shall be determined by multiplying the total amount of the retail value of all charitable raffle boards and games sold by wholesalers or distributors to retailers during the said three-month period by 20%.

8.3 The fee imposed on the retail value of charitable raffle boards and games shall be in addition to the Consumers Sales and Service Tax imposed by West Virginia Code § 11-15-1 et seq. and collected by wholesalers or distributors on sales to retailers who do not furnish a West Virginia sales tax exemption certificate (CST-280) to the wholesaler or distributor.

8.4 All fees due and owing to the Commissioner by reason of West Virginia Code § 47-23-1 et seq. and these regulations, if paid after the due dates required by Section 47-23-8 and this section, shall be subject to the provisions of West Virginia Code § 11-10-1 et seq., (the West Virginia Tax Administration and Procedures Act).

8.5 Each wholesaler or distributor shall provide with each quarterly payment of fees a return covering the business transacted in the previous three calendar months and providing such other information as the Commissioner may deem necessary for the ascertainment or assessment of the required fee. Such return shall be signed under penalty of perjury on such forms as the Tax Commissioner may prescribe and the wholesaler or distributor shall at the time of filing remit all fees owed or due.

8.5.1 All returns prescribed in West Virginia Code § 47-23-8 and this section are required, although a fee might not be due nor any business transacted for the period covered by the return.

8.6 Each person required to file a return shall make and keep such records as are necessary to substantiate the required returns. Necessary records include, but are not limited to, invoices, serial numbers or other verification, inventories, receipts, disbursements, and sales tax exemption certificate, for a period of not less than three (3) years, or the period open to review in the case of waiver of the statute of limitations, whichever is longer.

8.7 Unless otherwise authorized in writing by the Commissioner pursuant to Section 110-35-11 of these regulations, each delivery ticket or invoice for each purchase or sale, whether in cash or otherwise, of charitable raffle boards or games must be recorded upon a serially numbered original invoice showing the name and address of the seller and the purchaser, the point of delivery, the date, quantity, description, serial number and price of the product sold, and such other reasonable information as the Commissioner may require. The fee must be stated separately from the quantity and price of the product sold.

8.7.1 Manufacturers who sell charitable raffle boards and games to West Virginia wholesalers and distributors are required to generate such invoices.

8.7.2 Such original invoice must remain with the charitable raffle boards or games while the product is in the possession of the distributor, wholesaler or retailer, or while the product is being transported to a destination in the State of West Virginia.

8.8 The Commissioner is authorized by West Virginia Code § 47-23-8 and these regulations to inspect or examine the stock of charitable raffle boards and games kept in and upon the premises of any person where charitable raffle boards and games are placed, stored or sold. Furthermore he or she is authorized to inspect or examine the records, books, papers and any equipment or records of manufacturers, wholesalers and distributors or any other person for the purpose of determining the quantity of charitable raffle boards and games acquired or disbursed to verify the truth and accuracy of any statement or return and to ascertain whether the required fee has been properly paid.

8.9 To assist in obtaining records, books and papers and ascertaining the amount of fees and returns due, the Commissioner has the power to examine witnesses under oath; and if the witness fails or refuses to grant the Commissioner access to the books, records or papers, the Commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of

the party and such court shall thereupon issue summons to such party to appear before the Commissioner, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of any fee and returns due.

**§110-35-9. Penalty for failure to file return when no fee due; crimes; other offenses; penalties; seizures of illegal boards and games; disposition.**

9.1 In the case of any failure to make or file a return on the date prescribed when no fee is due, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, West Virginia Code § 47-23-9 imposes a penalty of \$25.00 for each month or fraction thereof that the failure continues.

9.2 If any person:

9.2.1 Makes any false entry upon an invoice or with intent to evade the fee presents any such false entry for the inspection of the Commissioner;

9.2.2 Prevents or hinders the Commissioner from making a full inspection of any place where charitable raffle boards or games subject to the fee are sold or stored or prevents or hinders the full inspection of any required invoices, books, records or papers;

9.2.3 Sells any charitable raffle boards or games in this State on which the applicable fee or tax has not been paid;

9.2.4 Being a retailer in this State, fails to produce on demand by the Commissioner invoices of all charitable raffle boards and games purchased or received by him within three years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control;

9.2.5 Being a retailer in this State, purchases or acquires charitable raffle boards and games from any person other than a licensed wholesaler or distributor;

That person shall in accordance with the terms of West Virginia Code § 47-23-9 be guilty of a misdemeanor.

9.3 Any person convicted of violating the provisions of West Virginia Code § 47-23-9(b) and this Section 110-35-9.2 shall be confined in the county jail or regional jail for not less than one year, or fined not less than \$1000.00 nor more than \$10,000.00, or both fined and imprisoned.

9.4 Any person who falsely or fraudulently makes, forges, alters or counterfeits any invoice or serial number prescribed by the provisions of West Virginia Code § 47-23-1 et seq. or these regulations, for the purpose of evading the fee, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to pay a fine of not less than \$5,000.00 nor more than \$10,000.00, or imprisoned in the penitentiary for a term of not less than one year nor more than five years, or both fined and imprisoned.

9.5 Whenever the Commissioner or any peace officer of this State discovers any charitable raffle boards or games subject to the fee and upon which the fee has not been paid, such charitable raffle boards and games shall be deemed to be contraband, and the Commissioner or peace officer of this State, is authorized and empowered to seize and take possession of such charitable raffle boards or games, without a warrant. Such charitable raffle boards and games shall be forfeited to the State, and the Commissioner shall retain the forfeited charitable raffle boards and games until they are no longer needed as evidence in any prosecution of the person from whom the raffle boards and games were seized. The Commissioner may within a reasonable time thereafter destroy such charitable raffle boards and games or sell said boards or games at public auction to the highest bidder: **Provided,** That such seizure and destruction or public auction shall not be deemed to relieve any person from fine or imprisonment. Such destruction may be made in any county the Commissioner deems most convenient and economical. All revenue from the fee shall be deposited in the special revenue account established under the authority of West Virginia Code § 11-9-2a and used to support the investigatory activities provided for therein.

9.6 Magistrates shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under West Virginia Code § 47-23-1 et seq. or these regulations.

**§110-35-10. Transportation of charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.**

10.1 Every person who knowingly transports charitable raffle boards or games upon the public highways, waterways, airways, roads or streets of this State and to a destination in this State must have in his actual possession invoices or delivery tickets for such charitable raffle boards or games which show the true name and the complete and exact address of the manufacturer, the true name and complete and exact address of the wholesaler or distributor who is the purchaser, the quantity and description of the charitable raffle boards and games being transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state fee. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the charitable raffle boards or games so

transported, the vehicle or vessel in which the charitable raffle boards or games are being transported and any paraphernalia or devices used in connection with such, are declared to be contraband goods and may be seized by the Commissioner or by any peace officer of the State without a warrant.

10.2 Anyone who transports charitable raffle boards or games in violation of West Virginia Code § 47-23-10 and this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$300.00 nor more than \$5000.00, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

10.3 Charitable raffle boards and games seized under the authority of West Virginia Code § 47-23-10 and Section 10.4 of these regulations shall be forthwith destroyed in the manner provided for in West Virginia Code § 47-23-10 and Section 10.4 of these regulations. The destruction of such charitable raffle games and boards shall not relieve the owner thereof of any action by the Commissioner for violations of West Virginia Code § 47-23-1 et seq. or these regulations.

10.4 The Commissioner shall immediately after any seizure institute a proceeding for the confiscation thereof in the circuit court of the county in which the seizure is made. The court may proceed in a summary manner and may direct confiscation by the Commissioner. Any person claiming to be the holder of a security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard. In the event it appears to the court that the property was unlawfully used by a person other than the claimant, and if the said claimant acquired his security interest in good faith and without knowledge that the vehicle or vessel, was going to be so used, the court shall waive forfeiture in favor of such claimant and order the vehicle or vessel returned to such claimant.

**§110-35-11. Administration; rule-making, required verification.**

11.1 Every charitable raffle board or game printed for use in this State is required to bear on each ticket in each such board or game verification as defined in Section 110-35-2 of these regulations. The Commissioner may waive this requirement on a temporary basis and for a stated period of time for any such manufacturer that can clearly establish that substantial hardship will result from immediate compliance: **Provided**, That such a manufacturer must also obtain from the Commissioner approval to use an agreed-upon alternate form of verification for the period of time of the waiver.

11.2 The Commissioner shall deny an application for a license if he finds that the issuance thereof would be in violation of the provisions of West Virginia Code § 47-23-1 et seq. or these regulations.

11.3 The Commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain required records or file required reports required if the Commissioner finds that said failure will substantially impair the Commissioner's ability to administer the provisions of laws and regulations relating to charitable raffle boards and games.

11.4 The burden of proof in any administrative or court proceeding is on the applicant to show cause why a charitable raffle boards or games wholesaler's or distributor's license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

**§110-35-12. Severability.**

If any provision of these regulations or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of these regulations, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the applicability of such provision to other persons or circumstances shall not be affected thereby.

**§110-35-13. General procedure and administration.**

Each and every provision of West Virginia Code § 11-10-1 et seq. shall apply to the fees imposed by West Virginia Code § 47-23-1 et seq. with like effect as if applicable only to those fees.

FILED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

PUBLIC COMMENTS AND RESPONSES THERETO  
ON THE CHARITABLE RAFFLE BOARDS AND GAMES RULE

Set forth below is the public comment received and response provided by the State Tax Division pertaining to the Charitable Raffle Boards and Games Rule. For purposes of responding to the issue presented, the comment has been condensed rather than repeated verbatim.

Comment: Requiring invoices or delivery tickets to contain information unique to West Virginia when the shipment of raffle boards and games is only through West Virginia and to a destination outside this State is unconstitutional as a burden on interstate commerce.

Response: The State Tax Division agrees. As a result, Sections 110-35-8.7.2 and 110-35-10.1 have been changed accordingly.

LD:JM/lr

ACE NOVELTY CO., INC.  
AMERICAN GAMES, INC.  
ARROW INTERNATIONAL/CAPITAL GAME  
BONANZA PRESS, INC.  
DOUGLAS PRESS, INC.  
STUART ENTERTAINMENT, D/B/A BINGO KING  
TRADE PRODUCTS, INC.  
WORLD WIDE PRESS, INC.



Rec. 8/9/93 JEM

MARY B. MAGNUSON  
COUNSEL  
700 LUMBER EXCHANGE BUILDING  
TEN SOUTH FIFTH STREET  
MINNEAPOLIS, MINNESOTA 55402  
PHONE: (612) 336-2071  
FAX: (612) 346-6254

August 5, 1993

Department of Tax and Revenue  
Legal Division  
P.O. Box 1005  
Charleston, WV 25324-1005

Dear Sir/Madam:

The National Association of Fundraising Ticket Manufacturers (NAFTM) is a non-profit trade association comprised of seven companies that manufacturer supplies for charity fundraising, including bingo equipment and raffle boards and games. We have reviewed the proposed emergency rules governing charitable raffle boards and games and have only one area of significant concern.

We are concerned over the requirement that invoices or delivery tickets containing information unique to West Virginia accompany shipments of raffle boards and games to and through the State of West Virginia, even though the ultimate destination of the product is not in West Virginia. In our view, the proposed rule (as well as the statute upon which the rule is based) is unconstitutional.

The proposed rule requires manufacturers of raffle boards and games to generate an invoice or delivery ticket containing specific information and attach that invoice or delivery ticket to the product for shipping. Raffle boards and games are shipped from the various manufacturing plants by common carrier. There is one manufacturer in the State of West Virginia. NAFTM member companies are located in Ohio, Illinois, Iowa, and Washington. Product shipped from a manufacturing plant in one of these other states and destined for a location other than West Virginia may, depending on the common carrier, travel through West Virginia, thereby triggering the invoicing requirement. This poses a real problem for the manufacturer who may not know the route of the common carrier and may be forced to generate a West Virginia-specific invoice because the truck is likely to travel through West Virginia in route elsewhere.

Moreover, the invoicing requirement may require the generation of multiple invoices for a single shipment of product. Many states require the generation of invoices for product sold in that particular state. If the product is destined for another state,

but travels through West Virginia to that ultimate destination, the manufacturer may be required to generate two invoices: one for West Virginia and one as required by the state to which the product was shipped.

These problems are faced most acutely by manufacturers located outside the state of West Virginia. NAFTM member companies do business in as many as 45 states, including virtually all of the states around West Virginia. A manufacturer located in West Virginia would obviously not face similar burdens. As a result, it is quite apparent that the proposed rule burdens interstate commerce and discriminates against out-of-state manufacturers of raffle boards and games who may ship such games through the state of West Virginia. State statutes which discriminate against interstate commerce are invalid unless the state can demonstrate that the statute (1) serves a legitimate local purpose, and (2) that the purpose could not be adequately served by available nondiscriminatory means.<sup>1</sup> We contend that sections 8.7.2 and 10.1 of the proposed emergency rule do not meet this test.<sup>2</sup>

Requiring unique invoices or delivery tickets to accompany raffle boards and games shipped through West Virginia serves no legitimate local purpose. The invoicing requirement exists to document that the 20% fee has or will be paid by the distributor/wholesaler upon the sale of the product to West Virginia retailers. Product shipped through West Virginia is not subject to the 20% fee. In addition, invoices accompanying product shipped by manufacturers through West Virginia will not reflect the payment of the fee. Thus, invoices accompanying product shipped through West Virginia offer no useful information to the state to document the payment of the 20% fee.

To the extent that the state uses the invoices to track raffle boards and games through the distribution chain to ensure that the sales are legal, there is no information on the invoice that the state could not obtain from the serial number on each game. Under the provisions of the new raffle board and game statute, each game is required to contain a manufacturer identifiable serial number. This serial number allows the state to track any game (or ticket for that matter) from the manufacturer. By contacting the manufacturer, the state can determine who purchased the game from the manufacturer, when the game was shipped and the ultimate destination of the game. The serial number requirement was placed in the statute exactly for such purposes.

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<sup>1</sup> Maine v. Taylor, 477 U.S. 131, 106 S.Ct. 2440 (1986)

<sup>2</sup> We are well aware that the language of proposed emergency rule section 10.1 essentially parrots the language of section 43-23-10 of the newly enacted raffle board and game statute. We contend that the statute is equally infirm.

We understand that the Department cannot render invalid a lawfully enacted state statute. However, it would seem well within the authority of the Department to craft a rule which interprets the statute in a constitutional manner. We urge you to consider modifying both 10.1 and 8.7.2 to require an invoice to accompany shipment of raffle boards and games if the ultimate destination of the product is in West Virginia. No legitimate purpose is served by requiring invoices or delivery tickets for shipment through West Virginia and any regulatory concerns the state may have can be resolved through the less burdensome means of serial number tracking.

Please consider modifying section 8.7.2 as follows:

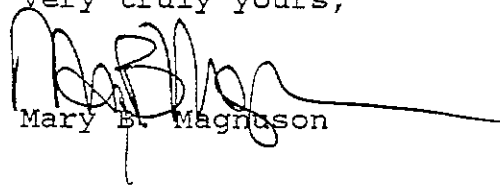
Such original invoice must remain with the charitable raffle boards or games while the product is in the possession of the distributor, wholesaler or retailer, or while the product is being transported to ~~ex~~ through a destination in the State of West Virginia.

Similarly, 10.1 may be modified in part as follows:

Every person who knowingly transports charitable raffle boards or games upon the public highways, waterways, airways, roads or streets ~~of to a destination in this state~~ must have in his actual possession invoices or delivery tickets for such charitable raffle boards or games which show the true name and the complete and exact address of the manufacturer, the true name and complete and exact address of the wholesaler or distributor who is the purchaser, the quantity and description of the charitable raffle boards and games being transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state fee, ~~if any, of the state or foreign country at the point of ultimate destination. ...~~

Thank you for your consideration of these comments. If we can answer any questions\_or provide any additional information, please do not hesitate to call.

Very truly yours,



Mary E. Magnuson

MBM/cls

cc: Richard Boyle