

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #3

FILED  
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AUG 31 9 35 AM '00  
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 Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 47-21-21 & 11-10-5

AMENDMENT TO AN EXISTING RULE: YES  NO

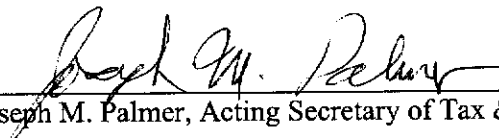
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 37

TITLE OF RULE BEING AMENDED: Charitable Raffles

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

  
Joseph M. Palmer, Acting Secretary of Tax & Revenue

\$12.40

**SUMMARY**  
**110 C.S.R. 37**  
**CHARITABLE RAFFLES**

This rule provides clarification and guidance on the licensing and regulation of charitable raffles in West Virginia. The amendments to the rule establish, define and explain the administrative remedies available to the Tax Commissioner when overseeing the regulation of those activities.

**STATEMENT OF CIRCUMSTANCES**  
**110 C.S.R. 37**  
**CHARITABLE RAFFLES**

West Virginia Code § 47-21-30 authorizes the Tax Commissioner to take certain actions against bingo licensees when West Virginia Code § 47-21-1 et seq. or the rule promulgated thereunder is violated. The authorized actions include the imposition of civil money penalties. However, Section 47-21-30(a)(6) requires the promulgation of a legislative rule in order to apply the penalties. This rule is being amended to accomplish that action.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Charitable Raffles

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Tax Department  
 Address: P.O. Box 1005  
Charleston, WV 25324-1005

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

There should be no change in operational expenses resulting from this rule.

Rule Title: Charitable Raffles

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3. Objectives of these rules:

This rule governs charitable raffles.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The impact may be negligible at best.

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

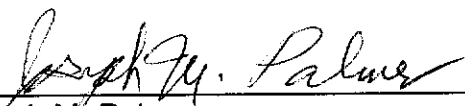
Licensees who violate the rule are subject to money penalties.

C. Economic Impact on Citizens/Public at Large.

None

Date: 8-28-08

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
Joseph M. Palmer  
State Tax Commissioner

Charitable Raffles  
110 C.S.R. 37  
Public Comments Received and  
Responses Thereto

**Comment:** There is no language in the Charitable Raffle rule that describes the term "de minimis violations". The term is, however, described in the Bingo rules, 110 C.S.R. 16. The Charitable Raffle rule, section 2.1.14 should reflect the language in the Charitable Bingo Rule, section 2.1.16.14.

**Response:** The two rules should be complementary. The comment is correct and the change has been made.

1000 Technology Drive, Suite 2310  
Fairmont, West Virginia 26554  
Telephone (304) 368-4000

600 Quarrier Street  
Charleston, West Virginia 25301  
Telephone (304) 347-1100

7000 Hampton Center, Suite K  
Morgantown, West Virginia 26505  
Telephone (304) 599-1390

3 West Piccadilly Street  
Winchester, Virginia 22601  
Telephone (540) 723-8877

Michael E. Caryl  
Telephone — (304) 264-4225  
Facsimile — (304) 267-3822

**Bowles Rice**  
**McDavid Graff & Love** PLLC  
ATTORNEYS AT LAW

105 West Burke Street  
Martinsburg, West Virginia 25401

Post Office Drawer 1419  
Martinsburg, West Virginia 25402-1419  
Telephone (304) 263-0836  
www.bowlesrice.com

August 22, 2000

5<sup>th</sup> Floor, United Square  
501 Avery Street  
Parkersburg, West Virginia 26101  
Telephone (304) 485-8500

World Trade Center  
333 West Vine Street, Suite 1200  
Lexington, Kentucky 40507  
Telephone (859) 225-8700

475 H Street, NW, Suite 300  
Washington, D.C. 20001  
Telephone (202) 682-3711

E-mail Address:  
mcaryl@bowlesrice.com

RECEIVED  
AUG 24 2000

Hon. Joseph M. Palmer  
State Tax Commissioner and Acting Secretary  
West Virginia Department of Tax and Revenue  
State Capitol, Room 300 West  
1900 Kanawha Boulevard, East  
Charleston, W. Va. 25305

Re: Comments on Proposed Amendments to Charitable Bingo and Raffles Rules

Dear Commissioner Palmer:

This is to bring your attention to an apparent oversight in the amendments which your agency has proposed in the legislative rules governing the administration of the charitable bingo and raffles laws.

Specifically, in the new section 2.1.14 of the charitable raffles rules (Title 110, Series 37), which defines the term "material violation," there is a reference to "de minimis violations . . . in accordance with this section." However, unlike the comparable provision of the charitable bingo rule amendments, there is, inexplicably, no language in that section of the charitable raffles rules that expressly describes the term "de minimis violations."

Accordingly, for the sake of clarity and consistency, I respectfully urge your agency to modify section 2.1.14 of the amendments to the charitable raffle rules by inserting there language identical to that found in amended section 2.1.16.14 of the charitable bingo rules (Title 110, Series 16) which describes in some detail the term "de minimis violations."

Bowles Rice  
McDavid Graff & Love<sup>PLLC</sup>

Hon. Joseph M. Palmer  
August 22, 2000  
Page 2

Thank you for your consideration of the foregoing comments.

Very truly yours,



Michael E. Caryl

MEC/mec

cc: Robert A. Hoffman, Director  
Legal Division  
P.O. Box 1005  
Charleston, W. Va. 25324-1005

**QUESTIONNAIRE**

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 31, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Room W-301, Capital Bldg.,  
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Charitable Raffles

1. Authorizing statute(s) citation W. Va. Code §§ 47-21-21 &  
11-10-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment  
Period:

July 24, 2000

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

August 23, 2000

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 hearing: (be exact)

August 31, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John Montgomery, Attorney Supervisor, Legal Division

State Tax Department, P.O. Box 1005, Charleston, WV 25324-1005

Phone: 558-5330, FAX 558-8728,

e-mail JMontgomery@tax.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Date of hearing or comment period:

---

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

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d. Attach findings and determinations and reasons:

Attached 

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**AGENCY APPROVED**  
**TITLE 110**  
**LEGISLATIVE RULE**  
**DEPARTMENT OF TAX AND REVENUE**

**SERIES 37**  
**CHARITABLE RAFFLES**

**FILED**  
Aug 31 9 35 AM '00  
OFFICE OF THE SECRETARY OF STATE

**§ 110-37-1. General.**

1.1. **Scope.** -- W. Va. Code § 47-21-1 et seq. allows individual or joint raffle occasions to be lawfully operated by licensed qualified charitable or public service organizations under certain specified restrictions and conditions. The purpose of this legislative rule is to provide the clarification and guidance necessary for lawful implementation and application of the law.

1.2. **Authority.** -- W. Va. Code §§ 47-21-21, 11-10-5 and 29A-3-1 et seq.

1.3. **Filing Date.** --

1.4. **Effective Date.** --

**§ 110-37-2. Definitions.**

2.1. When used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed in this section.

2.1.1. **"Bona Fide Senior Citizen Organization"** means any nonprofit organization that is organized and operated solely to provide service to persons who are fifty-five (55) years of age or older. An organization must be described, and qualified under Internal Revenue Code Section 501(c)(3) and have a determination letter to that effect from the Internal Revenue Service.

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

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

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

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

2.1.2.4. 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;

2.1.2.5. by lessening the burdens borne by government or voluntarily

supporting, augmenting, or supplementing services which government would normally render to the people;

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

2.1.2.7. providing or supporting nonprofit cultural or artistic activities;  
or

2.1.2.8. providing or supporting any political party executive committee.

2.1.3. **"Charitable or public service organization" or "major organization"** means a bona fide, nonprofit, tax exempt organization which is either benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary. These organizations must obtain an Internal Revenue Code Section 501 tax exempt status determination letter from the Internal Revenue Service finding that they are exempt from the federal income taxes under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code of 1986, as amended. However, organizations which are subdivisions of the federal, state and local governments do not need to obtain an Internal Revenue Code Section 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 Internal Revenue Code Section 501 tax exempt status determination letter from the Internal Revenue Service. The term "charitable or public service organization" does not include social or political organizations.

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

2.1.3.1.a. Internal Revenue Code Section 501(c)(3) exempts from federal taxation corporations, community chests, funds or foundations which are organized and operated only for:

2.1.3.1.a.1. religious purposes;

2.1.3.1.a.2. charitable purposes;

2.1.3.1.a.3. scientific purposes;

2.1.3.1.a.4. testing for public safety purposes;

2.1.3.1.a.5. literary or educational purposes;

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

2.1.3.1.a.7. the prevention of cruelty to children or animals.

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

2.1.3.1.b. Internal Revenue Code Section 501(c)(4) exempts from federal taxation nonprofit civic leagues or organizations operated solely for the promotion of social welfare. It also exempts local employee associations in which:

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

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

2.1.3.1.c. Internal Revenue Code Section 501(c)(8) exempts from federal taxation fraternal beneficiary societies that operate under the lodge system, such as a 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 such as life, sick, or accident insurance benefits, to the members or their dependents.

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

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

2.1.3.1.f. Internal Revenue Code Section 501(d) exempts from federal taxation religious or apostolic associations if they have a common treasury. These associations may engage in business which commonly benefits all members if the members include their share as gross income on their income tax returns. These amounts

are to be considered dividends received.

2.1.3.2. For further reference and explanation See Appendix B.

2.1.4. **"Charitable raffle"** means a raffle held by a charitable or public service organization of a bona fide senior citizen organization to raise money for a charitable or public service endeavor.

2.1.5. **"Charitable raffle board" or "charitable raffle game"** means:

2.1.5.1. a board or other device that has many folded printed slips to be pulled from 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;

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

2.1.5.3. such other similar game which may be defined by the State Tax Commissioner by legislative rule.

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

2.1.7. **"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. For illustrative purposes, the following examples may help in determining what constitutes "any area where raffle or a raffle occasion is being held."

2.1.8. **"Conduct"** means to direct the actual holding of a raffle and the playing of raffle games by activities including, but not limited to, selling raffle tickets, selling tip boards or pull tabs, collecting money, drawing winning raffle ticket stubs, verifying winners and awarding prizes.

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

2.1.910. **"Expend net proceeds for charitable or public service purposes"** means to devote the net proceeds of a raffle occasion to a qualified recipient organization.

2.1.11. **"Immediate family member"** means one's spouse, mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law, father-in-law and

step-child. A legally adopted child of an individual is treated for these purposes as a child of the individual by birth.

2.1.4012. **"Joint raffle occasion"** means a single gathering or session at which a series of one or more successive raffles is conducted by two or more licensees. It is also an occasion at which raffle tickets, and in conjunction therewith "pull tabs" or "tip boards" are sold and purchased and the winning numbers are revealed. For raffle tickets it also means the occasion of the drawing for the anticipated prize or prizes. For a joint raffle occasion authorized under W. Va. Code § 47-21-1 et seq., it means and includes the selling of raffle tickets, but not pull tabs or tip boards, on one day when the drawing for prizes will not be held until a later date; however, joint raffle occasion does not mean the selling of pull tabs and tip boards on one day when the drawing for prizes will not be held until a later date.

2.1.4413. **"Licensee"** means any organization or association granted an annual or limited occasion raffle license.

2.1.14. **"Material violation"** includes any of the following listed acts or omissions, set forth in West Virginia Code § 47-21-1, et seq., (except violations found to be de minimis violations by the Commissioner in accordance with this section), committed by a licensee, or an officer, director, employee, designee, agent or representative of a licensee:

2.1.14.1. Conducting charitable raffle occasions at times or at a location inconsistent with the license application;

2.1.14.2. Failure to timely amend or modify the charitable raffle license in accordance with section 9 of this rule;

2.1.14.3. Not having the raffle license posted at the occasion;

2.1.14.4. Allowing charitable raffle workers to play raffle;

2.1.14.5. Utilizing charitable raffle workers who fail to qualify under West Virginia Code § 47-21-1 et seq and this rule;

2.1.14.6. Expending or using charitable raffle proceeds for unauthorized expenses;

2.1.14.7. Distributing charitable raffle net proceeds for purposes other than qualified charitable or public service purposes or for unauthorized purposes;

2.1.14.8. Continuing failure to maintain accurate records;

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

2.1.14.10. Conducting fraudulent charitable raffle occasions:

2.1.14.11. Obtaining a charitable raffle license under false pretenses or deceptive or fraudulent circumstances.

2.1.14.12. **De minimis violations.** The Commissioner may find a violation to not be a material violation if, having regard to the nature of the conduct charged to constitute a violation, and the nature of the attendant circumstances, the Commissioner finds that the violator's conduct:

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

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

2.1.14.12.c. Considered with regard to the totality of the facts and circumstances, it appears that the conduct cannot reasonably be regarded as envisaged by the Legislature in forbidding the violation.

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

2.1.15. "**Meaningfully associated with the licensee**" means persons who are members of the licensee organization, family members of members of the licensee organization, clients of the licensee organization, supporters of the licensee organization, volunteers and employees of the licensee organization.

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

2.1.17. "**Net proceeds**" means the gross receipts (i.e. all moneys connected with participation in raffle games, the sale of supplies and other miscellaneous receipts) from all raffle occasions held during a license period minus the reasonable, necessary and actual expenses of holding the raffle occasions. The expenses of holding the game may not exceed twenty-five percent (25%) of the gross proceeds collected during the entire license period.

2.1.18. "**Non-membership organization**" or "**organization that is not a bona fide membership organization**" means an organization which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, but does not have bona fide members, or which has bona fide members, the majority of whom cannot operate charitable raffle

games over a sustained period of time by reason of physical disability or legal disability or any other bona fide disability.

2.1.18.1. Example 1: An organization which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, has only a board of directors. The organization carries out its operations through volunteer workers. The organization would be a non-membership organization for purposes of this definition.

2.1.18.2. Example 2: A young persons club (appropriately supported and sponsored by adults, parents and others) is a section 501(c)(3) organization which has members, all of whom are young persons under the age of 16. The members are prevented by law from participating in charitable raffle operations because of their ages (W. Va. Code §§ 47-21-1 et seq.). This young persons club is an organization which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, and the organization's bona fide members cannot operate charitable raffle games by reason of a legal disability. This organization will qualify as a "non-membership" organization or an organization that is "not a bona fide membership organization" for the limited purposes of this definition.

2.1.4319. **"Person"** means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

2.1.4420. **"Qualified recipient organization"** means a charitable or public service organizations as defined in Subdivision 2.1.4 of this rule, which is organized and function solely to benefit people by charitable or public service activities or endeavors.

2.1.4521. **"Raffle"** means a game authorized by W. Va. Code § 47-21-1 et seq., involving the selling of tickets to participate in such a game which entitles the holder or holders to a chance on a prize or prizes. It includes a game authorized by W. Va. Code § 47-23-1 et seq., involving the selling of so called "tip boards" or "pull tabs" which when opened or separated reveal a winning prize or combination of numbers or symbols which when read together designate a winning ticket; Provided, That, the selling of "tip boards" and "pull tabs" may only occur in conjunction with a charitable raffle occasion authorized under W. Va. Code § 47-21-1 et seq.

2.1.4622. **"Raffle Occasion"** means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee. It includes an occasion at which raffle tickets, and in conjunction therewith "tip boards" or "pull tabs" are sold and purchased and the winning numbers are revealed. For raffle tickets it also means the occasion for the drawing for the anticipated prize or prizes. For a raffle occasion authorized under W. Va. Code § 47-21-1 et seq., raffle occasion means and includes the selling of raffle tickets, but not pull tabs or tip boards, on one day when the drawing for prizes will not be held until a later date; however, raffle occasion does not mean the selling of pull tabs or tip boards on one day when the drawing for prizes will not be held until a later date.

2.1.23. The term "residents of this State meaningfully associated with a licensee" means individuals that are residents of West Virginia, who are associated with a licensee that is a non-membership organization, who are age eighteen years or older and who fulfill one or more of the following criteria:

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

2.1.23.2. Who are regular financial supporters of the licensee organization, or

2.1.23.3. Who are employees of the licensee organization, or

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

2.1.23.5. For purposes of this section, the term "residents of this State meaningfully associated with a licensee" includes the immediate family members of any resident of this State meaningfully associated with a licensee, as here defined, provided that such family members are residents of West Virginia.

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

2.1.4725. "Tax-exempt association or organization" means a charitable or public service organization which has received an Internal Revenue Service letter designating them as a tax-exempt organization or association under Internal Revenue Code Section 501.

2.1.4826. "Tip board" or "pull tab" means a charitable raffle board or charitable raffle game as defined supra.

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

individual does not qualify as a volunteer if that individual's services are rendered pursuant to any state, local, county or administrative requirement for graduation from any high school or other school or institution of learning.

2.1.4928. All other terms defined in the W. Va. Code § 47-21-1 et seq., have the same meaning when used in this rule.

### **§ 110-37-3. Raffle Operations.**

3.1. The following restrictions are imposed upon licensees for the conduct of a raffle occasion.

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

3.1.2. No games of chance other than raffle authorized in W. Va. Code § 47-20-1 et seq., and charitable raffles as defined in this rule may be conducted or allowed at any raffle occasion.

3.1.3. **"Tip boards", "pull tabs"** or other authorized games of chance must be sold to the licensee by a distributor which has registered with the Department of Tax and Revenue to sell and distribute those games of chance under W. Va. Code § 47-23-1 et seq. This provision does not apply to perforated raffle tickets printed for an organization by a local printing company.

3.1.4. The licensee must possess a valid raffle license at the time of the raffle occasion and the license must be present throughout the duration of any and all occasions that the licensee sponsors.

3.1.5. Operators and raffle workers may not play in or participate in the raffle games or occasions in which they are working or assisting.

3.1.6. All raffle material must possess a serial number given by a distributor which is licensed to operate in this State.

3.1.7. Checks may be cashed out of raffle funds not exceeding \$100.00 per occasion per person. The check must be made payable to the licensee and clearly marked on the face of the check with the term "raffle."

3.1.8. All winning raffle tickets, "pull tabs" or "tip boards" must be verified by a worker from the licensee organization before any prize money may be distributed.

3.1.9. All raffle occasions must be open to the general public.

3.1.10. Any player may request a verification of the numbers drawn or the winning tickets at the time a winner is determined.

3.1.11. Every player must be given an equal opportunity to win.

**§ 110-37-4. Licensing.**

**4.1. Who may hold raffle occasions.**

4.1.1. Except as provided in Subdivision 4.1.4 of this subsection, only persons, as defined in Section 2 of this rule, who are residents of this State and who are active members of any charitable or public service organization, as defined in Section 2 of this rule, may hold raffle occasions under a valid license if the organization has been in existence in this State for two (2) year prior to filing for a raffle license.

4.1.2. If the applicant is a charitable organization, it must have an Internal Revenue Code Section 501 determination letter before it may file for a raffle license.

4.1.3. Before any organization may hold a raffle or joint raffle occasion, it shall register with the Secretary of State under the Solicitation of Charitable Funds Act. (See Section 28 of this rule).

4.1.4. Any charitable or public service organization which has been in existence in this State for at least two years may conduct raffle occasions without a license if the following provisions are met.

4.1.4.1. The gross proceeds derived by that organization from all raffle occasions does not exceed \$7500 during any calendar year.

4.1.4.2. No prize awarded in any single raffle occasion exceeds \$1000.

4.1.5. Any charitable or public service organization which is not required to obtain a raffle license is not subject to the record keeping provisions of W. Va. Code § 47-21-16, but must maintain its own records for raffle. These records must be kept open for inspection by the Tax Commissioner for at least three (3) years.

**4.2. Application for raffle license.**

4.2.1. Application is to be made to the Tax Commissioner on the proper form.

**4.2.2. Filing of applications.**

4.2.2.1. Completed applications must be filed with the State Tax Commissioner. "Filing" means that the complete application is delivered to the West Virginia Department of Tax and Revenue, Criminal Investigation Division, Raffle and Raffle Licensing Unit, P.O. Box 1143, Charleston, West Virginia 25143, 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.

4.2.2.2. 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".

4.2.2.3. No raffle may be held and no tickets may be sold until the raffle application has been approved by the Commissioner and the license has been received by the applicant. Additionally, no raffle occasion may be held and no tickets may be sold until the expiration of the sixty day filing period, which is the time period between the Tax Commissioner's receipt of the application and the first raffle occasion.

Within five (5) days after the application has been approved, the Tax Commissioner shall send the license to the applicant. Any decision to deny an application must be made known to the applicant before the sixty (60) day filing period expires.

A failure to deny the application or send a license within the sixty day period will constitute approval of the application and the applicant may proceed to sell tickets and hold the raffle occasion. If the application has not been denied, the Tax Commissioner will send the license to the applicant within five (5) days after expiration of the filing period.

4.3. **Transferability** - No raffle license issued under W. Va. Code § 47-21-1 et seq. may be transferred.

### § 110-37-5. Annual License.

5.1. A charitable or public service organization may apply for an annual license which is valid for one (1) year from the date of issuance.

5.2. Only one (1) license per year may be issued to a charitable or public service organization and all of its auxiliaries, affiliates, chapters or lodges. If an organization does not obtain a license, the auxiliaries, affiliates, chapters or lodges may.

5.2.1. Example 1 - X is a national charitable organization with its headquarters in another state. Chapter B is located in Beckley. This Chapter wishes to hold raffle occasions. Chapter B may apply for and obtain a license so long as X is not licensed.

5.2.2. Example 2 - X is a national charitable organization with its headquarters in another state. X applies for and obtains a raffle license. X also has two (2) chapters in this State. Chapter A is located in Beckley and Chapter B in Wheeling. Both Chapter A and Chapter B wish to hold raffle occasions. Neither may obtain a license so long as X is so licensed.

5.2.3. Example 3 - C is a West Virginia volunteer fire department with two (2) auxiliaries in the state. If C applies for and obtains a raffle license, neither of the auxiliaries may obtain a license. However, the auxiliaries may hold raffles under C's license if they comply with all provisions of the West Virginia Code and this rule.

5.3. Branches, chapters or lodges of any national 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 separate organization for purposes of W. Va. Code § 47-21-1 et seq..

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

5.5. Raffle licenses must be conspicuously displayed at the location where the raffle occasions are held.

5.6. All raffle occasions must be open to the public.

**§ 110-37-6. Limited Occasion License.**

6.1. A charitable or public service organization may apply for a limited occasion license which is valid only for the time period specified in the application. This time period may not exceed six (6) months from the date of issuance and the number of raffle occasions may not exceed two (2) during this time period.

6.2. Only three (3) limited occasion licenses a year may be granted to the parent organization and all of its auxiliaries, affiliates, chapters or lodges. If the major organization does not obtain a limited occasion license, the auxiliary, affiliate, chapter or lodge may apply for one. A charitable or public service organization which applies for a limited occasion license is not required to possess an annual license.

6.3. For purposes of this section, branches, chapters or lodges of any national 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 separate organization for purposes of the West Virginia Code and this rule.

6.4. No licensee which holds an annual license may obtain more than one (1) limited occasion license per annual license period.

6.5. Two (2) or more organizations may hold a joint raffle occasion if each organization has a valid limited occasion license for the jointly held occasion.

6.6. Limited occasion licenses must be conspicuously displayed at the location where the limited occasion raffle occasions are held.

**§ 110-37-7. License Fees and Exemptions From Taxes.**

**7.1. License fees.**

7.1.1. Annual License - \$500.00.

7.1.2. Limited Occasion License - \$50.00.

7.1.3. State Fair License - \$500.00.

7.1.4. Exempt - Those organizations exempt from licensure under subdivision 4.1.4 of this rule are exempt from the fees imposed in this section.

7.1.5. 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 must be made either by certified check or money order. Payment may be made in person to the West Virginia State Tax Department, Criminal Investigation Division, Raffle and Raffle Licensing Unit, at 1001 Lee Street, Charleston, West Virginia.

## **7.2. Exemption from taxes.**

### **7.2.1. Franchise taxes.**

7.2.1.1. The license fee imposed in Subsection 7.1 of this rule is in lieu of all other license or franchise taxes or fees of this State.

7.2.1.2. No political subdivision of this State may impose any license or franchise fees or taxes in regard to any raffle occasion.

### **7.2.2. Consumers sales taxes.**

7.2.2.1. The licensee is not required to pay consumers sales tax on purchases to be used or consumed in the conduct of a raffle occasion.

7.2.2.2. The licensee is not required to collect consumers sales tax on any admission fees or any sales of raffle tickets, pull tabs or tip boards.

7.2.3. **Other taxes.** - The gross proceeds derived from the conduct of raffle occasions are exempt from:

7.2.3.1. state and local business and occupation taxes;

7.2.3.1. income taxes;

7.2.3.3. excise taxes; and

7.2.3.4. all special taxes.

## **§ 110-37-8. Information Required in Applications.**

**8.1. All applications for a raffle license shall contain:**

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

8.1.2. The name of the state or national organization;

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

8.1.4. The address of the applicant organization;

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

8.1.6. The address or location where raffle occasions are to be conducted;

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

8.1.8. A copy of the organization's charter, articles of incorporation or other evidence showing that the organization has been in existence for at least one (1) year prior to the making of the application;

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

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

8.1.11. A copy of all rental agreements involved if the premises are leased or subleased;

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

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

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

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

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

8.1.16.1. Allowing anyone, other than authorized individuals, to conduct any portion of the raffle occasion or operate any concessions is a violation of the West Virginia Code;

8.1.16.2. Reports must be filed and records must be kept as required by the West Virginia Code;

8.1.16.3. That it is a crime to violate any provision of the West Virginia Code;

8.1.16.4. That any violations may result in suspension or revocation of the organization's license and denial of applications for subsequent licenses;

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

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

**8.2. Limited occasion licenses** - In addition to the requirements provided in subdivisions 8.1.1 through 8.1.18 of this Subsection, the application for a limited occasion license shall also include:

8.2.1. The names and addresses of two (2) or more bona fide active members of the applicant organization. These members shall have the overall responsibility for the organization's raffle operations. One (1) of these members shall be present at all times when limited occasion raffle is being conducted; and

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

**8.3. Annual licenses** - In addition to the requirements provided in subdivisions 8.1.1 through 8.1.18 of this Subsection, the application for an annual license shall also include:

8.3.1. The names, addresses and telephone numbers of three (3) or more bona fide active members of the organization. These members shall have the overall responsibility for the organization's raffle operations. One (1) of these members shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes awarded; and

8.3.2. The names, addresses and telephone numbers of the highest elected officer of the licensee and his or her officially appointed designees. One (1) of these members shall also be present at all times when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded.

**§ 110-37-9. Amendment of License.**

9.1. If any circumstances, which are beyond the licensee's control, arise that would make the information in the original application inaccurate or would prevent the licensee from holding a raffle occasion in accordance with the information in the application, the licensee shall request approval from the Tax Commissioner to amend or modify its license.

9.2. Application for amendment or modification of the organization's license shall be made to the Tax Commissioner. The Commissioner shall provide application forms for this purpose.

9.3. Notification by the Tax Commissioner of approval of amendments or modifications to the license will be made to the licensee by regular mail.

**§ 110-37-10. Licensee Regulations.**

10.1. Each licensee may adopt rules and regulations so long as they are not inconsistent with or in violation of W. Va. Code § 47-21-1 et seq. or this rule.

10.2. Any rules and regulations adopted by a licensee shall be made available for public inspection at all raffle occasions.

10.3. Tip boards and pull tabs must be bought, sold and opened only within the area designated for the holding of a raffle occasion.

10.4. Any rules and regulations adopted by the licensee are a part of the records required to be maintained by the licensee.

10.5. A copy of licensee promulgated rules and regulations shall be filed with the Tax Commissioner.

**§ 110-37-11. Limits on Prizes Awarded: General Provisions.**

11.1. Prizes must be valued at fair market value at the time of the acquisition for the raffle or at the time of purchase.

11.2. Prizes may be money, real or personal property or merchandise other than beer, wine, spirits or alcoholic liquor.

**§ 110-37-12. Compensation of Raffle Operator.**

12.1. A raffle licensee is authorized under certain circumstances to pay a salary to operators of charitable raffle games who, as members of the licensee organization, have been active members in good standing for at least two (2) years prior to the date of filing the application for a charitable raffle license or the most recent filing of an application for renewal of the license. The salary may be no less than the federal minimum wage and no more than \$6.50 per hour worked at the charitable raffle occasion.

12.2. The number of operators which a licensee may pay for working at a charitable raffle occasion is dependent upon the licensee's gross receipts from the raffle occasions as indicated on the licensee's most recently filed annual financial report.

12.2.1. The licensee may pay no more than fifteen (15) operators when a raffle occasion is held in conjunction with a Super Raffle occasion.

12.2.2. The licensee may pay no more than eight (8) operators if its gross receipts as indicated in this Subsection equal or exceed \$100,000.

12.2.3. The licensee may pay no more than five (5) operators if its gross receipts as indicated in this Subsection is less than \$100,000 but equals or exceeds \$50,000.

12.2.4. The licensee may pay no more than three (3) operators if its gross receipts as indicated in this Subsection are less than \$50,000.

12.3. If a licensee lawfully holds a charitable raffle occasion simultaneously with a charitable raffle occasion, the number of paid charitable raffle operators allowed is in addition to the number of charitable raffle operators allowed under W. Va. Code § 47-20-12a. When such simultaneous raffle and raffle occasions occur, the raffle operators may be paid only from the raffle proceeds and the raffle operators may be paid only from the raffle proceeds. The charitable raffle and charitable raffle receipts and payments may not be commingled.

12.4. The terms "operator," "raffle operator" and "raffle operator" do not include concession stand workers. Additionally, concession workers may not be paid more than \$6.50 per hour.

**§ 110-37-13. Compensation for Concession Operator; Concession Operated by Charitable or Public Service Organization.**

13.1. Any licensee may allow any person to operate concessions as a part of a raffle occasion and be compensated for that operation: Provided, That:

13.1.1. the licensee organization holds regular functions other than raffle occasions on a regular basis;

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

13.1.3. the person which operates the concession at regular meetings is the concessionaire for raffle occasions;

13.1.4. the terms of the agreement, as provided for in Subdivision of this rule, are the same for both regular meetings and for raffle occasions. This agreement must be filed with the application for license and if any changes are made in the agreement those changes must be filed with the Tax Commissioner within ten (10) days of being agreed upon;

13.1.5. the cost of compensating any individual who participates in the conduct of raffle or related concessions shall not exceed \$6.50 per hour.

13.2. A licensee may also allow any charitable or public service organization to operate a concession at any raffle occasion held by a licensee; Provided, That the net proceeds received by the charitable or public service organization from the concession are used solely for the charitable or public service purposes of that organization.

**§ 110-37-14. Payment of Reasonable Expenses from Proceeds: Net Proceeds Disbursements.**

14.1. Reasonable, necessary and actual expenses incurred in connection with the conduct of raffle occasions may be paid from the proceeds of the conduct of raffle. Payments for the expenses may not exceed twenty-five percent (25%) of the gross proceeds collected during a license period, and are to be measured at the end of the license period and not at the end of any single raffle occasion or at the end of any quarterly reporting period. These payments may be made for:

14.1.1. rent paid for the use of any premises that does not exceed the fair market value rent for the premises; Provided, That the rent shall be prorated for the days on which raffle occasions are held. A copy of the rental agreement shall be filed with the application and any changes to that agreement shall be filed within ten (10) days of being made;

14.1.2. custodial services;

14.1.3. costs to the licensee for equipment and supplies used to hold the raffle occasion;

14.1.4. costs to the licensee for advertising the raffle occasion, but only to the extent the advertising is authorized in W. Va. Code § 47-21-17 and Section 16 of this rule;

14.1.5. hiring security personnel but only if the personnel are licensed in accordance with W. Va. Code § 30-18-1 et seq;

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

14.1.7. the actual cost to the licensee for the purchase of the prizes awarded at the raffle occasions; and

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

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

14.3. The net raffle proceeds, including any interest earned on those proceeds, shall be expended for the charitable or public service purpose(s) stated in the raffle license application within one (1) year after the expiration of the license.

14.4. None of the raffle proceeds may be used for construction, acquisition or improvement of real or personal property unless the property is used exclusively for charitable or public service purposes. The Tax Commissioner, where appropriate, may disapprove contracts affecting real or personal property used exclusively for charitable or public service purposes when the contracts are not reflective of the fair market value of the services provided under the contracts.

14.4.1. Example 1 - Raffle proceeds may not be used to build a barbecue pit for a charitable organization.

14.4.2. Example 2 - Raffle proceeds may be used to build a playground for the underprivileged.

14.4.3. Example 3 - Raffle proceeds may not be used to finance major structural improvements or additions to premises owned by a charitable or public service organization, when the premises are used for activities outside of the charitable or public service purposes of the charitable organization.

14.4.3.1. The term "major structural improvements or additions" means activities such as installing extensive plumbing, electrical, electronic, heating or cooling systems. It may also include, but not be limited to, replacing a roof, building a recreational deck, paving a parking lot or building a boat dock.

14.5. The Tax Commissioner may disapprove any contract for the sale of goods or services to any raffle licensee to be used in or to be related to any raffle occasion or

operation if the contract is unreasonable or is not representative of fair market value. The Tax Commissioner may also disapprove any lease of real or personal property to a raffle licensee to be used in or to be related to any raffle occasion or operation if the lease is unreasonable or is not representative of fair market value.

14.5.1. Disapproved contracts and leases are void in accordance with W. Va. Code § 47-21-15(e).

14.5.2. Any attempt by a raffle licensee to engage in transactions under a disapproved lease or contract is grounds for licensee suspension as well as for refusal to renew the charitable raffle license.

14.6. If a licensee, in good faith, finds that it cannot meet or comply with any of the requirements set forth in this Section or wishes to use the proceeds of raffle occasions for a long range charitable or public service purpose, then the licensee shall apply to the Tax Commissioner for permission to:

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

14.6.2. spend the net proceeds later than the one (1) year time period. If The Tax Commissioner grants permission to the licensee to spend the net proceeds after the expiration of the one (1) year time period, the licensee must file periodic reports with the Tax Commissioner until the proceeds are spent. The licensee shall apply for permission no later than sixty (60) days prior to the end of the one (1) year time period.

### **§ 110-37-15. Records.**

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

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

15.3. Audits of the licensee's books may be performed by the Tax Commissioner if he or she has reasonable cause to believe that the licensee has violated W. Va. Code § 47-21-1 et seq.

15.4. The Tax Commissioner shall perform, or cause to be performed, an audit of the books and records of any licensee that has awarded total prizes in excess of one

hundred seventy-five thousand dollars (\$175,000) during the previous license year. The Tax Commissioner shall file a copy of the completed audit with the county commission of the county in which the licensee holds raffle occasions.

**§ 110-37-16. Advertising.**

16.1. A licensee may advertise its raffle occasions in a reasonable manner; Provided, That the advertisements shall include the name of the licensee holding the raffle occasion. However, a licensee may not hire or pay any person to develop or conduct an advertising campaign to promote any raffle occasion.

**§ 110-37-17. Fraud; Penalties.**

17.1. In accordance with W. Va. Code § 47-21-18, any person or licensee that knowingly conducts or participates in a fraudulently or deceptively conducted raffle game with intent to defraud is guilty of a felony.

17.2. As provided in W. Va. Code § 47-21-18, the penalties upon conviction are:

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

17.2.2. imprisonment in the penitentiary for not less than one (1) or more than five (5) years; or both fined and imprisoned.

**§ 110-37-18. Obtaining License Fraudulently; Penalties.**

18.1. In accordance with W. Va. Code § 47-21-19, 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.

18.2. As provided in W. Va. Code § 47-21-19, the penalty upon conviction is a fine of not less than five hundred dollars (\$500) or more than ten thousand dollars (\$10,000).

**§ 110-37-19. Violation of Provisions; Penalties.**

19.1. In accordance with W. Va. Code § 47-21-20, any person who violates the provisions of W. Va. Code § 47-21-1 et seq. (other than the provisions concerning fraud and fraudulently obtaining a license) is guilty of a misdemeanor.

19.2. The penalty upon conviction is a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1000). The penalties upon a second conviction are:

19.2.1. a fine of not less than one hundred (\$100) or more than one thousand dollars (\$1000); and/or

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

**§ 110-37-20. Proceeds of State Fair.**

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

**§ 110-37-21. State Fair.**

21.1. In order for charitable raffles to be held at the State Fair, a charitable raffle license must first be issued to the State Fair Board. The State Fair Board shall have those charitable raffle occasions occurring at the State Fair conducted by one (1) or more persons who:

21.1.1. have held regular raffle games for a period of one (1) year prior to the filing of the State Fair Board's application;

21.1.2. 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; and

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

21.2. The State Fair Board may adopt reasonable regulations to govern the holding of raffle games at the State Fair. These regulations may not be inconsistent with or in violation of the W. Va. Code or this rule.

**§ 110-37-22. Administration.**

22.1. The Tax Commissioner has the power to:

22.1.1. deny an application for a license if the issuance of the license would be in violation of the W. Va. Code.

22.1.1.1. The applicant may protest the denial of the application. Any protest shall be made in writing and shall state the reason for the protest. This protest shall be filed with the Tax Commissioner within sixty (60) days of the receipt of the denial of the license.

22.1.1.2. When the protest is received by the Commissioner, a time and place shall be set for a hearing on the matter.

22.1.1.3. The Commissioner shall send to the applicant a notice containing the date of hearing, the time of hearing, the place where the hearing will be

held, and a short, plain statement of the matters asserted.

22.1.1.4. Service of the notice shall be by personal or substituted service.

22.1.1.5. At the hearing the applicant may produce evidence on its behalf and be represented by counsel.

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

22.1.1.7. The burden of proof is on the applicant;

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

22.1.2.1. The licensee or any member of the licensee's organization has been convicted under W. Va. Code §§ 47-21-18 or 47-21-19, and the Commissioner finds it would be in the public interest to revoke, suspend or refuse to renew a license;

22.1.2.2. the licensee has violated any of the other provisions of the W. Va. Code;

22.1.2.3. the licensee has failed to maintain records or file reports as required. Licenses shall 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 W. Va. Code § 47-21-1 et seq.

22.1.2.4. Before revoking or suspending a license, the Commissioner shall give ten (10) days notice to annual licensees or three (3) days notice to limited occasion licensees of the suspension or revocation. This notice shall be written, shall state reasons for the action and shall specify a time and place where the licensee may show why the action should not be taken. Notice may be served by personal or substituted service on the person who applied for the license on behalf of the organization.

22.1.2.5. At the time designated for any hearing the licensee may produce evidence on its behalf and be represented by counsel.

22.1.2.6. A decision of the Commissioner suspending or revoking a license is subject to judicial review on appeal by the licensee;

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

22.1.4. issue emergency orders suspending a raffle license.

22.1.4.1. These orders may be issued when:

22.1.4.1.a. the Commissioner believes that a criminal violation of the W. Va. Code has occurred;

22.1.4.1.b. the Commissioner believes that the suspension is necessary to prevent a criminal violation of W. Va. Code § 47-21-1 et seq.; or

22.1.4.1.c. the Commissioner believes that the suspension is necessary to preserve the public peace, health, safety, morals, good order or general welfare.

22.1.4.2. 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.

22.1.4.3. These orders are effective immediately upon issuance and service.

22.1.4.4. After issuance of an emergency order the Commissioner shall set a time and place for hearing within five (5) days. At this hearing the licensee may show cause why its license should not be revoked.

**§ 110-37-23. Filing of Reports.**

23.1. Annual, limited or state fair licensees shall file annual financial reports on forms provided by the Commissioner. These reports shall summarize the financial activity of the licensee for the full license year. Each annual reports shall be filed no later than (30) days after the end of the license period which it covers. The time period covered by the annual report is the full license year, or at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year. With this report, the licensee shall include its expired license.

23.1.1. Example 1. X organization obtains a license and holds raffle occasions on September 1, 1996. The annual report is due no later than September 30, 1997 (thirty (30) days after the expiration of the license which expires on August 31, 1997).

23.2. All required reports shall contain the name, address and social security number of any person who receives during a raffle occasion prizes with an aggregate value of over one hundred dollars (\$100).

23.3. Any licensee failing to file a required report when due is liable for a penalty of twenty-five (\$25.00) for each month, or fraction of a month during which the failure continues. The penalty shall not exceed one hundred (\$100.00) for each delinquent period.

23.4. The annual financial report required to be filed for each license year ending after July 1, 1996, must contain a compilation or review of the financial report, as defined by the American Institute of Certified Public Accountants, if for the license year just completed the licensee's gross receipts exceed fifty thousand dollars (\$50,000). The licensee, in lieu of a compilation or review, may file a financial report audited by a certified or licensed public accountant.

**§ 110-37-24. Filing of Copy of License.**

24.1. When granting a raffle license, the Tax Commissioner shall file a copy of the license with the clerk of the county commission of the county in which the raffle occasions are to be held. The clerk shall record this copy.

24.2. The Tax Commissioner shall make a copy of the application available for public inspection.

**§ 110-37-25. County Option Election.**

25.1. A county commission may call a local option election to determine if the provisions of W. Va. Code § 47-21-1 et seq. will continue in effect in the county. No local option election may be called to disapprove the playing of raffle games at the state fair. Raffles are permitted in all counties unless and until a local option election is held which results in a majority of voters disapproving the conducting of raffle occasions within the county.

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

**PETITION ON LOCAL OPTION ELECTION RESPECTING THE CONDUCT OF  
RAFFLE GAMES  
FOR CHARITABLE PURPOSES  
IN \_\_\_\_\_ COUNTY  
WEST VIRGINIA**

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

The undersigned petition the county commission to call and hold a local option election at: (1) a special or (2) the next primary, general or special election (the petition shall specify (1) or (2) upon the following question: Shall the provisions of Article twenty-one (21), Chapter forty-seven (47) of the Code of West Virginia, one thousand nine hundred thirty-one (1931) as amended, continue in effect in \_\_\_\_\_ county, West Virginia.

NAME                      ADDRESS                      DATE

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

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

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

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

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

25.6. A local option election may be held at the same time as any primary, general or special elections, but, it shall be held in connection with and as a part of the primary, general or special election if it is held at the same time.

25.7. The form of the ballot shall be substantially as follows:

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

25.8. If the majority of the voters vote no, charitable raffles may no longer occur in that county.

25.9. No local option election may be called in a county to resubmit said question to the voters of that county, whether the question was approved or disapproved at the previous local option election, any earlier than five (5) years after the last local option election.

#### **§ 110-37-26. Prohibited Acts.**

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

26.1.1. may not obtain, either directly or indirectly, a raffle license;

26.1.2. may not conduct a raffle game;

26.1.3. may not operate a concession;

26.1.4. may not lease or provide to any licensee organization any premise where raffle occasions may be held.

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

26.2.1. Example 1. - Y was convicted of a misdemeanor gambling offense in 1982. During the year 1991, Y may not participate in the operation of raffle in any way. But, in 1993, Y may participate, if he has a valid license.

**§ 110-37-26a. Smoking and Nonsmoking Sections.**

26a.1. If smoking is permitted during the conduct of any raffle occasion, in coordination with any raffle, super-raffle or limited occasion raffle occasion, any raffle operator who distributes more than one hundred (100) raffle cards and/or raffle sheets at such an occasion must provide smoking and nonsmoking sections.

**§ 110-37-27. Restriction on Use of Raffle Equipment.**

27.1. A licensee may only use raffle equipment:

27.1.1. which it owns;

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

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

27.1.4. Example 1 - John's Raffle Equipment Rental, an organized for profit company, may not rent raffle supplies to licensees in this State.

27.1.5. Example 2 - S organization owns several pieces of raffle equipment. Z organization does not wish to buy what it needs to conduct its raffle, but instead wishes to lease the equipment from S at a reasonable rate. Z may lease from S if both organizations meet the criteria for charitable raffle licensees under Subdivision 2.1.3. of this rule.

27.2. The rental or purchase of raffle equipment shall be considered a reasonable and necessary expense as provided for in Section 14 of this rule.

**§ 110-37-28. Requirement for a Registration Statement.**

28.1. Unless exempt, every charitable or public service organization that obtains a raffle license must file an annual registration statement with the Secretary of State's

Office, under the Solicitation of Charitable Funds Act.

28.2. These registration statements must be filed on forms provided by the Secretary of State before any raffle occasions are held.

**§ 110-16-29. Additional Remedies for the Tax Commissioner, Administrative Procedures: Deposit of Money Penalties.**

29.1. For any material violation of West Virginia Code § 47-21-1 et seq. or this rule, the Tax Commissioner may:

29.1.1. Revoke or refuse to renew any charitable raffle license;

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

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

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

29.1.3.2. No Probation Supervision Fee paid in accordance with this section may be claimed by the licensee as a reasonable, necessary or actual expense incurred in connection with the conduct of a raffle occasion under the authority of West Virginia Code § 47-21-15.

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

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

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

29.1.5. Require a charitable raffle licensee to prohibit one or more members,

supporters, volunteers or employees of the licensee involved in material violations from participating in, or being present at or on the premises of all future raffle occasions held under the charitable raffle license, or for the period of time specified by the Tax Commissioner.

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

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

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

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

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

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

29.1.6.5. The license shall be revoked if the licensee refuses to pay the penalty or surrender its license:

29.1.6.6. After the licensee has exhausted all administrative remedies provided in subsection 29.4 of this rule, the licensee may have the issue of whether a material violation was committed by the licensee reviewed in the circuit court of the county where the violation giving rise to the civil penalty occurred.

29.1.6.7. The imposition of civil penalties will be implemented in accordance with the criteria set forth in subsection 29.2 of this rule.

29.1.6.8. For purposes of these rules, surrender of the charitable raffle license or surrender of the license means and includes surrender of all regular and limited occasion raffle licenses held by the licensee, unless specifically otherwise directed by the

Tax Commissioner.

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

29.2.1. For conducting charitable raffle occasions at times or at a location inconsistent with the license application, the money penalty shall be:

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

29.2.2. For failure to timely amend or modify the charitable raffle license in accordance with section 9 of this rule, the money penalty shall be:

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

29.2.3. For not having the raffle license posted at the occasion; and allowing charitable raffle workers to play raffle, the money penalty shall be:

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

29.2.4. For utilizing charitable raffle workers who fail to qualify under West Virginia Code § 47-21-1 et seq. and this rule, the money penalty shall be:

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

29.2.5. For expending or using charitable raffle proceeds for unauthorized expenses, the money penalty shall be:

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

29.2.6. For distributing charitable raffle net proceeds for purposes other than qualified charitable or public service purposes or for unauthorized purposes, the money penalty shall be:

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

29.2.7. For continuing failure to maintain accurate records, the money penalty shall be:

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

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

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

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

29.2.9. For conducting fraudulent charitable raffle occasions, or obtaining a charitable raffle license under false pretenses or deceptive or fraudulent circumstances, the monetary penalty shall be:

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

29.2.10. The Tax Commissioner has the authority to impose any one or more, or any combination, of the penalties provided for in this subsection 29.2.

29.3. No sanctions or other penalty shall be imposed under subsection 29.2.4 on a charitable raffle licensee for failure to operate charitable raffle occasions with members when:

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

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

29.3.3. The raffle occasions are operated by residents of this State who have been employed by the licensee or who have been meaningfully associated with the licensee for one or more years before the date of the licensee's application for a license under West Virginia Code § 47-21-1 et seq., or for one or more years before the date of the licensee's most recent application for renewal of a license under West Virginia Code § 47-21-1 et seq., whichever is later.

**29.4. Administrative procedures.**

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

29.4.2. A charitable raffle licensee may appeal an order of the Tax Commissioner issued under this section by filing a written protest with the Tax Commissioner, either in person or by certified mail, properly addressed and postage

prepaid, within twenty days after the licensee is served with a copy of the order. Appeals shall be filed in the form or forms as the Tax Commissioner furnishes with the order.

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

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

29.5. Nothing contained in this rule shall be construed to prohibit, limit, alter or amend the Tax Commissioner's power under West Virginia Code § 47-21-23 to issue an emergency order suspending a raffle licensee.

## APPENDIX A

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

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

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

(a) Organization and operational tests.

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

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

(b) Organizational test.

(1) In general.

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

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

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

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

organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "Charitable Purposes", such articles ordinarily shall be sufficient for purposes of the organizational test (See subparagraph (5) of this paragraph for rules relating to construction of terms).

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

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

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

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

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

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

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

(C) To have objectives and to engage in activities which characterize it as an "action" organization as defined in paragraph (c)(3) of this section. The terms used

in subdivisions (A), (B), and (C) of this subparagraph shall have the meanings provided in paragraph (c)(3) of this section.

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

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

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

(c) Operational test.

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

in furtherance of an exempt purpose.

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

(3) "Action" organization.

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

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

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

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

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

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

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

(ii) It advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining

whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

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

(d) Exempt purposes.

(1) In general.

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

- (i) Religious,
- (ii) Charitable,
- (iii) Scientific,
- (iv) Testing for public safety,
- (v) Literary,
- (vi) Educational, or
- (vii) Prevention of cruelty to children or animals.

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

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

(2) **"Charitable" defined.** - The term "Charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "Charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection 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. Research when taken alone is a word with various meanings; it is not synonymous with "Scientific"; and the nature of particular research upon the purpose which it serves. For research to be "Scientific", within the meaning of section 501(c)(3), it must be carried on in furtherance of a "Scientific" purpose. The determination as to whether research is "Scientific" does not depend on whether such research is classified as "Fundamental" or "Basic" as contrasted with "Applied" or "Practical". On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on "Fundamental", as contrasted with "Applied", research.

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

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

(i) If the results of such research (including any patents, copyrights, processes, or formula resulting from such research) are made available to the

public on a nondiscriminatory basis;

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

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

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

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

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

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

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

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

(ii) Such organization retain (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formula resulting from its research and does not make patents, copyrights, processes, or formula available to the public. For purposes of this subdivision, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copy right, process, or formula, such patent, copyright, process, or formula shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or

formula can be utilized to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of subdivision (C) of this subparagraph) only if it is carried on for a person described in subdivision (C)(ii) of this subparagraph 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 paragraphs (a)(5) of § 1.513-2, with respect to research which constitutes an unrelated trade or business, and section 512(b)(7)(8), and (9), with respect to income derived from research which is excludable from the tax on unrelated business income.

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

(e) Organizations carrying on trade or business.

(1) **In general.** - An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization. See, however, section 501(d) and § 1.501(d)-1, relating to religious and apostolic organizations.

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

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

## APPENDIX B

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

**(a) 501(c)(3) Organizations.****(1) Religious**

Churches

Church affiliated colleges

Sermon publishing organizations that apply proceeds to purchase of materials for theology school libraries.

**(2) Educational, literary or scientific.**

Primary and secondary schools

Colleges or universities

Professional or trade schools

Private schools (Must have a racially nondiscriminatory admissions policy)

Teachers travel study groups

Historical exposition organizations

Engineering societies engaged in scientific research

Abortion counseling organizations

Sterilization information organizations

Credit union educational organizations

School Accreditation organizations

Organizations formed to provide work experience to students

Anthropological research organizations

Educational, cultural and public interest television programming organizations

Training program product sales organizations

Educational day care organizations

Political educational organizations (must not solicit for or endorse candidates)

**(3) Public safety.**

Traffic safety organizations

Organizations which inspect and test for public safety

**(4) Prevention of cruelty to children or animals.****(5) Fostering national or international amateur sports competition.****(6) Charitable.**

Nonprofit hospitals

Health care and maintenance organizations

Drug Clinics

Alcoholic treatment organizations

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

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

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

(2) Nonprofit local employees' associations.

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

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

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

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

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