

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #2

DO NOT MARK IN THIS BOX  
FILED  
JUL 9 9 50 AM '96  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Legislative; 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:         

TITLE OF RULE BEING AMENDED:         

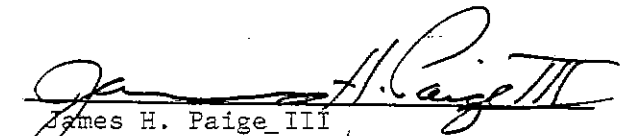
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 37

TITLE OF RULE BEING PROPOSED: Charitable Raffles

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 8, 1996 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Dept. of Tax & Revenue  
Legal Division  
P.O. Box 1005  
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
James H. Paige III

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

8.20



FILED

JUL 9 9 50 AM '96

GASTON CAPERTON  
GOVERNOR

State of West Virginia  
Department of Tax and Revenue

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JAMES H. PAIGE III  
SECRETARY

TAX DIVISION

P. O. Box 2389

Charleston, WV 25328-2389

CONSENT TO FILE RULE

July 8, 1996

To Whom It May Concern:

Title of Rule: Charitable Raffles

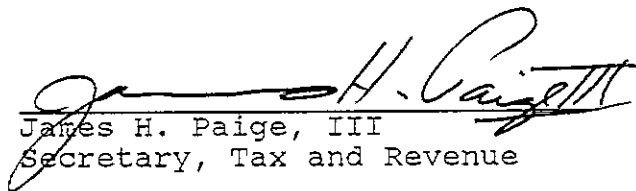
Title Number: 110

Series Number: 37

---

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

Signed this 8th day of July, 1996.

  
James H. Paige, III  
Secretary, Tax and Revenue

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Charitable Raffles

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Tax Division

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:

This legislative rule should cause no additional operating expenses.

3. Objectives of these rules:

To provide guidance and clarification in the licensing and operation of charitable raffles.

Rule Title: Charitable Raffles

---

---

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

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

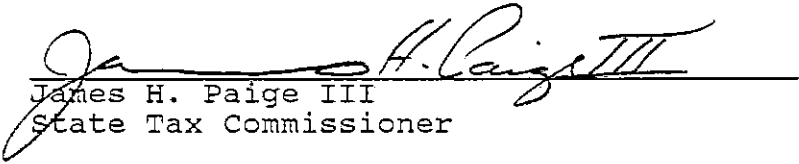
None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 8, 1996

Signature of Agency Head or Authorized Representative

  
James H. Paige III  
State Tax Commissioner



**State of West Virginia**  
**Department of Tax and Revenue**

**GASTON CAPERTON**  
GOVERNOR

**TAX DIVISION**  
P. O. Box 2389  
Charleston, WV 25328-2389

**JAMES H. PAIGE III**  
SECRETARY

**SUMMARY OF CHARITABLE RAFFLES RULE**

This legislative rule will assist in the licensing and operation of charitable raffles.

FILED

JUL 9 9 50 AM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

PROPOSED  
WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF TAX AND REVENUE  
TITLE 110  
SERIES 37

CHARITABLE RAFFLES

---

§110-37-1. General.

1.1 **Scope.** - The West Virginia Raffle Code 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 raffle laws.

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 herein, and shall apply in the singular or in the plural.

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. These organizations must be described, and qualified under I.R.C. Section 501(c)(3) and have a determination letter to that effect from the Internal Revenue Service.

2.1.2 "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; or

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

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; or

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; or

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; or

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

2.1.2.7 providing or supporting nonprofit cultural or artistic activities.

2.1.2.7.a Occasionally questions will arise as to whether a particular activity is a "charitable or public service activity or endeavor." The above criteria should provide some guidance. For further reference and explanation see Appendix A.

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 I.R.C. 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 1954, as amended. However, organizations which are subdivisions of the federal, state and local governments do not need to obtain an I.R.C. 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 I.R.C. Section 501 tax exempt status determination letter from the Internal Revenue Service. The term "charitable or public service organization" does not include social or political organizations.

2.1.3.1 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 forth below:

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

- 2.1.3.1.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 private shareholder or individual; no substantial propagandizing can be carried on; no attempts to influence legislation can be carried on; and no participation or intervention in political campaigns for candidates can be maintained.

2.1.3.1.b I.R.C. Section 501(c)(4) exempts from federal taxation nonprofit civic leagues or organizations operated solely for the promotion of social welfare. It also exempts 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 I.R.C. Section 501(c)(8) exempts from federal taxation fraternal beneficiary societies that operate under the lodge system (parent organization which charters local branches), or societies operating for the sole benefit of members of a lodge system fraternity. These organizations must also provide for the payment of benefits (life, sick, accident or other) to the members or their dependents.

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

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

2.1.3.1.f I.R.C. Sections 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 "Commissioner" or "Tax Commissioner" means the West Virginia State Tax Commissioner or his duly appointed representative except as otherwise required by law.

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

2.1.5.1 Clarification of the term "Area". - For illustrative purposes, several examples will be set forth to help in the determination of what constitutes "any area where raffle or a raffle occasion is being held."

2.1.5.1.a Example 1. - Organization X is holding a raffle occasion in connection with a scheduled bingo occasion in their organization's large meeting room. Pull tabs and tip boards are being sold only in the room where bingo is being played. The lounge next to the room contains a bar. This bar is not considered to be in an "area where a raffle or raffle occasion is being held," and alcoholic beverages, beer, and nonintoxicating beer may be sold and consumed in the lounge. But, no alcoholic beverages, beer, or nonintoxicating beer may be taken into the bingo area from the lounge.

2.1.5.1.b **Example 2.** - Organization Y is holding a raffle or raffle occasion not in connection with any bingo occasion. The concession stand is set up in the same building where the drawing for the raffle prize is to be held, or the tip boards or pull tabs are to be sold and opened, but not in the same room. The room that houses the concession stand is not considered an "area where a raffle or raffle occasion is being held". All alcoholic beverages, beer, and nonintoxicating beer must be sold and consumed outside of the room which is to be used for the sale of raffle tickets, the drawing of ticket stubs for the designated prizes or where tip boards and pull tabs are being sold and opened.

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

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

2.1.9 "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 also means an occasion at which raffle tickets, "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. It does not mean the selling of raffle tickets on one day when the drawing for prizes will not be held until a later date.

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

2.1.11 "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. Expenses of holding the game may not exceed twenty-five percent (25%) of the gross proceeds collected during the entire license period.

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

2.1.13 "Qualified recipient organization" means charitable or public service organizations (See Section 2.1.3 of the rule), which are organized and function solely to benefit people by charitable or public service activities or endeavors. (See Section 2.1.2 of the rule).

2.1.14 "Raffle" means a game authorized by West Virginia Code § 47-21-1et 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 West Virginia 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 West Virginia code § 47-21-1 et seq., or a charitable bingo occasion authorized under West Virginia Code § 47-20-1 et seq.

2.1.15 "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. It does not mean the selling of raffle tickets on one day when the drawing for prizes will not be held until a later date.

2.1.16 "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 I.R.C. Section 501. (See Section 2.1.3 of this rule).

2.1.17 All other terms defined in the West Virginia 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 bingo authorized in W. Va. Code § 47-20-1 et seq., and charitable raffles as herein defined 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 such games of chance under West Virginia 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 such 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 No checks may be cashed out of raffle funds.

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 No checks or money orders may be accepted in payment for a raffle game: Provided, That a licensee conducting a raffle event under the authority of an annual license may receive and cash no more than one (1) personal check from any player during only one (1) raffle occasion in an amount not in excess of \$25.00 which is made payable to the licensee and clearly marked on the face of such check with the term "raffle".

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

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

3.1.12 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 Section 4.1.4 below, only persons, as defined in Section 2.1.10 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 2.1.3 of this rule, may hold raffle occasions under a valid license if they have been in existence in this State for two (2) year prior to their filing for a raffle license.

4.1.2 If the applicant is a charitable organization, it must have an I.R.C. 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, each organization must 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 one year 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 West Virginia Code § 47-21-16, but must maintain its own records for raffle. All such 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, Bingo 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 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 West Virginia 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. Each occasion may not exceed six (6) hours in duration. There shall be no more than one raffle occasion held within a twenty four (24) hour period.

5.2 Only one (1) license per year may be granted to a charitable or public service organization and all of its auxiliaries, affiliates, chapters or lodges. If that 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 so 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 auxiliaries in the state. If C applies for and obtains a raffle license, neither of the auxiliaries may do so. However, the auxiliaries may play on 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 association or organization are not considered affiliates or auxiliaries of each other. Nor are local churches of a nationally organized church considered to be affiliates or auxiliaries of each other. In addition every school is to be considered a separate organization for purposes of West Virginia 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 major organization and all of its auxiliaries, affiliates, chapters or lodges. If the major organization does not obtain a license, the auxiliary, affiliate, chapter or lodge may. A charitable or public service organization which seeks to obtain a limited occasion license does not first have to possess an annual license.

6.3 For purposes of this section, branches, chapters or lodges of any national association or organization are not considered affiliates or auxiliaries of each other. Nor are local churches of a nationally organized church considered to be affiliates or auxiliaries of each other. In addition, every school is to be considered a 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 such organization has a valid limited occasion license for such 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. - No fee is required if the value of any prize awarded in a single raffle does not exceed \$1000.00 and the gross proceeds from all raffle occasions do not exceed \$7500.00 during any

calendar year.

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, Bingo 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 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 raffle licenses must contain:

8.1.1 The name of the applicant and whether the applicant is the major organization, such as, for example, a national headquarters of

a fraternal or religious association, or an affiliate, subsidiary, chapter or lodge of a major organization.

8.1.2 The name of the state or national organization.

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

8.1.4 The address of the applicant organization.

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

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

8.1.7 For charitable organizations, a copy of an Internal Revenue Service determination letter which states that the organization is exempt from taxation under Internal Revenue Code Section 501(a) and is described in Internal Revenue Code 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 two (2) years prior to the making of this 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 must also 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 subsection 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 made must be attached. This must include agreements providing for any type of remuneration to be received by the concession operator.

8.1.16 A statement stating that the individuals specified in Section 8.1.18, 8.1.19 or 8.1.20 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 its license and denial of applications for subsequent licenses.

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

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

8.1.19 **Limited occasion licenses.** - In addition to the requirements provided in subsections 8.1.1 through 8.1.18, the application for a limited occasion license must also include:

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

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

8.1.20 **Annual licenses.** - In addition to the requirements

provided in subsections 8.1.1 through 8.1.18, the application for an annual license must also include:

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

8.1.20.2 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 must 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 must request approval from the Tax Commissioner to amend or modify its license.

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

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

**§ 110-37-10. Licensee rules and regulations.**

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

10.2 Any rules and regulations adopted by a licensee must 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. The same applies to the drawing of raffle tickets. See, Section 2.1.5.1 of this rule.

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 must 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 and 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 such raffle occasions as indicated on the licensee's most recently filed annual financial report.

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

12.2.2 The licensee may pay no more than five (5) operators if its gross receipts as above indicated is less than \$100,00 but equals or exceeds \$50,000.

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

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

12.4 The terms "operator," "bingo operator" and "raffle operator" do not include concession stand workers. Additionally, concession workers may be paid no 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 such 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 to be the concessionaire for raffle occasions;

13.1.4 the agreement terms 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 they must be filed with the Tax Commissioner within ten (10) days.

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

**§ 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, but the payments may not exceed twenty-five percent (25%) of the gross proceeds collected during a license period, 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 such premises; **Provided, That** the rent shall be prorated for the days on which raffle occasions are held.

A copy of the rental agreement must be filed with the application and any changes to that agreement must 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 such advertising is authorized in West

Virginia Code § 47-21-17 and Section 110-37-16 of this rule;

14.1.5 hiring security personnel but only if such personnel are licensed in accordance with West Virginia 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;

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 thereon, must be expended for the charitable or public service purpose(s) stated in the 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 such 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 such contracts are not reflective of the fair market value of the services provided thereunder.

14.4.1 **Example 1.** - Raffle proceeds may not be used to build a barbecue pit for B 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 such 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, 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 West Virginia 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 above requirements or wishes to use the proceeds of raffle occasions for a long range charitable or public service purpose, then application must be made to the Tax Commissioner for permission to:

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

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

#### § 110-37-15. Records.

15.1 Separate accounting and bookkeeping procedures for raffle operations must be maintained by each licensee. This shall mean, at the minimum, that a separate bank account must 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. Such checks must be payable to a specific person, firm or corporation and at no time may such a check be made payable to cash. Detailed books of receipts and disbursements must also be maintained.

15.2 All records must be maintained for at least three (3) years or for such longer period as the Tax Commissioner shall, in writing, order and these records must 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 has reasonable cause to believe that the licensee has violated West Virginia 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 during the previous license year total prizes in excess of one hundred seventy-five thousand dollars (\$175,000). The Tax Commissioner shall file a copy of the completed audit with the county commission of the county wherein the licensee holds raffle occasions.

**§ 110-37-16. Advertising.**

16.1 A licensee may advertise its raffle occasions in a reasonable manner; Provided, That such advertisements must 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 West Virginia 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 West Virginia 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); and/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 West Virginia 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 West Virginia 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 West Virginia Code § 47-21-20, any person who violates the provisions of West Virginia 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 is required to have those charitable raffle occasions occurring at the State Fair be conducted by one 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 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;

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

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

**§ 110-37-22. Administration.**

22.1 The tax commissioner has the power to:

22.1.2.5 At the time designated for any hearing the licensee may produce evidence in 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 (West Virginia Code § 29A-5-1 et seq.). The burden of proof in such hearings shall be upon the licensee.

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 West Virginia Code has occurred;

22.1.4.1.b the Commissioner believes that the suspension is necessary to prevent a criminal violation of West Virginia 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 become effective immediately upon issuance and service.

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

#### § 110-37-23. Filing of reports.

23.1 Annual, limited or state fair licensees must file annual financial reports on forms provided by the Commissioner. These reports must summarize the financial activity of the licensee for the full license year. These annual reports must 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

22.1.1 deny an application for license if the issuance of the license would be in violation of the West Virginia Code.

22.1.1.1 The applicant may protest the denial of the application. Any protest must be made in writing and must state the reason for the protest. This must be filed with the Tax Commissioner within (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 will be set for a hearing on the matter.

22.1.1.3 The Commissioner shall send 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 Notice must be service by personal or substituted service.

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

22.1.1.6 A decision by the commissioner upholding the denial of the licensee 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 West Virginia Code § 47-21-18 or § 47-21-19, and the Commissioner finds it would be in the public interest to do so;

22.1.2.2 the licensee has violated any of the other provisions of the West Virginia Code;

22.1.2.3 the licensee has failed to maintain records or file reports as required. Licenses will only be revoked, suspended or refused under this section if the Commissioner finds that the failure to record or report will impair the Commissioner's ability to administer West Virginia Code § 47-21-1 et seq..

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

recently ended state or federal fiscal year. With this report, the licensee must 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 will be due no later than September 30, 1997 (thirty (30) days after the expiration of the license which will expire on August 31, 1997).

23.2 All required reports must 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 shall be liable for a penalty of \$25.00 for each month, or fraction thereof, during which the failure continues, such penalty not to exceed \$100.00 for each delinquent period.

23.4 The annual financial reports required to be filed for each license year ending after July 1, 1993 but before June 8, 1995 must be audited financial reports as defined by the American Institute of Certified Public Accountants if the licensee's gross receipts for the license year just completed exceed \$100,000.

23.5 The annual financial reports required to be filed for each license year ending after July 1, 1996 must contain a compilation or review of such financial report, as defined by the American Institute of Certified Public Accountants, if for the license year just completed the licensee's gross receipts exceed \$50,000.

**§ 110-37-24. Filing of copy of license.**

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

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

**§ 110-37-25. County option election.**

25.1 The county commission may call a local option election to determine if the provisions of West Virginia 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 will be permitted in all counties unless and until a local option election is held which results in a majority of voters determining a contrary intent.

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

PETITION ON LOCAL OPTION ELECTION  
RESPECTING THE CONDUCT OF  
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 election may be called.

25.3 If the petition is filed as specified, the county commission must enter an order calling a local option election, and must publicize the notice of such local option election by publication of a Class II-O legal advertisement with a county publication area. This notice must be published within 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 must conduct the local option election. These election officers shall count the ballots and make a return which shall be certified by the commissioners of election to the county commission. The county commission shall canvass the ballots and certify the result without delay.

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

25.7 The form of the ballot must 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 vote no, charitable raffles may no longer occur in that county.

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

**§ 110-37-26. 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 would be permitted to participate, if he had obtained 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 bingo, super-bingo or limited occasion bingo occasion, any bingo operator who distributes more than 100 bingo cards and/or bingo sheets at such an 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 Section 2.1.3. of these regulations.

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

**§ 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 and these must be filed before any raffle occasions are held.