
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING # 97-17

SUBJECT: Bingo Funds
Delivery to the Nonprofit's Representative Member
Deposit into the Bingo Account

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-21-4080 (Supp. 1996)
S. C. Code Ann. Section 12-21-4090 (Supp. 1996)
S. C. Code Ann. Section 12-21-3920 (Supp. 1996)
S. C. Code Ann. Section 36-4-104 (1976)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. When must a bingo promoter deliver the gross proceeds (less the amount paid out as prizes and collected as entrance fees) from a bingo session to the representative member of the nonprofit organization?
2. When must the representative member of the nonprofit organization deposit the gross proceeds (less the amount paid out as prizes) from a bingo session into the bingo checking account?

3. Must entrance fees charged pursuant to Code Section 12-21-4030 be deposited into the bingo checking account?

Conclusion:

1. A bingo promoter must deliver the gross proceeds (less the amount paid out as prizes and collected as entrance fees) from a bingo session to the representative member of the nonprofit organization at the end of the bingo session. While the statute no longer requires the representative member of the nonprofit organization to attend the entire bingo session, the representative member must be at the licensed location at the end of the bingo session in order to receive the money from the promoter “upon completion of the session.”
2. The representative member of the nonprofit organization must deposit the gross proceeds (less the amount paid out as prizes) from a bingo session into the bingo checking account no later than the day following the day the bingo session **began** provided the “bank is open to the public for carrying on substantially all of its banking functions.”

The following examples should provide some guidance:

- (a) If the bingo session begins at 1:00 p.m. on Tuesday and ends at 11:00 p.m. on Tuesday, the deposit must be made into the bingo checking account no later than Wednesday. If Wednesday is a legal holiday on which the bank is closed, then the deposit must be made on the next day that the bank is open.
 - (b) If the bingo session begins on or after 1:00 p.m. on Wednesday and ends at 1:00 a.m. on Thursday, the deposit must be made into the bingo checking account no later than that same Thursday. If Thursday is a legal holiday on which the bank is closed, then the deposit must be made on the next day that the bank is open.
 - (c) If the bingo session begins on or after 1:00 p.m. on Friday and ends at 1:00 a.m. on Saturday, the deposit must be made into the bingo checking account no later than Saturday if the bank is open on Saturday or Monday if the bank is closed on Saturday. If Monday is a legal holiday on which the bank is closed, then the deposit must be made on the next day that the bank is open.
3. Yes. The entrance fees charged at a bingo session pursuant to Code Section 12-21-4030 must be deposited into the bingo checking account no later than the day following the day the bingo session **began** provided the “bank is open to the public for carrying on substantially all of its banking functions.” See Conclusion #2 for examples.

Discussion:

Code Section 12-21-4080 reads in part:

(A) Upon completion of the session, the promoter shall deliver to the representative member of the organization the gross proceeds from the session less the amount paid out as prizes and collected as entrance fees.

(B) The representative member of the nonprofit organization shall deposit the funds into the bingo checking account or savings account as described in Section 12-21-4090. ... (Emphasis added.)

Code Section 12-21-4090 reads in part:

(A) The provisions of this section apply to the licensed nonprofit organization which is responsible for the special checking and savings accounts established by this section.

(B) The organization shall control all deposits, transfers, and disbursements from these accounts, including the payment of compensation to the promoter and employees of the promoter or organization working the bingo games.

(C) An organization receiving an annual license to conduct bingo shall establish and maintain one regular checking account designated the “bingo account” and also may maintain an interest-bearing savings account designated the “bingo savings account.” All funds derived from the conduct of bingo, less the amount awarded as cash prizes, must be deposited in the bingo account. No other funds may be deposited in the bingo account. Deposits must be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained. All accounts must be maintained in a financial institution in this State. (Emphasis added.)

In addition, Code Section 12-21-3920(6) defines “session” to mean “a consecutive series of games which must occur only between one o’clock p.m. and one o’clock a.m. No more than one session may occur during the permitted twelve hour period. These limits do not apply to games operated by state or county fairs.”

The first issue concerns when a bingo promoter must deliver the gross proceeds (less the amount paid out as prizes and collected as entrance fees) from a bingo session to the representative member. As cited above, Code Section 12-21-4080 requires that this money be delivered to the representative member “upon completion of the session.”

Words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d 231; Also see Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E. 2d 642.

As such, a bingo promoter must deliver the gross proceeds (less the amount paid out as prizes and collected as entrance fees) from a bingo session to the representative member of the nonprofit organization at the end of the bingo session. While the statute no longer requires the representative member of the nonprofit organization to attend the entire bingo session, the representative member must be at the licensed location at the end of the bingo session in order to receive the money from the promoter “upon completion of the session.”

The second issue concerns when funds from a bingo session should be deposited in the bingo checking account. The statute requires that “deposits must be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained.”

Since the provision in question concerns the depositing of funds into an account at a financial institution in South Carolina, the department has determined that a “business day” means the business day of a bank. While the statutes applicable to bingo and banking in South Carolina do not provide a definition of the term “business day,” the Uniform Commercial Code’s provisions concerning bank deposits and collections define a similar term.

Code Section 36-4-104(c) of the Uniform Commercial Code defines the term “banking day” to mean:

that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.

Therefore, the funds from a bingo session must be deposited by the next “part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.”

In addition, the statute states that “deposits must be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained.” (Emphasis added.) Since the bingo session can only occur between one o’clock p.m. and one o’clock a.m., the receipts from the bingo occasion will be considered received on the day the bingo session began. This is consistent with the above definition of banking day. Eleven of the twelve hours permitted for conducting a bingo session are in the day the bingo session began. Only one hour of the twelve hours permitted for conducting a bingo session are in the day the bingo session ends. As such, an absurd conclusion would result

if the “day of the bingo occasion” was considered to be the day the session ended. We do not believe it was the intention of the General Assembly that a nonprofit organization should wait until Monday to deposit the funds from a bingo session beginning at 1:00 p.m. on Thursday and ending at 1:00 a.m. on Friday. Requiring such an organization to deposit the funds on Friday complies with the intent the Bingo Act of 1996 to better and more closely regulate bingo. “A statute subject to interpretation is presumed not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits. If possible, doubtful provisions should be given a reasonable, rational, sensible, and intelligent construction. These rules prevail where they are not restrained by the clear language of the statute. Under this rule, general terms in a statute should be so limited in their application as not to lead to absurd consequences.” 73 Am. Jur.2D Statutes Section 265.

The third issue concerns the entrance fees charged pursuant to Code Section 12-21-4030 and whether such fees should be deposited into the bingo checking account.

Code Section 12-21-4030 reads:

(A) A promoter or organization may not impose a charge, other than as provided in subsection (B), on a player of more than the face value of each card sold to play bingo.

(B)(1) A holder of a Class AA license shall impose an entrance fee of eighteen dollars.

(2) A holder of a Class B license shall impose an entrance fee of five dollars.

(3) A holder of a Class D or Class E license may impose an entrance fee of five dollars. The entrance fees collected are not required to be remitted as taxes and are not included in gross proceeds for purposes of the prize limitation provided in Section 12-21-4000(12)(a).

Based on this section, the entrance fee is imposed by the nonprofit organization; and therefore, is revenue of the nonprofit organization.

Code Section 12-21-4080(A) reads:

Upon completion of the session, the promoter shall deliver to the representative member of the organization the gross proceeds from the session less the amount paid out as prizes and collected as entrance fees. (Emphasis added.)

However, Code Section 12-21-4090(C) reads:

(C) An organization receiving an annual license to conduct bingo shall establish and maintain one regular checking account designated the “bingo account” and also may maintain an interest-bearing savings account designated the “bingo savings account.” All funds derived from the conduct of bingo, less the amount awarded as cash prizes, must be deposited in the bingo account. No other funds may be deposited in the bingo account. Deposits must be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained. All accounts must be maintained in a financial institution in this State. (Emphasis added.)

In Beaty v. Richardson, 56 S.C. 173, 180, 34 S.E. 73, 76 (1899), the Court stated the rule as follows: "The legislature must have intended to mean what it has plainly expressed, and consequently there is no room for construction...Where the words of a statute are plainly expressive of an intent, not rendered dubious by the context, the interpretation must conform to and carry out that intent. It matters not, in such a case, what the consequences may be."

Based on the above, entrance fees must be deposited into the bingo checking account. And while the bingo promoter is not required to deliver the entrance fees from a bingo session to the representative member of the nonprofit organization at the end of the bingo session, such entrance fees, in accordance with Code Section 12-21-4090(C), must be deposited into the bingo checking account no later than the day following the day the bingo session **began** provided the “bank is open to the public for carrying on substantially all of its banking functions.” See the discussion of second issue beginning on page 4 for information concerning when deposits must be made.

However, the entrance fee must be delivered to a member of the nonprofit organization (other than the promoter) within a reasonable time so that an authorized member of the nonprofit organization (other than the promoter) can deposit the entrance fees into the bingo checking account within the time required by the statute.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
November 3, 1997