



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #89-23

SUBJECT: Bingo: Sessions
Display of Licenses
Withholding on Prizes
Assessment of Taxes
IRS Letter of Exemption
Revocation of Licenses
Expenses Payable from the Special Bingo Account
Limitation on Promoter's Licenses
Member Present at Session
Promoter Present at Session
Cards
Gross Proceeds

EFFECTIVE DATE: October 1, 1989

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

REFERENCE: S.C. Code Ann. Section 12-21-3310 et.seq. (As Amended June, 1989)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

1. What are the restrictions as to time and length of a bingo session under the Bingo Act of 1989?
2. Are nonprofit organizations and bingo promoters required to display their respective licenses at the location where bingo is conducted?

3. Under the Bingo Act of 1989, are the persons conducting bingo games required to withhold income taxes on prizes exceeding \$1000.00 or prizes exceeding \$500.00?
4. If an assessment is issued for bingo taxes or penalties due, is such assessment issued in the name of the promoter, the nonprofit organization, or both?
5. If a local chapter of a national nonprofit organization applies for a bingo license, may the local chapter use the national organization's letter of exemption from the I.R.S., or must the local chapter submit its own letter of exemption?
6. If a promoter's license is revoked, is the nonprofit organization's bingo license automatically revoked?
7. If the nonprofit organization's license is revoked, is the promoter's license automatically cancelled?
8. Do the following constitute "necessary and reasonable bona fide expenses incurred and paid in connection with the conduct of bingo", pursuant to Code Section 12-21-3490?
 - A) The \$1000.00 promoter's license;
 - B) The fee for the nonprofit organization's license; and
 - C) Dues to the S.C. Gaming Association.
9. May a promoter allow one of his employees to be designated as a promoter, thereby obtaining more than ten licenses, the limit established by Code Section 12-21-3390?
10. Is a member of the nonprofit organization, other than the promoter, required to be present at the bingo session from beginning to end?
11. Is the promoter required to be present at the bingo session from beginning to end?
12. Does the Bingo Act of 1989 place restrictions on the price a player may be charged for a bingo card?
13. Is the nonprofit organization responsible for issuing a paycheck to an employee of the promoter?
14. Does a bingo card, which does not have pre-printed numbers, but allows a player to write the numbers in the squares, comply with the Bingo Act of 1989?
15. Must bingo taxes be deposited in the special bingo checking account?
16. Are bingo taxes includable in the calculation for determining whether the 60% give away requirement has been met, pursuant to Code Section 12-21-3420(12)?

Facts:

The Bingo Act of 1989 (H.B. 3052) became effective October 1, 1989. The new law includes many changes, such as a new promoter's license, bond requirements, written contracts, etc.

Discussions:

1. The first issue concerns the time period during which a bingo session may be conducted.

Code Section 12-21-3320(6), of the new law, defines "session" to mean:

A consecutive series of [bingo] games which must occur only between twelve o'clock noon and twelve a.m. of the following day. No more than one session may occur during the permitted period.

Therefore, the question is: what is meant by the phrase "twelve a.m. of the following day"? In other words, is the session time period twelve hours, twenty-four hours, or thirty-six hours?

To determine which meaning is applicable, in this instance, certain rules of statutory construction must be considered.

The following quotes are from 73 Am. Jur. 2d Statutes:

Section 258.

It is generally regarded as permissible to consider the consequences of a proposed interpretation of a statute, where the act is ambiguous in terms and fairly susceptible of two constructions. Under such circumstances, it is presumed that undesirable consequences were not intended; to the contrary, it is presumed that the statute was intended to have the most beneficial operation that the language permits. It is accordingly a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a beneficial operation of the law, and a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences.

Section 262.

It is not to be presumed that the legislature intended to establish a rule attended with inconvenience, and where a statute is ambiguous and susceptible of two constructions, convenience may be taken into consideration in the interpretation thereof. Moreover, a construction of an ambiguous statute so as to produce convenient results is favored.

Section 265.

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.

If "twelve a.m. of the following day" authorizes a thirty-six hour session, then certain classes of licenses, which may conduct three sessions a week, would be able to operate 108 hours out of the total 168 hours in a week.

If "twelve a.m. of the following day" authorizes a twenty-four hour session, then the session would run from "twelve noon" to "twelve noon". Therefore, in effect, there would be no break between sessions. The end of one would mark the beginning of another. Furthermore, if the Legislature had intended the same beginning and ending times, then the phrase "twelve noon" or "twelve a.m." could have been used as both the beginning and ending times.

2. The second issue is whether both nonprofit organizations and bingo promoters are required to display their licenses.

Code Section 12-21-3390, of the current law, reads:

For each licensee that the promoter manages, operates, or conducts bingo, the promoter must purchase a promoter's license as provided for in Section 12-21-3350. No promoter is permitted more than ten licenses. This license must be prominently displayed at the location where bingo is conducted (emphasis added).

In summary, the bingo promoter's license must be displayed at the location where bingo is conducted.

The Bingo Act of 1989, which goes into effect October 1st, does not specifically require the nonprofit organization to display its license. However, rules of statutory construction require us to review the bingo statute as a whole. The following quotes from 73 Am.Jur.2d, Statutes provide some guidance.

Section 188:

Under the rule of statutory construction of statutes in pari materia, statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogeneous system. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can reasonably be done. Indeed, as a

general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, unless a different purpose is shown plainly.

Section 191:

The different parts of a statute reflect light upon each other, and statutory provisions are regarded as in parimateria where they are parts of the same act. Hence, a statute should be construed in its entirety, and as a whole.

All parts of the act should be considered, and construed together. It is not permissible to rest a construction upon any one part alone, or upon isolated words, phrases, clauses, or sentences, or to give undue effect thereto. The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, is not to be defeated by the use of particular terms.

The rejection of some of the provisions of a statute for unconstitutionality, does not vary the sense of meaning of the remaining provisions, which are to be construed as well in the light of those rejected, as of those which remain.

In reviewing the new statute as a whole, we take note of the following code sections:

Section 12-21-3400 (B):

The bingo license authorized by this chapter must not be transferred to any other nonprofit organization and is valid and continues in force so long as the nonprofit organization to whom it is issued continues to conduct the bingo games at the same location in accordance with the provisions of this chapter (emphasis added).

Section 12-21-3465:

Only one nonprofit organization may operate or cause the operation of bingo per building. This section applies to all buildings regardless of ownership, of primary use, or of original use.

Section 12-21-3510:

The Commission shall perform all functions incident to the administration, collection, enforcement, and operation of a tax imposed under this chapter.

In summary, in reviewing the statute as a whole, other provisions of the new bingo law require that the Commission have on-site documentation as to who is sponsoring bingo games at a particular location.

3. The third issue concerns withholding taxes from bingo prizes.

Code Section 12-21-3600 requires a quarterly report to be filed by promoters. That section reads:

A promoter of a bingo game who pays a winner a prize valued at one thousand dollars or more shall record the name, address, and social security number of the winner and the value of the prize he received and shall report the information to the Tax Commission quarterly.

However, Code Section 12-9-310(2), which concerns income subject to withholding, reads, in part:

In regard to bingo prizes or winnings paid to residents or nonresidents of this State, seven percent of the total amount of each payment of five hundred dollars or more must be withheld.

In summary, promoters conducting bingo games are required to withhold seven percent of prizes of five hundred dollars or more, while they must file a quarterly report listing prize winners of one thousand dollars or more.

4. The fourth issue concerns the name(s) which should appear on an assessment.

Code Section 12-21-3380 reads:

The promoter and the nonprofit organization are jointly and severally liable for all taxes, penalties, interest, and fines imposed by this chapter and Chapter 54 of Title 12. However, the promoter at all times is liable primarily.

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 SC 269, 255 S.E. 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E. 2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 S.E. 2d 682 (1950).

Black's Law Dictionary, Fifth Edition, defines the phrase "joint and several liability" as follows:

A liability is said to be joint and several when the creditor may sue one or more of the parties to such liability separately, or all of them together at his option. A joint and several bond or note is one in which the obligors or makers bind themselves both jointly and individually to the obligee or payee, so that all may be sued together for its enforcement, or the creditor may select one or more as the object of his suit. Term also refers to the liability of joint tort-feasors. See Contribution; Joint tort-feasors.

Such liability permits the Internal Revenue Service to collect a tax from one or all of several taxpayers. A husband and wife that file a joint income tax return usually are collectively or individually liable for the full amount of the tax liability.

In summary, the Commission may assess either party, or both the promoter and the organization.

Code Section 12-21-3380 also states that "the promoter at all times is liable primarily". This sentence does not in any way affect the Commission's right to assess, or collect from, either the nonprofit organization or the promoter. Rather, it concerns the nonprofit organization's right to seek reimbursement from the promoter.

5. The fifth issue concerns whether or not a letter of exemption from the I.R.S. is acceptable, if issued to the national organization, and not directly to the local chapter.

Code Section 12-21-3320(5) defines "nonprofit organization", in part, as, "an organization exempt from federal income taxes....".

Code Section 12-21-3330 reads, in part:

The game of bingo is not a lottery when:

(1) the nonprofit organization conducting the game has completed the application as described in Section 12-21-3340 and the application has been approved by the Commission;

* * * *

(3) the nonprofit organization presents to the Commission upon application a certified copy of the statement issued by the Internal Revenue Service exempting the nonprofit organization from federal income taxation...(emphasis added).

Code Section 12-21-3340(A) reads, in part:

(A) To conduct bingo, an applicant nonprofit organization shall file with the Commission a written application in a form prescribed by the Commission, executed and notarized which must include:

- (1) the name and address of the applicant and sufficient facts relating to its incorporation and organization to enable the Commission to determine whether it is an authorized organization;
- (2) a copy of the organization's corporate charter and the Internal Revenue Service's statement exempting the applicant from federal income taxes.

* * * *

(3)a copy of any contract or lease between a promoter and the applicant; and (emphasis added).

Furthermore, Code Section 12-21-3340(c) requires each "applicant" to file a renewal application each year.

The Bingo Act of 1989 does not specifically state whether the national organization's letter of exemption is acceptable; however, previously cited statutory rules of construction (73 Am.Jur. 2d, Statutes, Sections 188, 191) require us to look at the statute, and the above cited sections, as a whole.

In summary, the statute requires the "applicant nonprofit organization" to submit an IRS letter of exemption, which is the local chapter of the nonprofit organization. The national organization is not applying for a license, nor will it be the one conducting bingo games.

However, it should also be noted that the IRS will, at times, issue a "Group Exemption Letter" to a national organization. This letter includes those local chapters, organizations or associations on whose behalf the national organization has filed for a Group Exemption Letter.

6. The sixth issue concerns the status of the nonprofit organization's license, if such organization's promoter has his license revoked.

The statute does not require the Tax Commission to automatically revoke the nonprofit organization's license if the promoter has his license revoked. In relying on the statutory rules of construction previously cited (73 Am.Jr. 2d, Statutes, Sections 188, 191) we must review several code sections.

Code Section 12-54-90 was amended, by the Bingo Act of 1989, to read:

(A) When a person fails, neglects, violates, or refuses to comply with a provision of law or regulation administered by the Commission, the Commission, in its discretion, may revoke one or more licenses held by the taxpayer within ten days of notification in writing of the taxpayer's failure to comply. The notification may be served by certified mail or personally.

(B) A person whose license has been revoked must not be issued a new license until all outstanding liabilities are satisfied.

(C) The Commission may review and determine whether a new license may be issued according to guidelines established by it.

In summary, the licenses of a promoter or the nonprofit organization may be revoked if such person fails, neglects, violates or refuses to comply with State tax laws.

Furthermore, Code Section 12-21-3330 reads, in part;

The game of bingo is not a lottery when:

* * * *

(2) the promoter under contract with the nonprofit organization is licensed properly with the Commission;

Code Section 12-21-3350(D) reads, in part:

A promoter shall obtain a promoter's license for each organization for which he operates bingo games.

Code Section 12-21-3360 reads, in part:

If a nonprofit organization intending to operate a Class AA or B license does not contract with an outside promoter, the organization shall designate a member as the promoter.

Code Section 12-21-3390 reads, in part:

No promoter is permitted more than ten licenses.

Code Section 12-21-3470 reads:

A person who has been convicted of violating a state or federal statute relating to gaming or gambling, a crime that has a sentence of two or more years, or, where applicable, whose promoter's license has been revoked by the Commission is not permitted to manage or conduct a game or assist in any manner with the bingo operation (emphasis added).

In summary, where a promoter's license has been revoked, the nonprofit organization's license is not automatically revoked. However, the nonprofit organization cannot operate the game until it contracts with a new promoter, as such operation would constitute the playing of an illegal lottery.

Furthermore, if a promoter has more than one license, the revocation of one, revokes all his promoter licenses, pursuant to Code Section 12-21-3470, if such revocation is due to a violation of the statute.

7. The seventh issue concerns the status of the promoter's license, if the organization's license is revoked.

The statute does not require the Tax Commission to automatically cancel the promoter's license if the nonprofit organization's license is revoked. In relying on the statutory rules of construction previously cited (73 Am.Jur. 2d, Statutes, Sections 188, 191) we must review several code sections, including Code Sections 12-54-90, 12-21-3330, 12-21-3350(D) and 12-21-3360 which were previously cited in Discussion #6. We must also review the following:

Code Section 12-21-3340(A) reads, in part:

To conduct bingo, an applicant nonprofit organization shall file with the Commission a written application in a form prescribed by the Commission, executed and notarized which must include:

* * * *

(6) the designation of a 'promoter' as defined by this chapter

(7) a copy of any contract or lease between a promoter and the applicant;...

Code Section 12-21-3390 reads:

For each licensee that the promoter manages, operates, or conducts bingo, the promoter must purchase a promoter's license as provided for in Section 12-21-3350. No promoter is permitted more than ten licenses. This license must be prominently displayed at the location where bingo is conducted.

In summary, the promoter's license is valid only for a particular nonprofit organization.

8. The eighth issue concerns whether certain items constitute "necessary and reasonable...expenses" payable from the nonprofit organization's special bingo checking account.

Code Section 12-21-3490 reads, in part:

(A) The provisions of this section apply to the 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.

* * * * *

(E) Checks drawn on the bingo account must be for one or more of the following purposes:(1) the payment of necessary and reasonable bona fide expenses incurred and paid in connection with the conduct of bingo;
(2) the payment of necessary and reasonable compensation incurred and paid in connection with the conduct of bingo for personnel and promoters managing and conducting the game;
(3) the disbursement of net proceeds derived from the conduct of bingo to charitable purposes or the purpose for which the organization was established;
(4) the transfer of net proceeds derived from the conduct of bingo to the bingo savings account pending a disbursement to a charitable purpose.

* * * * *

(K) Net proceeds must not be used directly or indirectly by a licensed authorized organization to support or oppose a candidate or slate of candidates for public office, to support or oppose a measure submitted to a vote of the people, or to influence or attempt to influence legislation. The records of these accounts are available for inspection, upon demand, by the commission.

Furthermore, Code Section 12-21-3350 reads, in part:

(A) A promoter under contract with a licensee to manage, operate, or conduct a game shall file a written application for a promoter's license...

* * * * *

(D) The license authorized by this section is for the privilege of engaging in business as a bingo promoter and must be purchased from the commission at a cost of one thousand dollars a year.

In addition, the S.C. Gaming Association has informed the Commission that it only provides services for persons and organizations operating bingo games, and that the association does not support or oppose certain candidates for public office, legislation or a vote before the people.

In summary, when looking at the above code sections together, the nonprofit organization must establish a special bingo checking account and only reasonable expenses of the nonprofit organization, in the conduct of bingo, may be paid from this account. However, no proceeds from the account may be used, directly or indirectly, to support or oppose certain candidates for public office or legislation.

9. The ninth issue is whether a promoter may designate an employee as a promoter, in order to obtain more than ten licenses.

Code Section 12-21-3350, previously cited, requires each promoter managing a bingo game for a nonprofit organization to apply for a promoter's license. Code Section 12-21-3390 reads:

For each licensee that the promoter manages, operates, or conducts bingo, the promoter must purchase a promoter's license as provided for in Section 12-21-3350. No promoter is permitted more than ten licenses. This license must be prominently displayed at the location where bingo is conducted.

Furthermore, Code Section 12-21-3400 reads:

- (A) The promoter's license authorized by this chapter must not be transferred to any other person, organization, entity, or corporation.
- (B) The bingo license authorized by this chapter must not be transferred to any other nonprofit organization and is valid and continues in force so long as the nonprofit organization to whom it is issued continues to conduct the bingo games at the same location in accordance with the provisions of this chapter.
- (C) No promoter or nonprofit organization may lease, sell, rent, lend, or exchange to any other person, organization, corporation, or other entity a promoter's or bingo license issued pursuant to this chapter.

In summary, a promoter's license is for the privilege of engaging in business as a bingo promoter and is valid only for the person to whom it is issued. The license may not be transferred, leased, sold, rented or exchanged with any other person. In addition, a promoter may only be issued ten licenses at any one time.

10. The tenth issue concerns the requirement that a member of the nonprofit organization be present at the session from beginning to end.

Code Section 12-21-3400 reads, in part:

- (A) A member of the nonprofit organization, other than the promoter, is required to be present at the bingo game (emphasis added).

Reading further from Code Section 12-21-3400:

- (B) Upon completion of the session, the promoter shall turn over to the representative member of the nonprofit organization the gross proceeds from the session less the amount paid out as prizes (emphasis added).

Furthermore, for purposes of the bingo law, the terms "bingo" and "game" are defined, in part, at Code Section 12-21-3320(1) as "a specific game of chance".

The term "session" is defined, in part, at Code Section 12-21-3320(6) as "a consecutive series of games".

In summary, a member of the nonprofit organization must be present at each bingo game and must also be present at the end of each session to receive the proceeds of that session.

11. The eleventh issue concerns whether the promoter must be present at the session from beginning to end.

Code Section 12-21-3390 reads:

For each licensee that the promoter manages, operates, or conducts bingo, the promoter must purchase a promoter's license as provided for in Section 12-21-3350. No promoter is permitted more than ten licenses. This license must be prominently displayed at the location where bingo is conducted.

The following quote from 73 Am.Jur.2d Statutes, Section 265, provides some guidance concerning this question.

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.

It should be noted that the statute only requires a member of the sponsoring nonprofit organization to be present at each game. The statute is silent concerning the presence of the promoter. (See Discussion #10)

12. The twelfth issue is whether the statute imposes price restrictions on bingo cards.

Code Section 12-21-3420 reads, in part:

In addition to the manner of play prescribed in Section 12-21-3410, the following procedures apply to the conduct of the game:

* * * * *

(13) All cards used in a game sell for an equal value.

Furthermore, Code Section 12-21-3410(A) reads, in part:

The game of bingo must be played in the following manner:(1) Bingo is played by more than one player and a caller who is associated with the house. Each player pays an amount certain for each card to be played during the course of a game and may purchase the card for a specified number of games. After the player has purchased a card or cards for a specified number of games, the house cannot

require or accept an additional payment or consideration by the player in order to complete the specified number of games.

In summary, the statute does not limit the price of a bingo card; however, it does require that each card, for a particular game, "sell for an equal value".

13. The thirteenth issue concerns the issuance of paychecks to employees of the promoter from the special bingo checking account.

Code Section 12-21-3490 reads, in part:

(A) The provisions of this section apply to the 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"...

* * * * *

(E) Checks drawn on the bingo account must be for one or more of the following purposes:

(1) the payment of necessary and reasonable bona fide expenses incurred and paid in connection with the conduct of bingo;

(2) the payment of necessary and reasonable compensation incurred and paid in connection with the conduct of bingo for personnel and promoters managing and conducting the game;...(emphasis added).

In summary, a nonprofit organization conducting bingo must establish a special bingo checking account from which all compensation is paid.

14. The fourteenth issue concerns whether certain "bingo cards" comply with the requirements of the statute.

Code Sections 12-21-3410 and 12-21-3420, which establish the manner in which bingo is to be played, require the use of a bingo card.

The "cards" in question have five horizontal rows and five vertical columns forming twenty-five squares. The five columns are denominated from left to right by the respective letters of the word "B-I-N-G-O".

The center square has the word "FREE" printed in it. However, the remaining twenty-four squares are blank.

Prior to the game, each player fills in the blank squares with the numbers, retains one copy and turns a carbon copy over to the house. The game is then played in the manner prescribed by law.

Code Section 12-21-3320(3) defines the term "card", and reads:

'Card' means a printed design on which there are arranged five horizontal rows and five vertical columns forming twenty-five squares. Numbers are printed in twenty-four of the squares, and the term 'free', 'free square', or 'free space' is printed in the square or space located in the center of the card. The five columns are denominated from left to right by the respective letters of the word 'B-I-N-G-O'. Each square in the 'B' column contains a number from one through fifteen inclusive; each square in the 'I' column contains a number from sixteen through thirty inclusive; except for the center the 'N' column contains a number from thirty-one through forty-five inclusive; each square in the 'G' column contains a number from forth-six through sixty inclusive; and each square in the 'O' column contains a number from sixty-one through seventy-five inclusive. No number may appear twice on the same card (emphasis added).

15 & 16.

The last issues concern whether bingo taxes must be deposited in the special checking account and whether they should be considered in determining whether 60% of the proceeds were to be given away as prizes.

Code Section 12-21-3480 reads; in part:

(B) Upon completion of the session, the promoter shall turn over to the representative member of the nonprofit organization the gross proceeds from the session less the amount paid out as prizes.

(C) The representative member of the nonprofit organization shall deposit the funds into the bingo checking or savings account as described in Section 12-21-3490 (emphasis added).

Code Section 12-21-3420 reads, in part:

In addition to the manner of play prescribed in Section 12-21-3410, the following procedures apply to the conduct of the game:

* * * * *

(12) A minimum of sixty percent of the gross proceeds taken in by the house during a single session must be returned to the players in the form of prizes (emphasis added).

Furthermore, Code Section 12-21-3320(8) defines the term "gross proceeds" as:

...the total amount received from the sale of bingo cards and entrance fees charged at locations in which bingo is conducted.

Conclusions:

1. The Bingo Act of 1989 (H.B. 3052) restricts the operation of a bingo "session" to twelve hours, between twelve noon and twelve midnight.
2. Both nonprofit organizations and promoters are required to prominently display their licenses at the location where bingo is conducted.
3. Promoters conducting bingo games are required to withhold income taxes on prizes of five hundred dollars or more.

However, promoters must also file a quarterly report, with the Tax Commission, listing the name, address and social security number of each winner of a prize valued at one thousand dollars or more.

4. An assessment issued for bingo taxes and penalties may be issued in the name of the promoter, the nonprofit organization, or both.

However, it is Commission policy to issue the assessment in the names of the promoter and the nonprofit organization, with each party receiving a copy of the assessment so that all concerned are adequately notified of their liability.

5. The local chapter of a national organization may not use the I.R.S. letter of exemption issued to the national organization, unless the I.R.S. has issued the national organization a "Group Exemption Letter" which includes the applicant organization as a local chapter, association, or organization falling within the provisions of the "Group Exemption Letter". The burden of proof that the applicant organization falls within the provisions of a Group Exemption Letter falls upon the applicant organization.

However, the Commission will allow organizations applying for a bingo license between October 1, 1989 and October 1, 1990 to submit their national organization's letter of exemption. After October 1, 1990, the Commission will only accept IRS "Group Exemption Letters" or IRS letters of exemption issued to the specific bingo applicant.

6. The revocation of a promoter's license does not revoke the bingo license of the nonprofit organization for whom he is conducting the game.

However, such organization cannot conduct a game until it has properly contracted with a new promoter, who is licensed with the Commission.

7. The revocation of a nonprofit organization's license does cancel the promoter's license with respect to that particular organization. A promoter's license is valid only for a specific nonprofit organization.
8. The Bingo Act of 1989 requires that the nonprofit organizations establish and maintain a special checking account from which only reasonable expenses of the nonprofit organization, in the conduct of bingo, may be paid.
 - (A) The promoter's license, which costs one thousand dollars a year, is for the privilege of managing bingo games and is an expense of the promoter, not the nonprofit organization. Therefore, the proceeds from the special bingo checking account may not be used to pay the promoter's license fee, unless the payment of such fee constitutes compensation for managing the games.
 - (B) The fee for the nonprofit organization's license is an expense of the organization and is, therefore, payable from the special bingo checking account of the nonprofit organization.
 - (C) Dues to the South Carolina Gaming Association, paid by the nonprofit organization, are a reasonable expense since such association only provides services or information associated with the game of bingo.

However, if the association, at some later date, supports or opposes legislation, candidates for public office, or a measure submitted to a vote of the people, or influences or attempts to influence legislation, the dues to the association may not be paid from the special bingo checking account, pursuant to Code Section 12-21-3490(K).

9. The promoter's license is valid only for the person to whom it is issued and may not be transferred to any other person. Therefore, a promoter may not designate one of his employees as a promoter, as such would constitute the transfer of a license whereby the promoter could exceed the ten license limit.

However, this does not restrict any person from becoming a promoter on his own, if all requirements of the statute are met.

10. A member of the nonprofit organization, other than the promoter, must be present for the entire bingo session.

However, the statute does not require the same member to be present for the entire session; therefore, members may work in shifts as long as a member is always present.

11. Due to the fact that a promoter may conduct up to ten different games at a time, it is deemed unreasonable and illogical to conclude that a promoter must be physically present at each game.

However, the promoter shall at all times remain responsible for the operation of each game and session, and liable for any taxes, penalties and interest which may be due. Furthermore, the promoter must, in his absence, be represented at the game by an employee or an agent.

12. The Bingo Act of 1989 does not place price restrictions on the price a player may be charged for a card or a package of cards. However, the amount charged each player for a single card, or package of cards, must be the same.

13. The statute requires that all compensation, whether to the promoter, his employees or employees of the nonprofit organization, must be disbursed from the special bingo checking account.

NOTE: Chapter 9 of Title 12 requires the promoter to withhold income taxes from his employees; therefore, the organization should disburse funds necessary to pay the salary of the promoter's employees, to the promoter, who will issue the salaries accordingly. Both the promoter and the organization must maintain the appropriate documentation to verify the disbursements of such funds from the account.

14. A bingo card which does not have pre-printed numbers in the squares, but allows the player to write in the numbers, does not comply with the Bingo Act of 1989.

15. All "gross proceeds" must be deposited into the special bingo checking account, including all monies and taxes collected from the players through the sale of cards and entrance fees.

16. Bingo taxes collected from the players through the sale of cards or entrance fees constitute part of the "gross proceeds" of the games, and are therefore includable in the calculation for determining whether the 60% give away requirement has been met, pursuant to Code Section 12-21-3420(12).

SOUTH CAROLINA TAX COMMISSION

S. Hunter Howard, Jr., Chairman

A. Crawford Clarkson, Jr., Commissioner

T. R. McConnell, Commissioner

Columbia, South Carolina

October 25 1989

SUMMARY OF SC REVENUE RULING #89-23
(Question and Answer Format)
SUMMARY OF SC REVENUE RULING #89-I

1.Q. What are the restrictions as to time and length of a bingo session under the Bingo Act of 1989?

A. The Bingo Act of 1989 (H.B. 3052) restricts the operation of a bingo "session" to twelve hours, between twelve noon and twelve midnight.

2.Q. Are nonprofit organizations and bingo promoters required to display their respective licenses at the location where bingo is conducted?

A. Both nonprofit organizations and promoters are required to prominently display their licenses at the location where bingo is conducted.

3.Q. Under the Bingo Act of 1989, are the persons conducting bingo games required to withhold income taxes on prizes exceeding \$1000.00 or prizes exceeding \$500.00?

A. Promoters conducting bingo games are required to withhold income taxes on prizes of five hundred dollars or more.

However, promoters must also file a quarterly report, with the Tax Commission, listing the name, address and social security number of each winner of a prize valued at one thousand dollars or more.

4.Q. If an assessment is issued for bingo taxes or penalties due, is such assessment issued in the name of the promoter, the nonprofit organization, or both?

A. An assessment issued for bingo taxes and penalties may be issued in the name of the promoter, the nonprofit organization, or both.

However, it is Commission policy to issue the assessment in the names of the promoter and the nonprofit organization, with each party receiving a copy of the assessment so that all concerned are adequately notified of their liability.

5.Q. If a local chapter of a national nonprofit organization applies for a bingo license, may the local chapter use the national organization's letter of exemption from the I.R.S., or must the local chapter submit its own letter of exemption?

A. The local chapter of a national organization may not use the I.R.S. letter of exemption issued to the national organization, unless the I.R.S. has issued the national organization a "Group Exemption Letter" which includes the applicant organization as a local chapter, association, or organization falling within the provisions of the "Group Exemption Letter". The burden of proof that the applicant organization falls within the provisions of a Group Exemption Letter falls upon the applicant organization.

However, the Commission will allow organizations applying for a bingo license between October 1, 1989 and October 1, 1990 to submit their national organization's letter of exemption. After October 1, 1990, the Commission will only accept IRS "Group Exemption Letters" or IRS letters of exemption issued to the specific bingo applicant.

- 6.Q. If a promoter's license is revoked, is the nonprofit organization's bingo license automatically revoked?
- A. The revocation of a promoter's license does not revoke the bingo license of the nonprofit organization for whom he is conducting the game.

However, such organization cannot conduct a game until it has properly contracted with a new promoter, who is licensed with the Commission.

- 7.Q. If the nonprofit organization's license is revoked, is the promoter's license automatically cancelled?
- A. The revocation of a nonprofit organization's license does cancel the promoter's license with respect to that particular organization. A promoter's license is valid only for a specific nonprofit organization.

- 8.Q. Do the following constitute "necessary and reasonable bona fide expenses incurred and paid in connection with the conduct of bingo", pursuant to Code Section 12-21-3490?

- A) The \$1000.00 promoter's license;
- B) The fee for the nonprofit organization's license; and
- C) Dues to the S.C. Gaming Association.

- A. The Bingo Act of 1989 requires that the nonprofit organizations establish and maintain a special checking account from which only reasonable expenses of the nonprofit organization, in the conduct of bingo, may be paid.

(A) The promoter's license, which costs one thousand dollars a year, is for the privilege of managing bingo games and is an expense of the promoter, not the nonprofit organization. Therefore, the proceeds from the special bingo checking account may not be used to pay the promoter's license fee, unless the payment of such fee constitutes compensation for managing the games.

(B) The fee for the nonprofit organization's license is an expense of the organization and is, therefore, payable from the special bingo checking account of the nonprofit organization.

- (C) Dues to the South Carolina Gaming Association, paid by the nonprofit organization, are a reasonable expense since such association only provides services or information associated with the game of bingo.

However, if the association, at some later date, supports or opposes legislation, candidates for public office, or a measure submitted to a vote of the people, or influences or attempts to influence legislation, the dues to the association may not be paid from the special bingo checking account, pursuant to Code Section 12-21-3490(K).

- 9.Q. May a promoter allow one of his employees to be designated as a promoter, thereby obtaining more than ten licenses, the limit established by Code Section 12-21-3390?

- A. The promoter's license is valid only for the person to whom it is issued and may not be transferred to any other person. Therefore, a promoter may not designate one of his employees as a promoter, as such would constitute the transfer of a license whereby the promoter could exceed the ten license limit.

However, this does not restrict any person from becoming a promoter on his own, if all requirements of the statute are met.

- 10.Q. Is a member of the nonprofit organization, other than the promoter, required to be present at the bingo session from beginning to end?

- A. A member of the nonprofit organization, other than the promoter, must be present for the entire bingo session.

However, the statute does not require the same member to be present for the entire session; therefore, members may work in shifts as long as a member is always present.

- 11.Q. Is the promoter required to be present at the bingo session from beginning to end?

- A. Due to the fact that a promoter may conduct up to ten different games at a time, it is deemed unreasonable and illogical to conclude that a promoter must be physically present at each game.

However, the promoter shall at all times remain responsible for the operation of each game and session, and liable for any taxes, penalties and interest which may be due. Furthermore, the promoter must, in his absence, be represented at the game by an employee or an agent.

- 12.Q. Does the Bingo Act of 1989 place restrictions on the price a player may be charged for a bingo card?

A. The Bingo Act of 1989 does not place price restrictions on the price a player may be charged for a card or a package of cards. However, the amount charged each player for a single card, or package of cards, must be the same.

13.Q. Is the nonprofit organization responsible for issuing a paycheck to an employee of the promoter?

A. The statute requires that all compensation, whether to the promoter, his employees or employees of the nonprofit organization, must be disbursed from the special bingo checking account.

NOTE: Chapter 9 of Title 12 requires the promoter to withhold income taxes from his employees; therefore, the organization should disburse funds necessary to pay the salary of the promoter's employees, to the promoter, who will issue the salaries accordingly. Both the promoter and the organization must maintain the appropriate documentation to verify the disbursements of such funds from the account.

14.Q. Does a bingo card, which does not have pre-printed numbers, but allows a player to write the numbers in the squares, comply with the Bingo Act of 1989?

A. A bingo card which does not have pre-printed numbers in the squares, but allows the player to write in the numbers, does not comply with the Bingo Act of 1989.

15.Q. Must bingo taxes be deposited in the special bingo checking account?

A. All "gross proceeds" must be deposited into the special bingo checking account, including all monies and taxes collected from the players through the sale of cards and entrance fees.

16.Q. Are bingo taxes includable in the calculation for determining whether the 60% give away requirement has been met, pursuant to Code Section 12-21-3420(12)?

A. Bingo taxes collected from the players through the sale of cards or entrance fees constitute part of the "gross proceeds" of the games, and are therefore includable in the calculation for determining whether the 60% give away requirement has been met, pursuant to Code Section 12-21-3420(12).