



SC REVENUE RULING #91-2

SUBJECT: Free Bingo Cards

TAX MANAGER: John P. McCormack

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

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

REFERENCE: S.C. Code Ann. Section 12-21-3330 (Supp. 1989)
S.C. Code Ann. Section 12-21-3410 (Supp. 1989)
S.C. Code Ann. Section 12-21-3420 (Supp. 1989)

AUTHORITY: S.C. Code 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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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) May bingo cards be given away free by a licensed bingo promoter or licensed nonprofit organization to the players?
- (2) May persons, who are not licensed by the Commission to play bingo, conduct bingo if the players are never charged for the cards (i.e.: socials at retirement communities or nursing homes; promotions by radio stations or grocery stores)?
- (3) May a licensed bingo promoter or licensed nonprofit organization contribute, or pay in any manner, the costs of bingo cards for the players?

Facts:

South Carolina laws permit certain nonprofit organizations to sponsor bingo games in which bingo cards are sold to players for a chance to win a prize. The nonprofit organization is also allowed to hire a promoter to manage or conduct the games.

From time to time such nonprofit organizations or promoters may offer free bingo to all players for a specific game; to the players who arrive to play before a certain time; or as a prize for winning a game. Also, retirement communities and nursing homes conduct bingo, without charge, as a social event for their residents.

In addition, licensed bingo operations will from time to time pay a portion of the amount charged a player in order to avoid slowing sales down by making change for the player.

Discussion:

1 & 2. The first two issues concern whether "free bingo" is permissible under South Carolina law.

The South Carolina Constitution, Article 17, Section 7, reads:

No lottery shall ever be allowed or be advertised by newspapers, or otherwise, or its tickets be sold in this State. The game of bingo, when conducted by charitable, religious or fraternal organizations exempt from federal income taxation or when conducted at recognized annual State and county fairs, shall not be deemed a lottery prohibited by this section.

In other words, the game of bingo, under certain circumstances, is a "legal lottery". Now we must determine what a lottery is.

The South Carolina Supreme Court held in *Darlington Theatres, Inc. v. Coker*, 190 SC 282, 2 SE2d 782 (1939) "... that to constitute a lottery, or a scheme in the nature of a lottery, it is essential that three elements be present, to wit: (1) The giving of a prize, (2) by a method of chance, (3) for a consideration paid by the contestant or participant. The concurrence of the first and second elements is not sufficient. The element of illegality is introduced only when the third element is present." Therefore, a lottery requires consideration.

However, Code Section 12-21-3330 further declares that "[t]he game of bingo is not a lottery when ... the game is conducted in accordance with the provisions of Sections 12-21-3410 and 12-21-3420."

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 (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:

* * * * *

- (3) Only one bet or payment is to be paid for each card.
- (4) No bets or payments may be made while a game is in progress, except the sale of cards for subsequent games.

* * * * *

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

Also, the Legislature placed various restrictions on bingo operations in order to further regulate them. In fact, the title to the Act (R287, H3052 - 1989) specifically states: "... so as to provide for the regulation of bingo by the Tax Commission..." The statute regulates the amount of prizes, how the game must be played, how the proceeds are to be handled, and the license application process. It also requires written contracts between the promoter and the organization and requires various reports to be filed with the Commission.

"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, homogenous 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." 73 Am. Jur.2d, Statutes Section 188.

Therefore, in reviewing the statute as a whole, the Legislature placed strict requirements on all operations which seek to raise revenue through bingo and did not intend for such operations to circumvent the provisions concerning prize limitations, disbursements of money from the special checking account, the manner in which the game is played and other provisions by allowing free bingo. Such provisions provide protection for the players, the nonprofit organization and the State.

In summary, a nonprofit organization which chooses to raise money through bingo must sell each card for each game at an amount certain. The Legislature, through Code Sections 12-21-3310 et. seq., has established a specific manner in which the game of bingo, as a "legal lottery", must be played and has placed various other restrictions on such operations.

3. The last issue concerns who can pay for the players' cards.

As previously cited, Code Section 12-21-3410 requires that "[e]ach player pays an amount certain for each card to be played during the course of a game ..."

Conclusions:

- (1) Bingo cards cannot be given away free by a licensed bingo promoter or a licensed nonprofit organization to the players.

Note: This conclusion prohibits a licensed bingo promoter or a licensed nonprofit organization from offering free bingo games or cards to anyone for any reason.

- (2) Persons, who are not licensed by the Commission to play bingo, may conduct bingo if the players do not pay any consideration (in money or otherwise) whatsoever to play bingo (e.g., socials at retirement communities or nursing homes; promotions by radio stations or grocery stores).

Note: Any requirements or restrictions imposed upon the players in order to play bingo, whereby some consideration has been indirectly paid, constitutes the payment of a consideration to play the game itself. Such requirements or restriction may include, but are not limited to, a requirement to purchase merchandise at a store, to pay an admissions fee, to be a member of a retirement community, or to be a resident of a nursing home. In order to conduct bingo without being licensed by the Commission, no consideration, direct or indirect, may be required and the game must be open to the public without restrictions.

- (3) Licensed bingo promoters or licensed nonprofit organizations cannot contribute, or pay in any manner, the costs of bingo cards for the players.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.
S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.
A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell
T. R. McConnell, Commissioner

Columbia, South Carolina
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