

SC REVENUE RULING #97-9

SUBJECT: Domicile and Organizational Requirements  
(Bingo)

EFFECTIVE DATE: October 1, 1997

SUPERSEDES: SC Revenue Ruling #93-3

REFERENCE: S.C. Code Ann. Section 12-21-4070 (Supp. 1996)  
S.C. Code Ann. Section 12-21-3920 (Supp. 1996)  
S.C. Code Ann. Section 12-21-3940 (Supp. 1996)  
S.C. Code Ann. Section 33-14-103 (Supp. 1996)  
S.C. Code Ann. Section 33-14-104 (Supp. 1996)  
S.C. Code Ann. Section 33-14-105 (Supp. 1996)  
S.C. Code Ann. Section 33-14-200 (Supp. 1996)  
S.C. Code Ann. Section 33-14-210 (Supp. 1996)  
S.C. Code Ann. Section 33-14-220 (Supp. 1996)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1996)

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Would the bingo license applicants, as described in the examples in the Facts, qualify for a bingo license under the bingo laws of this State?

Facts:

Several questions have arisen recently concerning the statutory requirement that an individual or organization be domiciled in South Carolina for three years before a bingo license may be issued. In addition, questions have also been asked concerning the issuance of bingo licenses to auxiliary entities of organizations already licensed to conduct bingo.

## DOMICILE REQUIREMENTS:

Example 1 - An organization, upon incorporation, filed its charter with the Secretary of State. After ten years, it is administratively dissolved by the Secretary of State for failure to comply with the law. A year later the organization files for reinstatement with the Secretary of State; files all its delinquent returns (if any); and pays all taxes, fees, penalties and interest due the State. The organization is reinstated and immediately applies for a bingo license.

Example 2 - After five years, an organization voluntarily dissolves by notifying the Secretary of State. Later the organization files for reinstatement with the Secretary of State; files all its delinquent returns (if any); and pays all taxes, fees, penalties and interest due the State. The organization is reinstated and immediately applies for a bingo license.

Example 3 - After seven years of operation, an organization is administratively dissolved by the Secretary of State for failing to comply with statutory provisions. The organization, a local chapter or post of a national veterans organization, claims that according to the records of its national headquarters it is a viable chapter or post in good standing. It has not yet filed with the Secretary of State for reinstatement, but it has applied for a bingo license.

## ORGANIZATIONAL REQUIREMENTS:

Example 4 - A church has received an Internal Revenue Service letter of exemption under IRC Section 501(c), and has three subordinate churches, located in different cities, under the same exemption letter. The subordinate churches have the same federal employer identification (FEI) number and the same Board of Directors as the "main" church. The "main" church has a bingo license. The three subordinate churches are each applying for a license to play bingo.

Example 5 - A local chapter or post of a national veterans organization has a women's auxiliary. The local chapter has a bingo license, and the women's auxiliary is applying for a bingo license so they may conduct games at a separate location.

## Discussion:

## DOMICILE REQUIREMENTS:

1. The first issue that must be addressed applies to the facts set forth in Examples #1 through #3. Essentially, we must determine how the dissolution and reinstatement of an organization under the laws administered by the Secretary of State effect the issuance of a bingo license.

Code Section 12-21-4070 reads:

No license, as provided by this article, may be issued to any organization or individual that has not been domiciled in this State for at least three years immediately preceding the license application. In the case of the organization, the organization must also have been active in this State for at least three years.

The State Supreme Court, in Army-Navy Bingo, Garrison #2196 v. Plowden, 281 S.C. 226, 314 SE 2d. 339 (1984), held a similar provision under the prior bingo law was within the police powers and policy interests of the State and was constitutional.

Furthermore, Code Section 12-21-3920 defines the term “nonprofit organization” to mean

an entity which is organized and operated exclusively for charitable, religious, or fraternal purposes which is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19).

To fully understand the issue, we must also consider the statutory provisions concerning dissolution and reinstatement of an organization under the laws administered by the Secretary of State.

Chapter 14 of Title 33 of the South Carolina Code of Laws establishes the statutory provisions for a corporation to voluntarily dissolve or for the Secretary of State to administratively dissolve a corporation.

A corporation may dissolve by delivering to the Secretary of State, for filing, articles of dissolutions setting forth various information as required under Code Section 33-14-103. The corporation is dissolved upon the effective date of its articles of dissolution. However, Code Section 33-14-104 allows the corporation to revoke its dissolution within 120 days of its effective date. In addition, this section reads:

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Furthermore, Code Section 33-14-105 states that “[a] dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, . . .” The corporation is required to wind up and liquidate its business and affairs “as expeditiously as practicable.”

A corporation may also be administratively dissolved for failing to comply with certain statutory provisions (Code Sections 33-14-200 and 33-14-210). As with a corporation that is voluntarily dissolved, Code Section 33-14-210(d) provides that the corporation "continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs". In addition, Code Section 33-14-220 allows an administratively dissolved corporation to apply for reinstatement. This section also provides that "[w]hen the reinstatement is effective, it relates back to and takes effects as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred."

In considering both the bingo law and the corporate law, the following quote from 73 Am. Jur.2d, Statutes Section 188 provides guidance:

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.

Therefore, while the domicile of an organization in this State is uninterrupted by its "temporary" dissolution if it is reinstated by the Secretary of State, it may not be issued a bingo license since it has not been active for at least three years immediately preceding the license application and it has not been "operated for charitable, religious, or fraternal purposes as required by the statutory definition of the term "nonprofit organization." A license may be issued once the organization has been active and operating for charitable, religious, or fraternal purposes for a period of three consecutive years immediately preceding the application.

#### ORGANIZATIONAL REQUIREMENTS:

2. The second issue that must be addressed applies to the facts set forth in Examples #4 and #5. The issue in question is whether or not the subordinate churches, or the women's auxiliary of the local chapter of a national veterans organization, are separate organizational entities from the main church or chapter. This is important since Code Section 12-21-4040 states that "[n]o nonprofit organization may hold more than one bingo license."

The State constitution allows nonprofit organizations, that are organized for religious, fraternal, or charitable purposes, to conduct bingo games as a means of raising money for their organizational purposes.

In implementing the Constitution, the General Assembly has provided in Code Section 12-21-3940 that:

(A) Before conducting a game of bingo, a nonprofit organization shall file with the department a written application in a form prescribed by the department, executed and notarized which must include:

(1) the name, address, and telephone number of the applicant and sufficient facts relating to its incorporation and organization to enable the department 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) the name, addresses, and telephone numbers of the organization's officers;

Also, the department in SC Revenue Ruling #89-23 held, in part, that:

The local chapter of a national organization may not use the [I.R.S.] exemption letter issued to the national organization, unless the I.R.S. has issued to the 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.

As stated earlier, "statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogenous system." 73 Am. Jur.2d, Statutes Section 188.

In determining the eligibility of an applicant to conduct bingo, we must determine whether the applicant is a separate location of an organization that already has a bingo license or a separate organizational entity. Such a determination must be made on a case by case basis considering various factors, including those set forth in the statute.

## Conclusions:

### DOMICILE REQUIREMENTS:

While the domicile of an organization in this State is uninterrupted by its "temporary" dissolution if it is reinstated by the Secretary of State, it may not be issued a bingo license since it has not been active for at least three years immediately preceding the license application and it has not been "operated for charitable, religious, or fraternal purposes as required by the statutory definition of the term "nonprofit organization." A license may be issued once the organization has been active and operating for charitable, religious, or fraternal purposes for a period of three consecutive years immediately preceding the application.

Therefore, the bingo license applicants, as described in the Examples 1, 2, and 3 in the Facts, do not qualify for a bingo license under the bingo laws of this State. Once these organizations have actively been operating for charitable, religious, or fraternal purposes for three years immediately preceding the license application, such organizations may be issued a bingo license provided they meet all other requirements of the statute.

### ORGANIZATIONAL REQUIREMENTS:

An organization may only hold one bingo license. Therefore, it must be determined if the applicant is a distinct organizational entity and not merely a separate location of an organization that already has a bingo license. Such a determination must be made on a case by case basis considering all the facts and circumstances, including those set forth in the statute.

Factors that may be considered include, but are not limited to:

- (1) Does the applicant operate under a separate charter from any related entity?
- (2) Has the applicant received an exemption from the I.R.S., either under its own name or as a listed organization, chapter, post, church, etc. under a Group Exemption Letter from the I.R.S.? In other words, does the I.R.S. consider the applicant to be a separate and distinct organizational entity?
- (3) Does the applicant have a management group which makes the day to day decisions of the applicant? Is this management group separate from any management group of a related entity? Are the officers the same as or different than the officers of a related entity?

(4) Does the applicant maintain a bank account, other than the one set up in anticipation of playing bingo, separate from any related entity?

(5) Do the minutes of any meetings indicate the applicant is a separate entity from any related entity?

(6) What does the membership list of the applicant indicate? Are the members the same as or different than the members of a related entity?

(7) What do any other records, public or private, indicate? (i.e. deeds, leases, contracts)

Therefore, it can not be determined if the bingo license applicants, as described in the Examples 4 and 5 in the Facts, qualify for a bingo license under the bingo laws of this State. Such a determination can only be made after considering the applicant's individual facts and circumstances as discussed above.

Note: In considering the above list of factors, a "negative" answer to one or more of the above questions will not necessarily prevent an organization from being classified as a separate and distinct organization eligible for a bingo license. All facts and circumstances must be considered to determine the organizational status of the applicant.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

July 22, 1997  
Columbia, South Carolina