

SC REVENUE RULING # 98-7

SUBJECT: Withholding of Distributions to “Fictitious Charity”
(Bingo)

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 12-21-4190 (Supp. 1997)
S. C. Code Ann. Section 12-21-4080 (Supp. 1997)
S. C. Code Ann. Section 12-21-4090 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

May the department withhold the money to be distributed to a nonprofit organization under Code Section 12-21-4190(1) if it determines that the nonprofit organization is a fictitious charity?

Conclusion:

The department, if it determines that an organization is a “fictitious charity,” may withhold from the organization the payments due under Code Section 12-21-4190(1), provided it has properly notified the organization of this determination and the reasons for the determination. These payments will be withheld from the time of notification until the matter is resolved, including the time period the matter is appealed, unless otherwise ordered by the Administrative Law Judge Division or the courts to issue such payments.

In addition, the department may seek reimbursement of any payments made to a “fictitious charity” under the provisions of Code Section 12-21-4190(1), provided it has properly notified the organization of this determination and the reasons for the determination. The department will seek the reimbursement of these payments via an assessment for only that time period that the department has determined the organization was being operated in order to deceive or as a sham.

Finally, under the provisions of Code Section 12-21-4280 or Code Section 12-54-90, the department, at the same time it notifies an organization that it will withhold payments due under Code Section 12-21-4190(1), will notify the organization that it will seek revocation of its bingo license.

Facts:

Effective October 1, 1997, the General Assembly enacted the Bingo Act of 1996 which adds Article 24, Chapter 21, Title 12 and repeals Article 23, Chapter 21, Title 12. The Bingo Act of 1996 implements a wide variety of substantial changes to the bingo laws.

The main change concerns the purchase of bingo cards. The following is a brief explanation of this aspect of the law:

1. All bingo operators will be required to obtain their bingo cards by paying a tax to the department. Upon application for the cards, the department will authorize a qualified distributor to sell bingo cards to the bingo operator. The tax must be paid within 15 days of application for the cards.
2. The department must collect 16.5 cents per dollar face value of the bingo cards (except for Class C nonprofit organizations.) Twenty-six percent of this revenue will be distributed to the nonprofit organizations, with the remainder distributed in accordance with the statute for governmental purposes.
3. The department will make distributions to the nonprofit organization (sponsoring charity) from the tax received by the last day of the month following the month the revenue was collected.
4. The nonprofit organization, or the promoter conducting the games on its behalf, may then use the bingo cards purchased from the distributor through this procedure to conduct bingo games in order to raise money in accordance with the law.

Discussion:

The issue is whether the department may withhold from the nonprofit organization the money to be distributed to the nonprofit organization under Code Section 12-21-4190(1) if the department has determined that the nonprofit organization is a fictitious charity.

Code Section 12-21-4190 concerns the payment of the tax to the department, and reads:

The department shall charge and retain sixteen and one-half cents of the dollar value for each bingo card sold except sales to Class C licensees pursuant to this article. The revenue retained must be distributed as follows:

(1) twenty-six percent of the revenue must be distributed to the sponsoring charity for which the bingo cards were purchased. The department shall make the distribution to the sponsoring charity by the last day of the next month following the month the revenue was collected. Distributions under this subsection must be reduced by any delinquent debts as defined in the Setoff Debt Collection Act.

(2) seventy-four percent pursuant to Section 12-21-4200.

Code Section 12-21-4200 distributes the seventy-four percent discussed above among various state agencies.

Code Section 12-21-4090(J) reads in part:

If the organization is identified as a fictitious charity after originally licensed, any payments due the charity revert to the general fund.

Code Section 12-21-3920(5) defines the term “nonprofit organization” to mean, in part:

an entity which is organized and operated exclusively for charitable, religious, or fraternal purposes ...

The statute does not define the term “fictitious charity.” However, 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 S.C. 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 S.C. 484, 60 S.E. 2d 682 (1950).

The American Heritage Dictionary, Second College Edition. defines the word “fictitious” to mean:

adj. 1. Of, pertaining to, or characterized by fiction; imaginary. 2. Adopted or assumed in order to deceive; *a fictitious name*. 3. Not genuinely believed or felt; sham; *greeted me with a fictitious enthusiasm*.

Therefore, if the department determines that a nonprofit organization is organized and operated for purposes other than charitable, religious, or fraternal, then the organization is organized and operated in order to deceive or as a sham and is a “fictitious charity” under the provisions of Code Section 12-21-4090(J).

The question now arises as to when the department should withhold the payments due under Code Section 12-21-4190(1) if it has determined that the organization in question is a fictitious charity.

The timing of withholding such payments could create a dilemma. If the department does not withhold the payments until after the organization has exhausted its appeal of the determination, then a fictitious charity could receive payments for months, even years, while the matter makes its way through the administrative and judicial process.

A second question also arises. If the organization has already received payments under Code Section 12-21-4190(1) and it is determined that it has been operating in a deceptive manner or as a sham, then what happens to the money? Does the department seek reimbursement of these payments? Is the organization allowed to keep this money?

“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.

Based on the above, the department, if it determines that an organization is a “fictitious charity,” may withhold the payments due under Code Section 12-21-4190(1) provided it has properly notified the organization of this determination and the reasons for this determination. These payments will be withheld from the time of notification until the matter is resolved, including the time period the matter is appealed, unless otherwise ordered by the Administrative Law Judge Division or the courts to issue such payments.

In addition, the department may seek reimbursement of any payments made to a “fictitious charity” provided it has properly notified the organization of this determination and the reasons for the determination. The department will seek the reimbursement of these payments via an assessment for only that time period that the department has determined the organization was being operated in order to deceive or as a sham.

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SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III

March 24, 1998
Columbia, South Carolina