



SC REVENUE RULING #93-5

SUBJECT: Bingo Proceeds - Code Section 12-21-3610

TAX MANAGER: John P. McCormack

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

REFERENCE: S.C. Code Ann. Section 12-21-3610 (Supp. 1992)
S.C. Code Ann. Section 12-21-3380 (Supp. 1992)
S.C. Code Ann. Section 12-21-3530 (Supp. 1992)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)

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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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. Can a bingo promoter be held liable for the tax imposed upon bingo proceeds under Code Section 12-21-3610?
2. If a bingo promoter can be held liable for the tax imposed upon bingo proceeds under Code Section 12-21-3610, can the Commission levy against the promoter's bond for any unpaid tax imposed under Code Section 12-21-3610?

Facts:

As part of the Appropriations Act of 1992 (Act 501, Part II, Section 59), the General Assembly extended the State sales and use tax to the proceeds of licensed bingo games.

Questions have arisen as to the application of various provisions of the bingo law to this new tax on bingo proceeds.

Discussion:

Code Section 12-21-3610 became effective July 1, 1992, and reads:

The sales and use tax imposed pursuant to Chapter 36 of Title 12 applies on gross proceeds from the game of bingo as provided in this chapter [21], but this section does not apply to bingo games held under a Class E license.

In order to address the first issue, we must review Code Section 12-21-3380. That section reads:

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

The Commission, in SC Revenue Ruling #89-23, reviewed this section with respect to the bingo tax and held:

An assessment 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.

Later, in Commission Decision #91-15, the Commission stated that the bingo taxes "must be assessed against both [the nonprofit organization] and the Promoter, with the Promoter being primarily liable for payment."

Code Section 12-21-3380, as cited above, imposes this joint and several liability with respect to "all taxes, penalties, interest, and fines imposed by this article ..." The new tax on bingo proceeds is imposed under the same article (Article 23 of Chapter 21 of Title 12); therefore, the "promoter and the nonprofit organization are jointly and severally liable for [the tax on bingo proceeds]."

In summary, the tax on bingo proceeds, as imposed under Code Section 12-21-3610, must be assessed against both the nonprofit organization and the promoter, with the promoter being primarily liable for payment.

The second issue concerns the bonding requirements of Code Section 12-21-3530. That section reads:

Except as otherwise provided in this section, every organization and promoter licensed to conduct bingo, as a condition precedent to conducting a game or to continue in the business of conducting a game, shall file a bond executed by a surety company authorized to do business in this State, or post a cash bond with the commission in an amount as may be approved by the commission. The organization and the promoter must have separate bonds. No organization or promoter may engage in this business before submitting the bond required by this section. This bond is security for all state taxes, penalties, interest, fines, fees, and warrant costs for which the promoter or organization is liable. The minimum bond for a promoter is twenty thousand dollars. The minimum bond for an organization licensee is as follows:

- (1) Class AA twenty thousand dollars;
- (2) Class B ten thousand dollars;
- (3) Class C no bond required;
- (4) Class D no bond required;
- (5) Class E no bond required.

Therefore, the bond is security for all state taxes.

Conclusions:

1. The tax on bingo proceeds, as imposed under Code Section 12-21-3610, is the joint and several liability of the nonprofit organization and the promoter, with the promoter being primarily liable. Therefore, the Commission must assess both the nonprofit organization and the promoter for any tax due under Code Section 12-21-3610.

Note: The tax on bingo proceeds, as imposed by Code Section 12-21-3610, does not apply to bingo games operated under a Class E license.

2. Since a bond of a bingo promoter is "security for all state taxes" under Code Section 12-21-3530, the Commission can levy against the promoter's bond for any unpaid tax imposed under Code Section 12-21-3610, as well as all other state taxes which may be due by the promoter.

Note: The Commission may also levy against the nonprofit organization's bond for any unpaid tax imposed under Code Section 12-21-3610, in addition to all other taxes, since the bond is "security for all state taxes".

SOUTH CAROLINA TAX COMMISSION

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

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

s/James M. Waddell, Jr.
James M. Waddell, Jr., Commissioner

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