
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #98-13

SUBJECT: Sale of Bingo Cards For More or Less Than Face Value (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 12-21-3990 (Supp. 1997)
S. C. Code Ann. Section 12-21-4030 (Supp. 1997)
S. C. Code Ann. Section 12-21-4270 (Supp. 1997)
S. C. Code Ann. Section 12-21-4220 (Supp. 1997)
S. C. Code Ann. Section 12-21-4190 (Supp. 1997)
S. C. Code Ann. Section 12-21-4100 (Supp. 1997)
S. C. Code Ann. Section 12-21-4240 (Supp. 1997)
S. C. Code Ann. Section 12-21-4250 (Supp. 1997)
S. C. Code Ann. Section 12-21-4210 (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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.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 a licensed bingo operation sell a bingo card for more than or less than the face value of the bingo card?

Conclusion:

No. Bingo cards cannot be sold to the players for more than or less than their face value. Bingo cards must be sold to the players at face value.

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.
5. Bingo cards must meet the design and requirements of the department.

Pursuant to these changes, the department has developed a color code equivalent for the dollar face value printed on bingo cards. These standards, in which the color and style of the card determines its face value, can be found in SC Revenue Ruling #97-11.

Discussion:

The first issue is whether a licensed bingo operation may sell a bingo card for more than its face value.

Code Section 12-21-3990 reads in part:

(A) 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 must pay no more than face value for each card to be played during the course of a game and may purchase the card or cards 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 12-21-4030 reads:

(A) A promoter or organization may not impose a charge, other than as provided in subsection (B), on a player of more than the face value of each card sold to play bingo.

(B)(1) A holder of a Class AA license shall impose an entrance fee of eighteen dollars.

(2) A holder of a Class B license shall impose an entrance fee of five dollars.

(3) A holder of a Class D or Class E license may impose an entrance fee of five dollars. The entrance fees collected are not required to be remitted as taxes and are not included in gross proceeds for purposes of the prize limitation provided in Section 12-21-4000(12)(a). (Emphasis added.)

Based on the above, a licensed bingo operation may not sell a bingo card for more than the face value of the bingo card.

The second issue is whether a licensed bingo operation may sell a bingo card for less than its face value.

The Bingo Act of 1996 as a whole and the reasons for it indicate that it was the intent of the General Assembly that bingo cards be sold only for their face value and not for less than their face value.

First, we must consider the issues faced by the General Assembly. This may be best illustrated by information from a December, 1992 report issued by the former SC Tax Commission entitled: "Bingo in South Carolina: Who Really Benefits?" The following are quotes from this report (The headings note the section and page number where the quote can be found in the report.):

The Sponsoring Charity versus The Professional Promoter - Page Sixteen

While South Carolina bingo grossed \$90 million last year, the sponsoring charities reportedly received only one percent. The professional bingo operators, on the other hand, are paid more than 10 times what the charities receive.

These bingo professionals use numerous ways to siphon the cash out of the bingo games. These methods include signing lucrative management contracts, charging exorbitant rental rates for the building and equipment, establishing monopolies on the bingo paper supply business, and skimming the cash from the nightly games.

Charitable Contributions - Page Seventeen

For the period October 1, 1989 through September 20, 1992, the total charitable contributions reported on the bingo quarterly financial statement are \$2,898,668.

This amount is dwarfed in comparison to the more than \$28 million dollars paid to promoters and other bingo operators.

This contribution amount must be further analyzed by the fact that its validity has not been substantiated. In addition, the existence of several allegedly charitable organizations is being questioned by the Tax Commission. In several instances the so called charity serves no purpose other than the enrichment of the promoter, and is nothing more than the promoter and his associates.

The Professional Bingo Promoter: Methods to Derive Income from Bingo - Page Eighteen

Of the bingo expenditures reported on quarterly financial statements, more than \$28 million dollars have been paid to promoters in salaries, rental fees, and other expenses. This is 10 times the amount reportedly paid to the sponsoring charities.

Many South Carolina bingo licensees report promoter fees in excess of \$100,000, with several in excess of \$500,000 and two exceeding \$1 million.

Unreported Proceeds (Skim Money) - Page Twenty-One

During the course of various South Carolina Tax Commission criminal investigations, it has been determined that cash is in some instances “skimmed” from the bingo games. As stated earlier, the method of skimming simply involves keeping all the money over the legal limits. “AB” license cannot payout more than \$8,000 in prizes in one session. Therefore, if the game pays the required minimum percentage of prizes, the bingo should not receive more than \$13,333 in gross proceeds. Any amount in excess of the \$13,333 will be unreported or “skimmed” by the operators.

During the course of one investigation, it was established that one bingo operator had “skimmed” an amount in excess of \$20,000 from only two nights games. In addition, the results of several other criminal investigations show that for those games in which proceeds were skimmed, the unreported income approximated 33 percent of the gross reported. While this percentage may not be applicable to all bingo operations, the task force estimates the gross proceeds could be under reported by as much as 20 percent.

Record Keeping - Page Thirty-Three

The bingo industry inherently is one which maintains few if any records after the night of the bingo game. For example, a large “AA” game uses eight cashiers during the bingo game to sell the packs of cards. When the Tax Commission auditors questioned the nightly records of the games conducted, they determined no cash registers were used. Beginning and ending bingo supply inventories were used by the promoter to verify the number of packs sold. When the auditors asked to see these inventories, they were told the reports are thrown away each night. The ticket stubs for the game were also thrown away by the promoter. In addition, the auditors determined that the bingo operation maintained other very detailed records the night of the session. These records, used as methods of internal controls, were destroyed after the conclusion of the bingo session.

The only records of the bingo games provided to the auditors were handwritten schedules prepared by the promoter showing gross revenue, total prize payouts and the number of players in attendance. The auditors needed to verify the records of a bingo session played and to determine the accuracy of the schedules provided.

In order to accomplish this, the Tax Commission attempted to monitor the next bingo session conducted. When the inspection team arrived and informed the promoter of their intentions, the bingo operators decided not to conduct that session. This “AA” bingo game only operates one session a month, yet they made the choice not to play instead of allowing the Tax Commission to inspect their game. This decision was made minutes before the doors were scheduled to open. Several buses had already arrived in the parking lot and were turned away. One bus had driven all night from West Virginia.

Bingo is a business operating primarily in cash, which when coupled with the inadequate records makes it extremely difficult for the Tax Commission to enforce the statutes and collect the appropriate tax revenues.

Second, we must consider the statutory scheme adopted by the General Assembly in the Bingo Act of 1996. The above cited report, “Bingo in South Carolina: Who Really Benefits?,” was the genesis for this statutory scheme.

Section 12-21-4270. Application to obtain bingo cards.

Each licensed nonprofit organization or promoter, in the name of a licensed organization, may obtain bingo cards approved by the department by making application and remitting sixteen and one-half percent of the total face value of the cards to be purchased. Payment to the State for the issuance of bingo cards must be made by certified check within fifteen days of receipt of the application. Upon receipt of the application, the department shall notify a licensed distributor, who has purchased bingo cards from a licensed manufacturer that the licensed distributor may release the face value of the bingo cards requested to the licensed organization or promoter. However, no additional bingo cards must be released until payment is received for the prior application of bingo cards. The department is required to set forth procedures to ensure that there is a crosscheck between manufacturers, distributors, and licensed nonprofit organizations or promoters. A quarterly return is required by each manufacturer, distributor, and licensed non-profit organization or promoter on or before the last day of the month following the close of the calendar quarter outlining those items the department determines necessary to verify the sale and distribution of bingo cards. The sale of bingo cards and entrance fees provided by Section 12-21-4030 are not subject to the admissions tax provided by Section 12-21-2420. (Emphasis added.)

Section 12-21-4220. Bingo card design and requirements.

Bingo cards shall meet the design and requirements of the department. The use of the cards is evidence of the payment of the license tax imposed upon bingo cards by this article. (Emphasis added.)

Section 12-21-4190. Bingo card charges.

The department shall charge and retain sixteen and one-half cents for each dollar of face 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.

Section 12-21-4100. Record keeping and reporting requirements.

(A) Each licensed nonprofit organization conducting bingo games shall submit quarterly to the department on the last day of the month following the close of the calendar quarter a report under oath containing the following information:

- (1) the amount of the gross proceeds derived from the games;
- (2) each item of expense incurred or paid;
- (3) each item of an expenditure made or to be made, with a detailed description of the merchandise purchased or the services rendered;
- (4) the net proceeds derived from the games;
- (5) the use to which the proceeds have been or are to be applied;
- (6) a list of prizes offered and given, with their respective values;
- (7) excess proceeds as provided in Section 12-21-4000(12)(b);
- (8) number of players at each session;
- (9) other information considered necessary by the department.

(B) Each licensed nonprofit organization shall maintain records to substantiate the contents of each report.

(C) The department may revoke the license of an organization that fails to file the reports and information required in this article.

Section 12-21-4240. License to manufacture, distribute or use bingo cards.

Each manufacturer, distributor, organization, or promoter must be licensed to manufacture or distribute, or use bingo cards. The department shall charge an annual license fee of five thousand dollars for each manufacturer and two thousand dollars for each distributor. A license issued by the department under this section is renewable annually unless canceled or terminated. No license issued under this section is transferable or assignable.

Section 12-21-4250. Dual roles.

A bingo card manufacturer may not be licensed to operate a game as a bingo card distributor or as a promoter. A bingo card distributor may not be a manufacturer, a licensed nonprofit organization, or promoter. A licensed nonprofit organization or a promoter may not be a manufacturer or distributor.

Section 12-21-4210. Sale or transfer of bingo cards.

Bingo cards may not be sold or transferred between licensed organizations, between distributors, or between manufacturers. All unused bingo cards may be returned to the department for refund and destruction. The department is required to refund only the amount retained by the department previously based on the face value of each card and does not include the manufacturer's price or transportation charges to the consignee at destination and such additional charges.

Based on the above, the statute is designed to ensure the department, the charities and the general public know the exact amount of revenue flowing through a bingo operation. Knowing this information can help reduce or eliminate the skimming of revenue by promoters and others and ensure that 50% of the revenue is returned to the players in the form of prizes. It also provides the information needed by the General Assembly and the public to determine if the money generated under the bingo laws is being used for charity.

“The primary rule of construction, to which all other rules for statutory construction are subservient, requires that the legislative intent must prevail if it can reasonably be discovered in the language used construed in light of the intended purpose.” Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (1987). Beaufort County v. Jasper County, 220 S.C. 469, 68 S.E.2d 421 (1951).

Therefore, the intent of the General Assembly is to impose tight controls over the bingo industry and to ensure the problems cited in the December 1992 report by the SC Tax Commission, “Bingo in South Carolina: Who Really Benefits?,” are eliminated.

As such, bingo cards may not be sold for less than their face value. Otherwise, a promoter or other person could skim revenue from the bingo games. Under the scheme designed by the General Assembly, the department can easily determine, based on the amount of cards sold to the bingo operation as authorized by the department, the amount of money flowing through a bingo operation. When cards are sold for their face value, the intent of the General Assembly in enacting the Bingo Act of 1996 can prevail.

If bingo operations are allowed to sell cards for less than their face value, then the Bingo Act of 1996 does not accomplish the intent of the General Assembly and does not control the problems cited in the 1992 report. "In seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing." McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964)

In summary, bingo cards cannot be sold to the players for more than or less than their face value. Bingo cards must be sold to the players at face value.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina
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