

BG 11-01
Tax Type: Bingo/Charitable Games
Issue: Propriety of Penalty

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	No.
OF THE STATE OF ILLINOIS)	
v.)	Bingo License
)	
ABC BINGO,)	Julie-April Montgomery
Taxpayer.)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe for ABC BINGO; George Foster, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Violation & Assessment (“Notice”) to ABC BINGO (“Taxpayer”). This Notice assessed a \$5,000 penalty because Taxpayer provided premises for the conduct of bingo without a license and allowed unlicensed organizations to conduct bingo on its premises in violation of the Bingo License and Tax Act (“Bingo Act”) (230 ILCS 25/1 *et seq.*).

Taxpayer protested the Notice. The Department submitted documentary and testimonial evidence. Taxpayer presented documentary evidence. Following the submission of all evidence and a review of the record, it is recommended that the Notice be affirmed. In support thereof, are made the following findings of fact and conclusions of law.

Findings of Fact

1. Taxpayer has had no bingo providers' license since 2007 when said license was revoked. Dept. Ex. Nos. 2 (The Department's Bureau of Criminal Investigation's "Investigation Summary Report"), 3 (Order Pursuant to Licensee's Withdrawal); Tr. pp. 9, 15.
2. On May 22, 2009 two special agents of the Department's Bureau of Criminal Investigation visited Taxpayer's facility. Dept. Ex. Nos. 1 (Notice of Violation & Assessment), 2; Tr. p. 10.
3. On May 22, 2009 approximately 70 people were playing bingo on Taxpayer's premises. Dept. Ex. No. 2; Tr. pp. 12-13, 22.
4. On May 22, 2009 Ms. Jane Doe of XYZ Foundation ("XYZ") worked a register and sold bingo cards on Taxpayer's premises. Dept. Ex. No. 2; Tr. p. 11.
5. On May 22, 2009 Taxpayer's manager was informed that Taxpayer would need a bingo providers' license. Dept. Ex. No. 2; Tr. p. 13.
6. On May 22, 2009 the Department's special agents obtained and examined play cards of QRST Group ("QRST") and XYZ which they found to "have five spaces across, five spaces down with one free space in the middle." Tr. p. 12.
7. On May 22, 2009 ladies associated with QRST and XYZ were informed that because they were playing bingo on Taxpayer's premises their groups would need bingo licenses. Dept. Ex. No. 2; Tr. p. 13.
8. Melrose Park raffle licenses were posted at Taxpayer's premises. Dept. Ex. No. 2; Taxpayer Ex. No. 1 (Melrose Park raffle licenses); Tr. pp. 11, 17-20.

Conclusions of Law

Section 1 of the Bingo Act provides:

Definitions. For purposes of this Act, the following definitions apply:

“Bingo” means a game in which each player has a card or board for which a consideration has been paid, containing 5 horizontal rows of spaces, with each row except the central one containing 5 figures. The central row has 4 figures with the word “free” marked in the center space. 230 ILCS 25/1.1.

“Provider” means any person or organization ... that owns or leases premises to an organization for the conduct of bingo. *Id.*

Providers’ license. The Department shall issue a providers’ license permitting a person, firm, or corporation to provide premises for the conduct of bingo. No person, firm or corporation may rent or otherwise provide premises without having first obtained a license. 230 ILCS 25/1.4

Any person or organization, in addition to other penalties provided for in this Act, shall be subject to a civil penalty not to exceed \$5,000 for any of the following violations:

- (1) Providing premises for the conduct of bingo without first obtaining a license or a special permit to do so.
- (2) Allowing unlicensed organizations to conduct bingo on its premises. 230 ILCS 25/5(d)(1)-(2).

Section 3 of the Bingo Act also incorporates by reference sections 4 and 5 of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*) which provide that the Department’s determination is *prima facie* correct. 35 ILCS 120/4, 5. Here the Department established its *prima facie* case by its submission into evidence, under the certificate of the Director, a copy of the Notice. Dept. Ex. No. 2. Once the Department established its *prima facie* case, the burden shifted to Taxpayer to establish, by a preponderance of the evidence, that the Department’s determination was incorrect. *See* 230 ILCS 25/5.1; 5 ILCS 100/10-15.

The Department asserts there was unauthorized bingo and Taxpayer did not have the required license for such activity. Taxpayer believes the Department failed to prove its case, and as such, it cannot be said unauthorized bingo occurred or that Taxpayer was required to have a

bingo providers' license. Therefore, the issues to be decided are whether: 1) unauthorized bingo occurred on Taxpayer's premises and 2) Taxpayer had a bingo providers' license.

On May 22, 2009 Department representatives found that bingo cards were being sold and played on Taxpayer's premises. Tr. pp. 11-13. An examination of these cards revealed that they contained "five spaces across, five spaces down with a free space in the middle." Tr. p. 12. This is the statutory definition of a bingo card. Department representatives observed only raffle licenses posted at Taxpayer's facility. Tr. p. 11. All of this led the Department to determine that neither the groups present on Taxpayer's premises playing bingo nor Taxpayer had bingo licenses. Dept. Ex. No. 2.

Taxpayer alleges the Department did not prove that bingo was played on May 22, 2009. Tr. p. 33. This is not so. Besides the introduction into evidence of the Notice which established the Department's *prima facie* case, the Department presented the testimony of the special agent who observed the bingo playing and sale of bingo cards, as well as, submitted her report documenting such activity. Dept. Ex. No. 2; Tr. pp. 11-13.

Taxpayer asserts that it was raffles, not bingo, that occurred on its premises. Tr. p. 35. Taxpayer bases this assertion on its belief that the activity the special agent described "fit[s] also under the Raffle Statute." Tr. p. 33 Taxpayer thereby concludes that since the activity that occurred was a raffle no violations occurred because the groups present on the premises had raffle licenses. Tr. pp. 34-35. This assertion is without foundation. Bingo has the specific and unique requirement that its playing cards have five spaces across, five spaces down and a free space in the center. This was the type of playing card observed and documented by the Department's special agents as being used on the premises. Raffles do not require the five spaces across, five spaces down and free center space cards. *See* 230 ILCS 15/1. Moreover,

Taxpayer, as the prior owner of a bingo providers' license, would have been aware of what type of activity constituted bingo. Furthermore, Taxpayer's manager was able to observe the bingo activity, with the Department's special agent on May 22, 2009, when the special agent informed him of the need for a bingo providers' license because of the activity occurring on Taxpayer's premises. Tr. p. 13.

The Bingo Act requires both the organizations conducting bingo games and the provider of the premises for bingo have licenses. Neither the groups conducting bingo on Taxpayer's premises nor Taxpayer had licenses. It was this lack of bingo licenses which serves as the basis of the Notice. The Department proved bingo occurred on May 22, 2009 by unlicensed groups. The Department further proved that Taxpayer failed to have a bingo providers' license. Taxpayer's presentation of raffle licenses and a Department Information Bulletin entitled "Bingo Information" are not only insufficient to overcome the Department's *prima facie* case but do not show that no unlicensed bingo activity occurred on May 22, 2009.

Recommendation

In light of the above, it is recommended that the Department's Notice assessing a \$5,000 penalty be affirmed.

May 12, 2011

Julie-April Montgomery
Administrative Law Judge