



Texas Lottery Commission



Commissioners:

Robert G. Rivera, Chairman

Cindy Fields • Mark A. Franz • Clark E. Smith • Jamey Steen

LaDonna Castañuela
Director

June 7, 2024

Ms. Kimberly L. Kiplin
510 Hearn Street, Suite 200
Austin, TX 78703

Via Certified Mail No. 9214 8901 9403 8364 6845 35

Re: Bingo Advisory Request No. 2024-0415-0002

Dear Ms. Kiplin:

This opinion responds to your request for a bingo advisory opinion received via email on April 15, 2024. Specifically, you asked the following questions:

May a licensed bingo distributor receive or “take back” bingo equipment or bingo supplies from a licensed authorized organization (not a licensed manufacturer or another licensed distributor)? If so, under what circumstances may a licensed bingo distributor “take back” bingo equipment or supplies?

Below is our response:

No. According to Tex. Occ. Code §2001.407(c), “A licensed distributor may not receive by purchase or otherwise bingo equipment or supplies from a person other than a licensed manufacturer or another licensed distributor.” The issue is whether the word “receive” includes a “take back” or return of bingo equipment or supplies. Under Texas rules of construction, when a word in a statute is not defined, our task is to determine its common, ordinary meaning, and we may look to dictionary definitions as guidance.¹ Merriam-Webster defines “receive” as “to come into possession of; to acquire.” Black’s Law Dictionary defines it as “to acquire or get something.” When an organization returns bingo equipment to a distributor, the distributor “acquires it” or “comes into possession” of it. Thus, either common definition is sufficient to determine that the word “receive” as used in this provision of the statute includes a “take back” or return. As such, a distributor may not receive bingo equipment or supplies by a “take back” or return from a person other than a licensed manufacturer or another licensed distributor.

This interpretation is further supported by the statute’s use of the phrase “... by purchase *or otherwise...*” (*emphasis added*) If the statute merely said “...by purchase...”, it would be reasonable to interpret the law to allow for a “take back” or return from a customer, but the addition of the phrase “...or otherwise...” indicates that there are no circumstances whatsoever under which

¹ *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014).

a distributor may receive bingo equipment from any person other than a licensed manufacturer or distributor.

Your request also mentions the use of the phrase "...return, or any type of transfer..." in Charitable Bingo Administrative Rules §§402.300(g)(6) and 402.301(e)(1) related to manufacture and distributor record keeping for pull-tab bingo tickets and bingo paper, respectively. You state that those provisions "seem to suggest that certain 'take back' transactions between a licensed distributor and licensed authorized organization would not be prohibited." As demonstrated above, the statute clearly prohibits such a transaction. Because an agency rule cannot contradict its authorizing statute, the only reasonable interpretation of those rules provisions is that they allow for a return from a distributor to a manufacturer, but not from an organization to a distributor.

Because the answer to your first question is "no," there is no need to respond to your second question.

SUMMARY

A licensed bingo distributor may not receive or "take back" returned bingo equipment or bingo supplies from a licensed authorized organization. According to Tex. Occ. Code §2001.407(c), "A licensed distributor may not receive by purchase or otherwise bingo equipment or supplies from a person other than a licensed manufacturer or another licensed distributor."

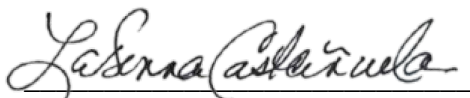
This advisory opinion cannot be construed as a tax ruling or otherwise interpretative of the Internal Revenue Code. The information provided is completely limited to the context of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

This advisory opinion is based on the laws, rules, and regulations in effect at the time of issuance. All the information provided herein is subject to changes in law.

This opinion is purely advisory in nature and is limited to the particular questions at issue at the time of the facts presented in the Request. Therefore, this opinion must not be relied upon as a pre-determination regarding any conduct which is not substantially consistent with the opinion and the facts stated in the request.

This Bingo Advisory Opinion was approved by the Commission at the June 6, 2024, Commission open meeting.

Sincerely,



LaDonna Castañuela, Director
Charitable Bingo Operations Division

cc:

Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Clark E. Smith, Commissioner
Jamey Steen, Commissioner
Ryan Mindell, Executive Director
Bob Biard, General Counsel
Tyler Vance, Assistant General Counsel