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AUTHOR Zannese, Lisa
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Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Does a Hall Charities Association meet the requirements of paragraph 149(1)(l) of the Act?

POSITION: Maybe.

REASONS: More information regarding their operations is needed.

October 21, 2011

Compliance Programs Branch Specialty Audits Section Directorate Attention: Rubin Dressler (613) 957-2747	HEADQUARTERS Income Tax Rulings L. Zannese
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2011-041086

XXXXXXXXXX (the "Association")

We are writing in response to your request for our views as to whether the Association qualified for the tax exemption provided by paragraph 149(1)(l) of the Income Tax Act (the "Act") for the years under review. In particular, you asked us to consider whether the Association's payment of bingo revenue to its members' and its reimbursement of members' licensing fees prevented the Association from claiming this tax exemption.

FACTS

Based on the fact sheet provided to us by the auditor, our understanding of the facts is as follows:

- * In Ontario, the Alcohol and Gaming Commission of Ontario is responsible for regulating licensed lottery events conducted by charities.
- * Ontario requires that charities undertaking fundraising through a Class A bingo hall be a member of a "hall charities association."
- * A hall charities association is described in Chapter 9 of the Ontario Lottery Licensing Policy Manual (the "Manual") as "an association formed by the individual charitable organizations conducting regular bingo events at a bingo hall."
- * The Association was incorporated without share capital on XXXXXXXXXX , to operate as a hall charities association for its members.
- * The Association's objects are to:
 - o attract customers to the XXXXXXXXXX and create an atmosphere which will encourage customers to return;
 - o promote and encourage fair and courteous dealings with customers;
 - o promote and encourage practices which comply with the applicable terms and conditions set out by the Alcohol and Gaming Commission of Ontario for bingo operations;
 - o represent and support the sponsors in business with the XXXXXXXXXX and all levels of government;
 - o administer the fund-raising activities which take place at the XXXXXXXXXX ; and

- o engage in any other complementary purposes which are not inconsistent with the above-listed objects.
- * Upon dissolution, any remaining assets of the Association are to be transferred to charitable organizations which carry on their work solely in Ontario.
- * Members of the Association are charities or non-profit organizations.
- * The Association had XXXXXXXXXX members in XXXXXXXXXX and XXXXXXXXXX members in XXXXXXXXXX .
- * The Association does not charge membership fees.
- * Hall charities association are required by Ontario to operate as non-profit associations.
- * According to the Manual, hall charities associations are meant to simplify the administration of lottery events by allowing the charities to use one licence and only have one lottery trust account. In addition, they provide charitable organizations one contact point for dealing with bingo hall owner/operators.
- * The Manual describes a hall charities association's responsibilities to generally include:
 - o the scheduling of dates and times of bingo events;
 - o determining the type of prize board (variable or fixed);
 - o determining the game schedule and the price of bingo paper;
 - o administering the licenses issued to the hall charities association; and
 - o co-ordinating services supplied to the Ontario Lotteries & Gaming Corporation.
- * Ontario legislation requires that the members of a hall charities association pay the license fees associated with conducting a bingo. The Association reimbursed its members all licensing fees the members paid to the City of XXXXXXXXXX . All fees paid to Ontario for special bingo games and break open tickets were paid by the Association.
- * The Association held bingo games XXXXXXXXXX .
- * In XXXXXXXXXX , net revenue from these bingos was split evenly between the bingo owner/operator (a for-profit corporation holding a Class A bingo license) and the members of the Association.

- * The split was changed in XXXXXXXXXX to XXXXXXXXXX % to the bingo owner/operator and XXXXXXXXXX % to the Association's members.
- * Members were charged fees by the Association to pay for the Association's general and administrative expenses.
- * The fees were deducted from the bingo revenues prior to paying members. Generally, each member received approximately \$XXXXXXXXXX per year.
- * Ontario legislation also requires a bingo owner/operator to split non-gaming revenue (from snack bars, vending machines etc.) with a hall charities association.
- * The Association also distributed a share of the non-gaming revenue to each of its members, after deducting the Associations expenses for services rendered with respect to these amounts.
- * The Association maintained a separate bank account for its promotional fund. It consulted with the members and the bingo owner/operator with respect to using these funds to best promote its activities.

OUR COMMENTS

In general terms, paragraph 149(1)(l) of the Act provides that the taxable income of an organization is exempt from tax under Part I of the Act for a period throughout which the organization meets all of the following conditions:

- * it is a club, society or association;
- * it is not a charity;
- * it is organized and operated exclusively for social welfare, civic improvement, pleasure, recreation or any other purpose except profit; and
- * its income is not available for the personal benefit of a member or shareholder.

The Association is a corporation and does not appear to be a charity. Based on the information provided by the auditor, it appears to us that the Association is organized in manner that meets the requirements of paragraph 149(1)(l) of the Act, in that it is an

administrator and promoter of the bingo games, but not necessarily the owner of the revenue raised through the bingo games.

We do not have sufficient information to provide an opinion as to whether the Association was operating exclusively for any purpose other than profit. In particular, a brief review of the Ontario legislation that governs the charitable gaming industry suggests to us that there may be an issue as to who owns the proceeds from the operations of the bingo after the bingo owner/operator has received its portion. Specifically, is the revenue paid to the Association from the operation of a bingo the revenue of the Association or is it the revenue of the members of the Association? We question which organization is the owner of these funds for several reasons:

- * Ontario requires that the members of the Association obtain the licenses to operate the bingos, suggesting that it is the members and not the Association that is responsible for the bingos;
- * hall charities associations are required to maintain a trust account in which the hall charities association must deposit its part of the revenue earned from the bingos. This suggests to us that the revenue is not the property of the hall charities association. Rather these associations may be better viewed as holding the revenue on behalf of their members; and
- * hall charities associations appear to act as agents or managers for the benefit of members as a hall charities association oversees activities and ensures that these comply with the Ontario legislation on behalf of members.

When reviewing the operations of an organization claiming the paragraph 149(1)(l) tax exemption, consideration should be given to the amounts charged for any products or services provided by the organization, as well as any material reserves maintained by the organization. Assuming that the bingo revenue is the income of the members and not the Association, then whether the Association qualifies for the tax exemption will depend on how much it charges its members for the services provided to them. As long as the fee charged by the Association to its members is at or close to cost, then it is possible for the Association to qualify as a 149(1)(l) organization. Moreover, if the bingo revenue belongs to the members of the Association, then amounts paid by the Association for special bingo licences, and amounts reimbursed to members with respect to licence fees charged by the City of XXXXXXXXXX may be viewed as coming from the income of the members, not the income of the Association. That is, there is no concern that income of the Association is available for the benefit of members.

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A 149(1)(l) organization may maintain a reasonable reserve, but the reserve must be for identifiable operating purposes or for a specific future capital project. A large reserve maintained for no other purpose than to earn investment income will likely result in an organization not qualifying for the paragraph 149(1)(l) tax exemption. We were not advised whether the Association has a reserve and if so, whether the auditor had any concerns regarding the size or purpose of the reserve.

If the revenue earned from the operation of the bingos is the income of the Association, then the Association does not qualify for the 149(1)(l) tax exemption because its main purpose is to generate a profit and it is providing that profit to its members. Fundraising, in and of itself, is an activity undertaken for a profit purpose, and unless the fundraising is incidental to an organization's operations it will generally result in an organization failing to meet the requirements of paragraph 149(1)(l) of the Act.

Please contact us, if we may be of any further assistance.

Yours truly,

Eliza Erskine
Manager
Non-Profit Organizations and Aboriginal Issues
Financial Sector and Exempt Entities Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch