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Daniel P. Bork
Commissioner

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David C. Trimble, General Counsel
Department of Charitable Gaming
Public Protection Cabinet
132 Brighton Park Boulevard
Frankfort, KY 40601

RE: Response related to taxability of charitable gaming supplies by tax-exempt entities

Dear Mr. Trimble:

This correspondence is in response to your request for guidance regarding the application of sales and use tax to the purchase of supplies and materials related to bingo, raffles, electronic bingo, electronic video pull-tab games and similar games available in Kentucky by tax-exempt entities. Hyperlinks to referenced statutes and regulations are provided.

Pursuant to KRS 139.495(2) as related to 501(c)(3) resident, nonprofit educational, charitable, or religious institutions, "Tax does not apply to sales of tangible personal property, digital property, or services to these institutions or limited liability companies described in subsection (1) of this section, provided the tangible personal property, digital property, or service is to be used solely in this state within the educational, charitable, or religious function."

The sales and use tax exemption provided in KRS 139.495(2) does not extend to all retail sales to resident, educational, charitable and religious institutions. Exempt items must be purchased for use solely within the educational, charitable or religious function of the tax-exempt entity. The otherwise taxable property or services purchased must be used in the performance of some activity that is itself educational, charitable or religious in nature in order for the purchase of that property to be exempt. <http://www.lrc.ky.gov/Statutes/statute.aspx?id=45416>

Commercial or income-producing activities such as bingo, electronic bingo, electronic video pull-tab games and similar games are not considered an educational, charitable or religious function. Thus, the purchase of tangible personal property, digital property or services by a tax-exempt entity for use in such an activity does not qualify for exemption from sales and use tax. Furthermore, the supplies and materials purchased are considered to be consumed by the charitable organization and not resold to its patrons. The charges to patrons for participating in a charitable gaming activity are not considered to be retail transactions subject to Kentucky sales and use tax.

In addition, the purchase of charitable gaming supplies by other designated IRS tax-exempt organizations in Kentucky (e.g. Veterans' organizations organized under Section 501(c)(19) or Section 501(c)(23), social welfare organizations, fraternal beneficiary societies, domestic fraternal societies, etc.) is subject to the 6% sales and use tax as well.

Examples of taxable supplies and materials commonly purchased for use in these activities include but are not limited to bingo cards, bingo sheets, chips, balls, cages, daubers, pens, raffle tickets, physical pull tabs, electronic pull tabs, electronic gaming tablets, electronic screens, computers, gaming software, point-of-sale (POS) systems, kiosks, and tables and chairs used as gaming stations.

To reiterate, the retail sale of electronic pull tabs to charities for use in fund raising activities in Kentucky is subject to sales and use tax just as sales of the paper pull tabs are taxable. Electronic pull tabs fall under the category of digital property defined in KRS 139.010(9).

<http://www.lrc.ky.gov/Statutes/statute.aspx?id=39929>

Tax-exempt entities should not provide a Purchase Exemption Certificate to their suppliers when they purchase tangible personal property, digital property or services for use in charitable gaming activities. If an exempt entity were to claim an exempt purchase for use in charitable gaming by executing a certificate, then liability shifts from the supplier to the purchaser and the charitable entity would be required to accrue and remit the 6% tax due on its purchase price.

This correspondence is based on the circumstances and facts presented in your correspondence and upon current Kentucky laws and regulations. Any change in the tax laws or regulations could affect this opinion. If you require further assistance, please contact me at the information listed below.

Sincerely,

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