



40% Retention Rule



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What is the 40% Retention Rule?

- *KRS 238.536(1): “The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period.”*

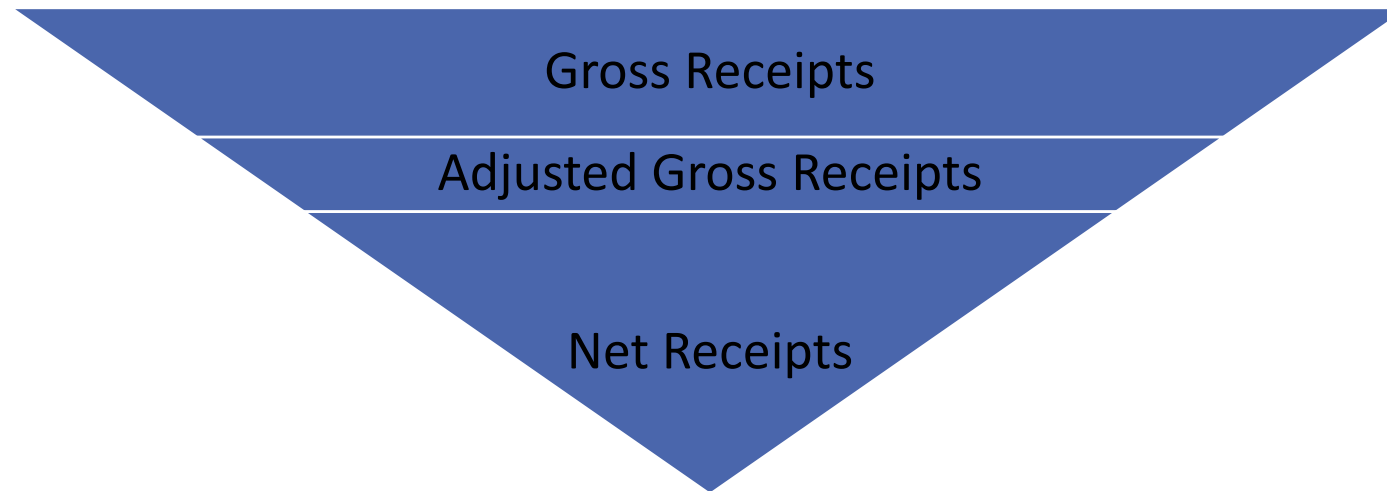




- **All** net receipts from charitable gaming must go toward the organization's charitable purpose.
 - Common misunderstanding: It does not mean that 40% of the money a charity makes off charitable gaming must go toward a charitable purpose. Instead,
- A charity cannot spend more than 60% of the money it has left over after paying out the gaming winners on the expenses of operating gaming (e.g., supplies, rent, utilities).

Calculating Retention Percentage

$$\text{Net Receipts} \div \text{Adjusted Gross Receipts} \geq 40\%$$



Types of Receipts

- What are gross receipts, adjusted gross receipts, and net receipts?

Gross receipts: “All money collected or received from the conduct of charitable gaming”

Adjusted gross receipts: “Gross receipts less all cash prizes and the amount paid for merchandise prizes purchased” (i.e., gross receipts minus winner payouts)



Types of Receipts Continued

Net Receipts: “Adjusted gross receipts less all expenses, charges, fees, and deductions authorized under [KRS Chapter 238]” (i.e., adjusted gross receipts minus expenses).

- *Expenses identified in KRS 238.550 and 820 KAR must be paid with charitable gaming funds and factor into the retention percentage.*
- *Includes charitable gaming supplies and equipment; rent; utilities; insurance; advertising; janitorial services; bookkeeping and accounting services; security services; membership dues for a charitable gaming trade organization; banking fees; volunteer food; noncash items to incentivize volunteers to sell raffle tickets; volunteer clothing; payments to DCG; printing costs; payment for purchasing prizes; promotional items, federal taxes and fees, check collection fees.*

Example Retention Percentage Calculation

Suppose the Human Fund is a charitable organization licensed to conduct charitable gaming in the Commonwealth of Kentucky.

The Human Fund is conducting a 50/50 “Split the Pot” raffle in which the winner will receive half of the proceeds of the raffle, and the Human Fund will retain the other half to use for its charitable purpose.

Tickets for the raffle cost \$1 each.



Example Retention Percentage Calculation



- ✓ The Human Fund sells 2,000 tickets for \$1 apiece. This generates \$2,000 in gross receipts.
- ✓ The winner of the raffle receives half the pot, which is \$1,000. After paying the winner, the Human Fund is left with \$1,000 of adjusted gross receipts.
- ✓ The Human Fund spent a total of \$500 advertising the raffle and renting space to hold the drawing. After subtracting these expenses from the adjusted gross receipts, the Human Fund has \$500 in net receipts.
- ✓ The Human Fund's net receipts (\$500) constitute 50% of its adjusted gross receipts (\$1,000).
- ✓ The Human Fund has **complied** with the 40% retention rule.

Penalties for Violation

These penalties are firmly established by KRS 238.536. The Department does not have discretion to waive these penalties or to consider mitigating circumstances.

Retention Percentage	Penalty
35.0% - 39.9%	<ul style="list-style-type: none">• Six months probation• Submit financial plan detailing how the licensee will achieve 40% retention, which must be approved by DCG.
30.0% - 34.9%	<ul style="list-style-type: none">• One year probation• Submit financial plan detailing how the licensee will achieve 40% retention, which must be approved by DCG• Six month review by DCG

Penalties for Violation

Retention Percentage	Penalty
25.0% - 29.9%	<ul style="list-style-type: none">• One year probation• Submit financial plan detailing how the licensee will achieve 40% retention, which must be approved by DCG• Mandatory training by DCG• Quarterly review by DCG
Less than 25% in one year, OR Less than 40% in two consecutive years	<ul style="list-style-type: none">• One year suspension of charitable gaming license• Before license is reinstated, licensee must submit a financial plan detailing how the licensee will achieve 40% retention, which must be approved by DCG• After reinstatement, one year probation and quarterly review by DCG

Benefits of the 40% Requirement

- Maximizes the amount of money that can be spent toward charitable purposes.
- Ensures that licensed charitable organizations are not operating on a thin margin.
- Prevents charities from spending money on frivolous or unnecessary expenses.
- Provides licensed charitable organizations leverage when negotiating prices for gaming supplies and rent.
 - The cost of charitable gaming supplies and rent for gaming space accounts for a substantial part of a charitable organization's expenses.
 - Since the cost of gaming supplies and rent decreases a charity's net receipts, the 40% retention requirement is a valuable asset for charities.

Common Reasons For Not Meeting 40% Retention

- Paying too much for expenses, such as bingo supplies or facility rent
- Conduct gaming with variable profit margins
 - Bingo: High payout games with low attendance and low bingo paper sales result in lower adjusted gross receipts, making it harder to reach the 40% retention goal.
 - Raffles: Purchasing expensive prizes and not selling enough tickets to cover the cost of the prize.
 - Pulltabs (paper or electronic) and “50/50” or “split the pot” raffles are the least risky forms of charitable gaming for organizations to meet the 40% standard.