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TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #02-40(F)

DIGEST

Amends 45 IAC 18 concerning charity gaming. Repeals 45 IAC 18-1-2, 45 IAC 18-1-3, 45 IAC 18-1-4, 45 IAC 18-1-5, 45 IAC 18-1-6, 45 IAC 18-1-7, 45 IAC 18-1-8, 45 IAC 18-3-3, 45 IAC 18-6-1, and 45 IAC 18-6-2. Effective 30 days after filing with the secretary of state.

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SECTION 1. 45 IAC 18-1-9 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-9 “Affiliate” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-6

Sec. 9. “Affiliate” means any person or entity directly or indirectly controlling, controlled by, or under common control or ownership as the licensee or shares with the licensee a common board, directors, or officer. *(Department of State Revenue; 45 IAC 18-1-9; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2300)*

SECTION 2. 45 IAC 18-1-10 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-10 “Bingo card” and “bingo paper” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-6

Sec. 10. “Bingo card” and “bingo paper” means permeations of letter and number combinations printed on reusable or nonreusable card or paper stock containing five (5) rows of five (5) squares, each imprinted with randomly placed numbers, one (1) through seventy-five (75), except for the center square that may be a free space, and a set of designators, similarly numbered, that are contained in a selection device. The letters “B-I-N-G-O” must also be imprinted, in order above each of the five (5) columns. A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold. (Department of State Revenue; 45 IAC 18-1-10; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)

SECTION 3. 45 IAC 18-1-11 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-11 “Bingo equipment” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-6

Sec. 11. “Bingo equipment” means all paraphernalia used to conduct the game, including the following:

- (1) Random number selection equipment.**
- (2) Designators, such as bingo balls.**
- (3) Designator receptacles.**
- (4) Number display boards.**
- (5) Dispensing devices.**

The term does not include audio or video equipment, which plays no part in the conduct of the game other than communicating the progress of the game. The term does not include any computer or other technologic aid. (Department of State Revenue; 45 IAC 18-1-11; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)

SECTION 4. 45 IAC 18-1-12 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-12 “Bingo supplies” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 12. “Bingo supplies” means:

- (1) bingo paper;**
- (2) bingo cards;**
- (3) concealed face bingo cards;**
- (4) daubers; or**
- (5) other devices designed to cover squares on bingo card or bingo paper.**

(Department of State Revenue; 45 IAC 18-1-12; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)

SECTION 5. 45 IAC 18-1-13 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-13 “Calendar” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 13. “Calendar” means a tabular register of days that does not cover less than one (1) calendar month or more than twelve (12) calendar months, and is used for a calendar raffle. (Department of State Revenue; 45 IAC 18-1-13; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)

SECTION 6. 45 IAC 18-1-14 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-14 “Calendar raffle” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 14. “Calendar raffle” means a raffle in which a drawing is held and a prize awarded on each date specified in a calendar. *(Department of State Revenue; 45 IAC 18-1-14; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)*

SECTION 7. 45 IAC 18-1-15 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-15 “Charity game night” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-6

Sec. 15. (a) “Charity game night” means an event where wagers are placed upon the following permitted games of chance through the use of imitation money:

- (1) A card game.**
- (2) A dice game.**
- (3) A roulette wheel.**
- (4) A spindle.**

(b) The term does not include an event where wagers are placed on:

- (1) bookmaking;**
- (2) a slot machine;**
- (3) a one-ball machine;**
- (4) a pinball machine that awards anything other than an immediate and unrecorded right of replay;**
- (5) a policy or numbers game; or**
- (6) a banking or percentage game played with cards or counters.**

(Department of State Revenue; 45 IAC 18-1-15; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2301)

SECTION 8. 45 IAC 18-1-16 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-16 “Computer or other technologic aid” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 16. “Computer or other technologic aid” means either of the following:

- (1) A device that uses electronic or electromagnetic media to assist a player by projecting the outcome of the game, keeping track of the number and letter combinations called in bingo, analyzing the probability of the occurrence of an event relating to the bingo, or analyzing the strategy for playing bingo.**
- (2) A device, such as a computer, telephone, cable, television, satellite, the Internet, or device that broadcasts the playing of a game or links gaming events.**

(Department of State Revenue; 45 IAC 18-1-16; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)

SECTION 9. 45 IAC 18-1-17 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-17 “Concealed face bingo card” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 17. “Concealed face bingo card” means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names, such as the following:

- (1) Tear-Open.**
- (2) Bonanza Bingo.**
- (3) Bull’s-eye.**

(4) Fortune Cards.

A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold. *(Department of State Revenue; 45 IAC 18-1-17; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 10. 45 IAC 18-1-18 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-18 “Conduct prejudicial to the public confidence in the department” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-1; IC 4-32-9; IC 35-45-5-1

Sec. 18. “Conduct prejudicial to the public confidence in the department”, as used in this article and in IC 4-32-1, means conduct that gives the appearance of impropriety, including the failure to file tax returns, conducting a gaming event without a license, sports betting, operating a gambling device, using or possessing a computer or other technologic aid, as defined in section 16 of this rule, or any other activity illegal under IC 35-45-5-1 et seq. *(Department of State Revenue; 45 IAC 18-1-18; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 11. 45 IAC 18-1-19 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-19 “Deal” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 19. “Deal” means each separate package, or series of packages, consisting of one (1) game of pull-tabs or tip boards with the same serial number. *(Department of State Revenue; 45 IAC 18-1-19; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 12. 45 IAC 18-1-20 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-20 “Dispensing device” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 20. “Dispensing device” means a mechanical or electromechanical device with one (1) or more stacking columns that dispense a pull-tab only after a player inserts an appropriate amount of coin or currency. This does not include any device that electronically generates a pull-tab. *(Department of State Revenue; 45 IAC 18-1-20; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 13. 45 IAC 18-1-21 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-21 “Door prize” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 21. “Door prize” means a prize awarded to a person based solely upon the person’s attendance at an event or the purchase of a ticket to attend an event and is not premised in whole or in part on the placing of a wager. No organization shall award a door prize when the award of a prize is determined, in whole or in part, on a sporting event. *(Department of State Revenue; 45 IAC 18-1-21; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 14. 45 IAC 18-1-22 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-22 “Existence” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9; IC 6-2.1-3; IC 6-3-2

Sec. 22. “Existence” means the organization’s active demonstrable support of its stated purpose or mission in addition

to any actual corporate existence, including maintaining its gross income tax exemption under IC 6-2.1-3, maintaining its adjusted gross income tax exemption under IC 6-3-2, and being current in all tax filings. *(Department of State Revenue; 45 IAC 18-1-22; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2302)*

SECTION 15. 45 IAC 18-1-23 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-23 “Festival” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 23. “Festival” means an event where a qualified organization is authorized to conduct bingo events, charity game nights, one (1) raffle event, door prize events, and sell pull-tabs, punchboards, and tip boards. *(Department of State Revenue; 45 IAC 18-1-23; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 16. 45 IAC 18-1-24 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-24 “Flare” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 24. (a) “Flare” means the card enclosed with each deal of pull-tabs that has the following information:

- (1) The name of the game.**
- (2) The manufacturer’s name or distinctive logo.**
- (3) The game form number.**
- (4) The prize structure for the game, which includes the number of winning pull-tabs by denomination and their respective winning symbol or symbols or number or numbers combination.**
- (5) The cost per ticket.**
- (6) The serial number of the game.**
- (7) The winning number or symbol for at least the top three (3) winning tiers set out in a manner that each prize may be marked off as the prize is won and awarded.**

(b) The requirements of subsection (a)(7) do not apply to games that include the use of a seal card.

(c) In addition to the other requirements of this section, all pull-tabs manufactured or distributed for sale in Indiana must meet the “Standards on Pull-Tabs” adopted by the North American Gaming Regulators Association October 12, 1991, as amended October 20, 1998, which is incorporated by reference. Copies are available from the North American Gaming Regulators Association, 26 East Exchange Street, Suite 500, St. Paul, MN 55101 or <http://www.nagra.org>. *(Department of State Revenue; 45 IAC 18-1-24; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 17. 45 IAC 18-1-25 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-25 “In existence for at least twenty-five (25) years” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 25. “In existence for at least twenty-five (25) years” means that the nationally recognized charitable organization must have been continuously incorporated or legally authorized to do business for at least twenty-five (25) years as a charitable organization, in each of at least three (3) states, including Indiana. *(Department of State Revenue; 45 IAC 18-1-25; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 18. 45 IAC 18-1-26 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-26 “In good standing with the department” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 26. "In good standing with the department" means an individual or organization that has:

- (1) made all required tax filings or any other required filings with the department; and**
- (2) no outstanding liabilities with the department.**

(Department of State Revenue; 45 IAC 18-1-26; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)

SECTION 19. 45 IAC 18-1-27 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-27 "Location" defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 27. "Location" means the street address and mailing address. It cannot include a post office box and is not connected by a common roof or wall with another structure where gaming activities occur. *(Department of State Revenue; 45 IAC 18-1-27; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)*

SECTION 20. 45 IAC 18-1-28 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-28 "Member" defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 28. (a) "Member" means an individual who is qualified for membership in an organization pursuant to its bylaws, articles of incorporation, charter, or rules, who is entitled to vote in the election of the organization's officers or board members, or both, and who is eligible to be elected as an officer or board member, or both, and to participate in the determination of the policies of the organization. The individual must be able to show continuous active participation in the organization's stated purpose or mission, including, but not limited to, the contribution of time, money, or talent to the organization and attends regular meetings of the organization.

(b) An auxiliary member may also be considered a member of an organization for the conduct of an allowable event if:

- (1) The auxiliary is part of a nationally recognized charitable organization.**
- (2) The auxiliary is created in the organizations bylaws adopted prior to the effective date of this section.**
- (3) The auxiliary member is entitled to vote in the election of the auxiliary organization's officers and/or board members, and who is eligible to be elected as an officer and/or board member and to participate in the determination of the policies of the auxiliary organization.**
- (4) The individual must be able to show continuous active participation in the auxiliary organization's stated purpose or mission, including, but not limited to, the contribution of time, money, or talent to the auxiliary organization and attends regular meetings of the auxiliary organization.**

(Department of State Revenue; 45 IAC 18-1-28; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2303)

SECTION 21. 45 IAC 18-1-29 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-29 "Nationally recognized charitable organization" defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 29. "Nationally recognized charitable organization" means an organization that:

- (1) possesses a determination letter or a ruling from the Internal Revenue Service stating that the organization is currently exempt from taxation under 26 U.S.C. 501, or is listed in Internal Revenue Service Publication 78 (Cumulative List of Organizations);**
- (2) has current exempt status with the department;**
- (3) is organized primarily for charitable purposes;**
- (4) is incorporated or legally authorized to do business in at least three (3) states, including Indiana; and**

(5) has a national membership of at least five thousand (5,000) people.
(Department of State Revenue; 45 IAC 18-1-29; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)

SECTION 22. 45 IAC 18-1-30 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-30 “Operator” defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 30. “Operator” means a member of a qualified organization who is:

- (1) an Indiana resident;**
- (2) in good standing with the department; and**
- (3) in addition to the forgoing [sic., foregoing], the following individuals are also operators:**
 - (A) A bartender licensed with the alcohol and tobacco commission if the bartender sells only pull-tabs, tip boards, or punchboards.**
 - (B) Any person who accounts for money received at the charity gaming event.**
 - (C) Any person who keeps records of the charity gaming event.**
 - (D) Any person who announces the letter-number combination at a bingo event.**

(Department of State Revenue; 45 IAC 18-1-30; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)

SECTION 23. 45 IAC 18-1-31 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-31 “Pull-tab” defined
Authority: IC 4-32-7-3; IC 4-32-8-3
Affected: IC 4-32-9

Sec. 31. “Pull-tab” means a game conducted in the following manner:

- (1) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player.**
- (2) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.**
- (3) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.**
- (4) Winners or potential winners, if the game includes the use of a seal, are determined by revealing the faces of tickets or cards. The player may be required to sign the player’s name on numbered lines provided, if a seal is used.**
- (5) The player with a winning pull-tab ticket or numbered line receives the prize stated on the flare from the qualified organization.**
- (6) A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold.**
- (7) A pull-tab may not be electronically generated.**

(Department of State Revenue; 45 IAC 18-1-31; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)

SECTION 24. 45 IAC 18-1-32 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-32 “Punchboard” defined
Authority: IC 4-32-7-3
Affected: IC 4-32-9

Sec. 32. “Punchboard” means a card or board that contains a grid or section that hides the random opportunity to win a prize based on the results of punching a single hole to reveal a symbol or prize amount. A serial number consisting of at least five (5) characters must be printed on each item manufactured and sold. A punchboard may not be electronically generated. (Department of State Revenue; 45 IAC 18-1-32; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2304)

SECTION 25. 45 IAC 18-1-33 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-33 “Premises” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 33. “Premises” means a building or a distinct portion of a building where charity gaming is conducted. A portion of a building is considered distinct if it has a separate mailing address and is not connected by a common roof or wall with another structure where gaming activities occur. *(Department of State Revenue; 45 IAC 18-1-33; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 26. 45 IAC 18-1-34 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-34 “Raffle” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 34. “Raffle” means a game in which one (1) or more persons who have purchased a raffle ticket win the prize or prizes. The winner or winners of the raffle are determined by drawing a ticket stub from a receptacle holding ticket stubs corresponding to all tickets sold for the raffle. The winning of a prize in a raffle cannot be premised in whole or in part on a sporting event. *(Department of State Revenue; 45 IAC 18-1-34; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 27. 45 IAC 18-1-35 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-35 “Revoke” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 35. “Revoke” means that a qualified organization cannot conduct any gaming events or hold a license for gaming events. The revocation begins at the time the organization receives notice from the department or when the organization exhausts all administrative remedies, whichever is later. *(Department of State Revenue; 45 IAC 18-1-35; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 28. 45 IAC 18-1-36 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-36 “Seal card” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 36. “Seal card” means a board or placard used with pull-tabs that contains a seal or seals, which when removed or opened reveal predesignated winning numbers, letter, symbols, or monetary denominations. The seal card serves as the game flare and must contain the information required in section 24 of this rule unless the manufacturer provides an additional flare containing the required information. A seal card may not be electronically generated. *(Department of State Revenue; 45 IAC 18-1-36; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 29. 45 IAC 18-1-37 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-37 “Serves a majority of counties in Indiana” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 37. “Serves a majority of counties in Indiana” means that a nationally recognized charitable organization must do the following:

(1) Maintain an office with a mailing address, which is open for business during posted business hours.

(2) Directly assist selected individuals or conducts other charitable activity.

Both services must be continuously available and ongoing in at least forty-seven (47) Indiana counties. *(Department of State Revenue; 45 IAC 18-1-37; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)*

SECTION 30. 45 IAC 18-1-38 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-38 “Suspend” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 38. “Suspend” means that the qualified organization cannot conduct any gaming events or hold a license for a period of time specified by the department. The period of suspension begins at the time the organization receives notice from the department or when the organization exhausts all administrative remedies, whichever is later. (Department of State Revenue; 45 IAC 18-1-38; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)

SECTION 31. 45 IAC 18-1-39 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-39 “Tip board” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-9

Sec. 39. “Tip board” means a board, placard, or other device containing a seal that:
(1) conceals the winning number or symbol; and
(2) serves as the game flare for a tip board game.

(Department of State Revenue; 45 IAC 18-1-39; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305)

SECTION 32. 45 IAC 18-1-40 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-40 “Tip board ticket” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 40. “Tip board ticket” is a single folded or banded ticket, or multi-ply card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol, or set of symbols, some of which have been designated in advance and at random as prize winners. A tip board ticket may not be electronically generated. (Department of State Revenue; 45 IAC 18-1-40; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)

SECTION 33. 45 IAC 18-1-41 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-41 “Value” defined

Authority: IC 4-32-7-3

Affected: IC 4-32-6

Sec. 41. “Value”, when used in connection with the word “prize”, means the retail price of the property given as the prize when the prize is other than money. This definition applies whether the property given as the prize is purchased or donated for the event. If the prize given is money, then the value of the prize is the sum of money regardless of any losses by the player. (Department of State Revenue; 45 IAC 18-1-41; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)

SECTION 34. 45 IAC 18-1-42 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-42 “Wager” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9

Sec. 42. “Wager” means risking money or other property for gain, contingent in whole or in part upon chance, but it does not include participating in a bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants. (Department of State Revenue; 45 IAC 18-1-42; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306)

SECTION 35. 45 IAC 18-1-43 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-1-43 “Worker” defined

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9; IC 4-32-6-24

Sec. 43. (a) In addition to the meaning set forth in IC 4-32-6-24, “worker” means a member of a qualified organization who is:

- (1) an Indiana resident; or
- (2) if an individual is not a resident of Indiana, he or she may be a worker only if the qualified organization ensures that:
 - (A) the individual is in good standing with the department;
 - (B) the individual is in good standing with the taxing authority of the state in which the individual resides; and
 - (C) the individual will provide the department with his or her state tax returns upon request. Failure to provide such returns will result in the worker being precluded from associating with charity gaming in Indiana for a period of not less than *[sic.]* one (1) year.

(b) Nothing in this section shall be construed to preclude a qualified organization from employing up to three (3) Indiana law enforcement officers or private detectives properly licensed in Indiana to perform security services during an allowable event. (*Department of State Revenue; 45 IAC 18-1-43; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306*)

SECTION 36. 45 IAC 18-2-1 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-2-1 Application by qualified organization

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-9-18

Sec. 1. (a) To obtain a license to operate an allowable event, a qualified organization must submit a written application on a form prescribed by the department.

(b) The application shall include the following information:

- (1) The name and address of the organization.
- (2) The names, ~~and~~ addresses of the officers of the organization.
- (3) The type of event ~~that~~ the organization proposes to conduct.
- (4) The location at which the organization will conduct the event.
- (5) The dates and time for the proposed event.
- (6) Sufficient facts for the department to determine that the organization is a qualified organization, including, but not limited to, the following:
 - (A) The organization’s not-for-profit number.
 - (B) A letter from the Internal Revenue Service stating that the organization is exempt from taxation under Section 501 of the Internal Revenue Code.
 - (C) Proof that the organization has been in existence for five (5) or more years.
 - (D) A copy of the organization’s bylaws or articles of incorporation.
 - (E) The name of each proposed operator, and sufficient facts to determine that the person is qualified to be an operator.
 - (F) A sworn statement by the presiding officer and secretary of the organization attesting to the eligibility of the organization, including the nonprofit character of the organization.
 - (G) Any other information that the department may require.

(c) A license is not required if the following conditions are met:

- (1) A fee is not charged for the event.
- (2) The value of all prizes awarded does not exceed ~~one hundred one thousand dollars (\$100)~~ **one hundred one thousand dollars (\$1,000) for a single event and no more than three thousand dollars (\$3,000) in a calendar year.**

(d) Although a license is not required under subsection (c), a qualified organization is required to obtain an exemption letter from the department before holding such an event. The department may issue the exemption letter on an annual basis if the qualified

organization shows that it holds such an event on a continuous basis throughout the year.

(e) If an event meets the conditions required by subsection (c) and an exemption letter is issued under subsection (d), 45 IAC 18-3-2 shall not apply to the conducting of that event. (*Department of State Revenue; 45 IAC 18-2-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1369; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2306*)

SECTION 37. 45 IAC 18-3-4 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-4 Calendar raffle; sale of tickets, calendars, and drawings for prizes

Authority: IC 4-32-7-3

Affected: IC 4-32

Sec. 4. (a) This section and sections 5 and 6 of this rule apply to calendar raffles.

(b) All calendars should be identical in form and include the following:

- (1) The number of the license issued by the department.**
- (2) The name and address of the sponsoring organization.**
- (3) The price of the calendar and the discounted price, if any, of multiple calendar purchases.**
- (4) The place for the purchaser to enter his or her name and address.**
- (5) The date, time, and place of the drawings.**

(c) Each calendar sold by an organization shall include a separate identification number, printed on both the purchaser's and the organization's portion of the calendar, numbered consecutively in relation to the other calendars for the same drawing.

(d) No calendar may exceed ten dollars (\$10) in cost for each month covered by the calendar.

(e) No person may sell a calendar unless authorized by a licensed organization.

(f) Tickets for a calendar raffle may not be offered for sale more than one hundred eighty (180) days before the raffle drawing.

(g) A calendar relating to a specific calendar raffle may not be sold after a drawing has taken place for any date on the calendar.

(h) The calendar shall be printed with the prize amount for each date on which a prize will be awarded.

(i) A calendar may be sold that either designates a prize amount for every day in a calendar period or for a smaller number of specifically designated days in a calendar period.

(j) The calendars sold for a specific calendar raffle shall have identical prize dates printed on all calendars sold.

(k) A licensed organization may not change any date on which a prize will be awarded or the amount of the designated prize after the organization has begun the sale of calendars.

(l) A licensed organization shall conduct drawings for all designated prize dates and award the prize amount that is printed on the calendar for each date.

(m) The purchaser of a calendar need not be present at the drawing to win a prize.

(n) If a calendar raffle drawing is canceled, the organization shall refund the receipts to the calendar purchasers.

(o) The organization that holds a calendar raffle drawing shall furnish a list of prize winners to each calendar holder who provides the organization with a self-addressed stamped envelope and requests the list. (*Department of State Revenue; 45 IAC*

18-3-4; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2307)

SECTION 38. 45 IAC 18-3-5 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-5 Replacement of tickets in the drawing container

Authority: IC 4-32-7-3

Affected: IC 4-32

Sec. 5. A licensed organization shall place a ticket or stub that has been drawn for a specific date back into the container so that the purchaser of that ticket or stub will have a chance to win again on all subsequent drawing dates. (*Department of State Revenue; 45 IAC 18-3-5; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2307*)

SECTION 39. 45 IAC 18-3-6 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-6 Refunds

Authority: IC 4-32-7-3

Affected: IC 4-32

Sec. 6. (a) A licensed organization, which has sold a calendar for a specific calendar raffle and subsequently decides not to conduct one (1) or more drawings printed on the calendar, shall refund the complete purchase price to each purchaser.

(b) A licensed organization may not deduct from a refund to a purchaser a handling charge or other amount relating to the expense incurred by the organization in the sale of a calendar. (*Department of State Revenue; 45 IAC 18-3-6; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2308*)

SECTION 40. 45 IAC 18-3-7 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-7 Use of proceeds

Authority: IC 4-32-7-3

Affected: IC 4-32-9-16

Sec. 7. (a) In accordance with IC 4-32-9-16, as a condition of receiving a charity gaming license or nonlicense letter issued on or after May 1, 2003, the following minimum percentage of charitable gaming gross receipts shall be used for those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized, or those expenses relating to the acquisition, construction, maintenance, or repair of any interest in real property involved in the operation of the organization and used for lawful religious, charitable, community, or educational purposes:

(1) Five percent (5%) for organizations with annual gross receipts less than one hundred fifty thousand dollars (\$150,000).

(2) Eight percent (8%) for organizations with annual gross receipts between one hundred fifty thousand dollars (\$150,000) and five hundred thousand dollars (\$500,000).

(3) Ten percent (10%) for organizations with annual gross receipts over five hundred thousand dollars (\$500,000).

Unless an organization has derived no gross receipts in the prior fiscal year, the gross receipts of the most recently completed fiscal year shall be used to determine the applicable percentage for the use of proceeds requirement. An organization with no prior charitable gaming activity shall be subject to a five percent (5.0%) minimum use of proceeds requirement.

(b) If an organization fails to meet the minimum use of proceeds requirement, its license shall be suspended or revoked and no further licensed or unlicensed events may be held.

(c) Except as provided in subsection (b), if an organization is within less than one (1) percentage point of the minimum use of proceeds requirement for a given fiscal year, it may request a one-time approval to make up the deficiency (in dollars) in the following fiscal year. If such approval is granted, the deficiency will be added to the percentage requirement for the following year and the permit shall not be suspended.

(d) Failure to meet the required percentage in the year following such approval shall result in a one (1) year suspension.

(Department of State Revenue; 45 IAC 18-3-7; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2308; errata filed Mar 10, 2003, 11:43 a.m.: 26 IR 2375)

SECTION 41. 45 IAC 18-3-8 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-8 Specific uses of proceeds

Authority: IC 4-32-7-3

Affected: IC 4-32

Sec. 8. (a) All payments by a qualified organization as use of proceeds must be made by check written from the organization's charitable gaming account.

(b) Use of proceeds payments may be made for scholarship funds or the future acquisition, construction, remodeling or improvement of real property or the acquisition of other equipment or vehicles to be used for religious, charitable, educational or community purposes. An organization may obtain department approval to establish a special fund account or an irrevocable trust fund for special circumstances. Transfers a special account or an irrevocable trust fund may be included as a use of proceeds if the payment is authorized by an organization's board of directors.

(c) No payments made to a special fund account shall be withdrawn for any purpose other than the specified purpose unless prior notification is made to the department.

(d) Expenditures of charitable gaming funds for social or recreational activities, or for events, activities, or programs that are open primarily to an organization's members and their families, shall not qualify as use of proceeds unless substantial benefit to the community is demonstrated.

(e) Expenditures of charitable gaming funds for salaries or honoraria to officers, directors, members, or employees of the qualified organization shall not qualify as use of proceeds.

(f) Payments made to or on behalf of indigent or sick or deceased members or their immediate families shall be allowed as use of proceeds up to one percent (1%) of an organization's prior year gross receipts provided they are approved by the board of directors and the specific need is documented. Organizations may obtain prior department approval to exceed the one percent (1%) limit in special cases.

(g) Payments made directly for the benefit of an individual member, member of his or her family or person residing in his or her household shall not be allowed as a use of proceeds unless authorized by law.

(h) Use of proceeds payments by an organization shall not be made for any activity that is prohibited by federal, state, or local laws or for any activity that attempts to influence or finance directly or indirectly political parties or committees or the election or reelection of any person who is or has been a candidate for public office. This subsection does not apply to bona fide political organizations.

(i) Organizations shall provide details of use of proceeds with the annual financial report.

(j) The department may disallow a use of proceeds payment to be counted against the minimum percentage referred to in section 7 of this rule.

(k) If any payment claimed as use of proceeds is subsequently disallowed, an organization may be allowed additional time as specified by the department to meet minimum use of proceeds requirements. *(Department of State Revenue; 45 IAC 18-3-8; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2308)*

SECTION 42. 45 IAC 18-4-1 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-4-1 Records of qualified organization

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 1. (a) A qualified organization must maintain adequate records of all financial aspects of a qualified event and report such information to the department on forms prescribed by the department. The organization must set up a separate account to account for all proceeds and expenditures of the qualified event. The records that must be kept include the gross receipts from each type of activity conducted at the allowable event, the prize payout, and the net receipts to the organization. Also, accountable are any rental costs associated with conducting the allowable event, including, but not limited to, a facility lease and the lease of tangible personal property.

(b) The reports are due thirty (30) days after the expiration date listed on the annual bingo license or, in the case of a special event license, ten (10) days after the special event is concluded.

(c) A qualified organization shall use Schedule CG-NSR (Charity Gaming Nightly Summary Report).

(d) The department will be granted unrestricted access to all records, including, but not limited to, the following:

(1) Membership information.

(2) Financial records.

(3) Receipts for the purchase of bingo supplies, punchboards, pull-tabs, and tip boards.

(e) An individual, or an employee, officer, or member of a corporate or partnership licensed entity who has a duty to remit gaming card excise tax to the department, holds the tax in trust for the state, and is personally liable for the payment of the tax plus any penalties and interest attributable to the tax. (*Department of State Revenue; 45 IAC 18-4-1; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1375; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2309*)

SECTION 43. 45 IAC 18-4-2 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-4-2 Records of manufacturer or distributor

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-7-4

Sec. 2. (a) An entity licensed as a manufacturer or distributor must keep records satisfactory to the department. The records must include the following:

(1) Sales invoices, including the following:

(A) Each licensee must use a general sales invoice ~~which~~ **that** is:

(i) numbered consecutively; and

(ii) prepared in at least two (2) parts, one being issued to the customer and the other retained in an invoice file.

(B) Each licensee must use a general sales invoice ~~which~~ **that** sets out the following information:

(i) The date of sale.

(ii) The customer name and business address.

(iii) A full description of each item sold, including the serial numbers of the products sold.

(iv) The quantity and sales price of each item.

(v) The manufacturer's or distributor's license number.

(vi) The customer's license number.

(vii) The gaming card excise tax due on the sale.

(2) Credit memoranda prepared in the same detail as sales invoices.

(3) A sales journal containing at least the following, by calendar month:

(A) The date of sale.

(B) The invoice number of the sale.

(C) The customer name or account number.

(D) The total amount of the invoice.

(E) The total amount of the gaming card excise tax due on the sale.

(4) A complete list of the persons representing the licensee.

(5) Purchase records documenting that all bingo supplies, equipment, pull-tabs, punchboards, and tip boards were purchased from either a licensed manufacturer or another licensed distributor.

(b) A serial number printed on an item sold must be identifiable with the sales invoice reflecting the sale of the specific item.

(c) The gross amount of sales to each customer must be kept on a calendar month basis.

(d) Records are required to be maintained until the later of the following:

- (1) Four (4) Six (6) years after the year in which they are created.
- (2) The end of the audit if such records are under audit.

(d) Marketing sheets that show the expected gross income, payout, net income, and number of deals in the pull-tab game, which have been sold to the qualified organization. The term "payout" does not include the cost of the game itself.

(e) If a licensed manufacturer or distributor destroys, discontinues, or otherwise tenders unusable, bingo supplies, punchboards, pull-tabs, or tip boards, sold in Indiana then the manufacturer or distributor must provide the department with a written list of the items destroyed, including quantity, description of the items and serial numbers, and the date on which the items were destroyed.

(f) A licensed manufacturer or distributor must keep the department informed of its location and where the records will be stored if the manufacturer ceases business.

(g) The foregoing records must be produced upon request by the department or its representative.

(h) Manufacturers or distributors of supplies, devices, or equipment, as described in IC 4-32-7-4(a) to be used in charity gaming in Indiana, must submit monthly reports, as prescribed by the department, detailing their sales of punchboards, pull-tabs, and tip boards to Indiana not-for-profit organizations. *(Department of State Revenue; 45 IAC 18-4-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1375; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2309)*

SECTION 44. 45 IAC 18-5-2 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-5-2 Gaming card excise tax

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32-15

Sec. 2. (a) An excise tax is imposed on the distribution of pull-tabs, punchboards, and tip boards a licensed distributor or manufacturer in the amount of ten percent (10%) of the wholesale price for the paid by the qualified organization that purchases pull-tabs, punchboards, or tip boards. that are sold to a qualified organization. The tax is effective June 1, 1992, for all sales that occur after May 31, 1992.

(b) Sales of bingo supplies and bingo equipment by manufacturers or distributors are not subject to the gaming card excise tax.

(c) A licensed entity supplying pull-tabs, punchboards, or tip boards is liable for the tax. The tax is imposed at the time the licensed entity:

- (1) brings or causes the pull-tabs, punchboards, or tip boards to be brought into Indiana for distribution;
- (2) manufactures pull-tabs, punchboards, or tip boards in Indiana for distribution; or
- (3) transports pull-tabs, punchboards, or tip boards to qualified organizations in Indiana for resale by those qualified organizations.

(d) (c) The gaming card excise tax is due twenty (20) days after the end of the calendar month in which the tax is imposed. It shall be remitted with the forms prescribed by the department.

(e) (d) All payments must be in the form of a check, a draft, or another financial instrument approved by the department prior to payment.

(f) (e) The department may, at any time, perform an audit of the books of a licensed entity to ensure compliance with IC 4-32-15. *(Department of State Revenue; 45 IAC 18-5-2; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2310)*

SECTION 45. 45 IAC 18-6-3 IS AMENDED TO READ AS FOLLOWS:

45 IAC 18-6-3 License revocation

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32; IC 6-8.1

Sec. 3. (a) The proposed action of the department to impose a civil penalty under this article is subject to review under IC 6-8.1. However, the licensee has only seventy-two (72) hours from its receipt of the decision, intended decision, or other action to file a written protest. Except as provided in subsection (b), as long as the matter is under protest, the licensee can continue to operate until all administrative appeals have been exhausted.

(b) The department may determine at any time that an emergency exists that requires the immediate termination of a license. Effective with the receipt of the department's decision to terminate its license, a licensee must cease all operations that were previously authorized under the license.

(c) An emergency requiring the immediate termination of a license will be deemed to exist under any of the following circumstances:

- (1) The information provided on the application for license is found to be false or misleading.
- (2) The appropriate fees are not paid.
- (3) An entity other than the qualified organization is conducting the allowable event.
- (4) The qualified organization is exceeding its allowable expenditures with respect to an allowable event.
- (5) The qualified organization is exceeding the number of days that it can conduct an allowable event.
- (6) The organization has conducted an allowable event at the same place and on the same day as another qualified organization.
- (7) Net proceeds are being used for purposes other than the lawful purposes of the organization.
- (8) Accurate reports are not being filed with the department in a timely manner.
- (9) Receipts and expenditures from an allowable event are not being kept in a separate and segregated account set up for that purpose.
- (10) An allowable event is being held in a county other than where the qualified organization's principal office is located.
- (11) An operator or worker does not meet the requirements of IC 4-32.
- (12) Prizes awarded are exceeding the limitations imposed by IC 4-32.
- (13) Fails or refuses to comply with the record keeping requirement of IC 4-32.**
- (14) Fails or refuses to allow inspection of records kept under IC 4-32.**
- ~~(13)~~ **(15) Any other violation of IC 4-32 or this article considered to be of a serious nature by the department.**

(d) If a licensee does not file a formal protest of the department's proposed termination of its license within the time limit imposed by subsection (a), then such inaction may be deemed an admission of the alleged violation and the department may issue an immediate termination of the license.

(e) The license of a manufacturer or distributor shall be terminated if there is a change in ownership and the department determines that an undesirable party is assuming the privileges of the license held by the manufacturer or distributor. (*Department of State Revenue; 45 IAC 18-6-3; filed Jan 8, 1993, 9:00 a.m.: 16 IR 1376; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2310*)

SECTION 46. 45 IAC 18-8 IS ADDED TO READ AS FOLLOWS:

Rule 8. Administrative Procedures

45 IAC 18-8-1 Representation of a qualified organization before the department

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 1. (a) **There are no formal qualifications for individuals to represent a qualified organization before the department. Prior to the department releasing any information to any person representing a qualified organization or licensee, or otherwise appearing or communicating with the department on a qualified organization or licensee's behalf, the representative must present a properly executed power of attorney, or, if the person is an attorney at law, then an**

appearance must be filed. No information will be released to anyone other than an officer or director of the qualified organization, unless a properly executed power of attorney or appearance has been presented. Power of attorney and appearance forms are available from the department.

(b) Casual conversations with a qualified organization or licensee's representative who does not have an appearance on file are permitted. However, specific information will not be disclosed.

(c) The appearance must contain the following information:

- (1) The name, address, and taxpayer identification number of the qualified organization.
- (2) The name, address, and telephone number of the qualified organization's representative or representatives. A corporation, law firm, or accounting firm must name at least one (1) individual as the representative.
- (3) Any restrictions or limitations placed upon the representative when acting on behalf of the qualified organization.
- (4) The appearance must be signed by an officer of the qualified organization or an individual authorized to execute a power of attorney. The department may require that the signature be notarized by a notary public if the representative is not a licensed attorney or certified public accountant.

(d) If the qualified organization executes an appearance, the department will communicate primarily with the organization's representative. (*Department of State Revenue; 45 IAC 18-8-1; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2311*)

45 IAC 18-8-2 Notice

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 2. If the department believes that a qualified organization or licensee has improperly reported a listed tax liability, the department may, within the prescribed statute of limitations period, issue to such qualified organization or licensee a formal notice that the department proposes to assess additional tax. The formal notice shall be based on the best information available to the department. Any written advisement, which informs the qualified organization or licensee of the amount of the proposed assessment for a particular tax period, shall constitute a formal notice. A formal notice shall be sent through the United States mail. (*Department of State Revenue; 45 IAC 18-8-2; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2311*)

45 IAC 18-8-3 Protests

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 3. (a) An entity has seventy-two (72) hours, as calculated in section 9 of this rule, from the date the notice of violation or department order is received to protest the department's findings under IC 4-32. The calculation of the seventy-two (72) hours begins at 8 a.m. the day following the receipt of the department's notice.

(b) All protests must be in writing and include the organization's name, taxpayer identification number, address, and the basis for objections to the department's findings.

(c) If the organization desires a hearing before the department, the protest shall so state. If an application or reapplication has been denied, the organization may, instead of a hearing, refile its application or pay the civil fines. Protests should be submitted to the charity gaming hearing officer.

(d) The department may correspond with the entity before the hearing, either in writing or orally, in order to gather information and clarify issues presented in the protest letter. (*Department of State Revenue; 45 IAC 18-8-3; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312*)

45 IAC 18-8-4 Hearings

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 4. (a) A qualified organization receiving a notice from the department shall have a right to protest and have a hearing

of the facts and issues before the department makes a final determination.

(b) The department's hearing procedures are as follows:

- (1) Upon receipt of a timely protest requesting a hearing with the department, the organization's protest will be forwarded to the charity gaming hearing officer.
- (2) The charity gaming hearing officer shall set a date for a hearing of the protest, and the qualified organization will be notified of the time and place thereof.
- (3) Once a hearing date has been set, extensions of time, continuances, and adjournments may be granted at the discretion of the department upon a showing of good cause.
- (4) If the qualified organization or its duly authorized representative wishes to file legal memoranda with the department concerning the facts, issues, and arguments of its protest, that material must be submitted at least five (5) days prior to the date of the hearing.
- (5) If an organization or its representative fails to appear at a hearing without securing a continuance, a default judgment will be issued in favor of the department.
- (6) The hearing will be conducted in an informal manner. The purpose of the hearing is to establish the qualified organization's specific objections and the reason for those objections.
- (7) The burden of proving that the department's findings are incorrect rests with the organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
- (8) If an organization fails to appear for a scheduled hearing, the petitioner will be assessed the costs of holding the hearing in their absence. An organization will no longer be in good standing with the department if they fail to pay the costs of conducting the hearing within thirty (30) days.

(Department of State Revenue; 45 IAC 18-8-4; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312)

45 IAC 18-8-5 Department's findings

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 5. The protest will not be resolved at the hearing. The department will consider all facts and arguments presented and a decision will be rendered in writing described as a departmental order. *(Department of State Revenue; 45 IAC 18-8-5; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312)*

45 IAC 18-8-6 Rehearing

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 6. (a) After receipt of the departmental order, the taxpayer may petition for a rehearing. The petition for rehearing must be timely filed according to section 3 of this rule. A rehearing will be granted by the department only under unusual circumstances. The taxpayer must allege that certain material facts or circumstances were not presented or considered in the original proceedings. A rehearing is granted at the discretion of the department.

(b) If a rehearing is granted, the rehearing will not be held de novo unless abuse of discretion is alleged. When such abuse is alleged, the evidence will not be reweighed. Instead, the department will only consider evidence most favorable to the department's position and reverse only if the decision is clearly against the logic and effect of the facts and circumstances. However, if the taxpayer presents new and relevant evidence as grounds for reversal, the new evidence will be weighed in light of all relevant facts and circumstances. *(Department of State Revenue; 45 IAC 18-8-6; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2312)*

45 IAC 18-8-7 Statute of limitations and retention of records

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32; IC 6-8.1-5-2

Sec. 7. Except as otherwise provided in IC 6-8.1-5-2, the statute of limitations for the assessment of a listed tax is governed by 45 IAC 15-5-7. There is no statute of limitations imposed upon the department investigating a violation of IC 4-32. A

qualified organization must retain its business records in accordance with the following schedule:

(1) The following must be retained for ten (10) years:

- (A) IT-35AR.
- (B) ST-103.
- (C) Nightly game sheets.
- (D) Federal Form 990.

(2) The following must be retained for three (3) years:

- (A) Seal cards.
- (B) Flare cards.
- (C) Schedule CG-NSR.
- (D) All other documents kept in the regular course of conducting charity gaming events.

(Department of State Revenue; 45 IAC 18-8-7; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2313)

45 IAC 18-8-8 Holidays

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 1-1-9-1; IC 4-32

Sec. 8. Any act that is required to be performed under IC 4-32 may be performed on the succeeding business day if the due date falls on any state holiday listed in IC 1-1-9-1, any other national legal holiday, or a Saturday or Sunday.

(Department of State Revenue; 45 IAC 18-8-8; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2313)

45 IAC 18-8-9 Date of filing

Authority: IC 4-32-7-3; IC 4-32-8-3

Affected: IC 4-32

Sec. 9. (a) If a document, which is required to be filed with the department by a prescribed date, is mailed through the United States mail, the date displayed on the post office cancellation mark establishes an irrebuttable presumption that the displayed date was the date on which the document was filed. If a document is delivered to the department in any other manner than the United States mail, the department shall stamp the document in such a fashion as to display the date the document is received. This date stamped by the department shall establish an irrebuttable presumption as to the date the document is received.

(b) If a document is sent through the United States mail by registered mail, certified mail, or certificate of mailing, then such date of registration, certification, or certificate shall be conclusive as to the date of filing. Such date as authenticated by the United States post office records shall be conclusive even in the case of a conflicting postmark date.

(c) If a document mailed through the United States mail is physically received after the due date without a legibly correct postmark, the person who mailed the document may show the document was mailed on or before the due date by reasonable evidence. Examples of such evidence include, but are not limited to, the following:

- (1) Testimony of the party.
- (2) Testimony of disinterested third parties.
- (3) Evidence and/or testimony from the United States post office.
- (4) Any other evidence which tends to establish the date of filing.

(d) If a document is mailed to, but never received by the department, the person sending the document may produce reasonable evidence to show that the document was mailed on or before the due date. Such evidence as used to show the correct postmark date in 45 IAC 18-6-3(c) might also be used to establish the mailing of a document. In addition to showing that the document was deposited in the United States mail on or before the due date, the person must file a duplicate document with the department within thirty (30) days from the date the department sends the person notice that the prescribed documents were not received. *(Department of State Revenue; 45 IAC 18-8-9; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2313)*

SECTION 47. THE FOLLOWING ARE REPEALED: 45 IAC 18-1-2; 45 IAC 18-1-3; 45 IAC 18-1-4; 45 IAC 18-1-5; 45 IAC 18-1-6; 45 IAC 18-1-7; 45 IAC 18-1-8; 45 IAC 18-3-3; 45 IAC 18-6-1; 45 IAC 18-6-2.

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Approved by Attorney General: February 26, 2003

Approved by Governor: February 28, 2003

Filed with Secretary of State: February 28, 2003, 2:16 p.m.

Incorporated Documents Filed with Secretary of State: None