

Document: Proposed Rule, **Register Page Number:** 28 IR 623

Source: November 1, 2004, Indiana Register, Volume 28, Number 2

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TITLE 45 DEPARTMENT OF STATE REVENUE

Proposed Rule LSA Document #04-255

DIGEST

Adds 45 IAC 18-3-7.1 and 45 IAC 18-3-8.1 concerning charity gaming and use of proceeds. Repeals 45 IAC 18-3-7 and 45 IAC 18-3-8. Effective 30 days after filing with the secretary of state.

45 IAC 18-3-7 45 IAC 18-3-8
45 IAC 18-3-7.1 45 IAC 18-3-8.1

SECTION 1. 45 IAC 18-3-7.1 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-7.1 Use of proceeds

Authority: IC 4-32-7-3

Affected: IC 4-32-9-16

Sec. 7.1. (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, 2006, 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%) 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 18-3-7.1)

SECTION 2. 45 IAC 18-3-8.1 IS ADDED TO READ AS FOLLOWS:

45 IAC 18-3-8.1 Specific uses of proceeds

Authority: IC 4-32-7-3

Affected: IC 4-32

Sec. 8.1. (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 to 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, 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, a member of his or her family, or a 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 7.1 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 18-3-8.1*)

SECTION 3. THE FOLLOWING ARE REPEALED: 45 IAC 18-3-7; 45 IAC 18-3-8.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 22, 2004 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Department of State Revenue will hold a public hearing on proposed rules to amend and clarify the rules concerning charity gaming conducted by qualified organizations. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N248 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Kenneth L. Miller
Commissioner
Department of State Revenue