

**BG 05-1**  
**Tax Type: Bingo & Charitable Games**  
**Issue: Propriety of Penalty**

**STATE OF ILLINOIS**  
**DEPARTMENT OF REVENUE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**SPRINGFIELD, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No. 04-ST-00</b>
<b>v.</b>	)	<b>License No. BP-000</b>
	)	
<b>ABC BINGO CENTER</b>	)	
	)	
<b>Taxpayer</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Daniel G. O’Day of Cusack, Fleming, Gilfillan & O’Day for ABC Bingo Center.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Violation and Assessment (“Notice”) to ABC Bingo Center (“taxpayer”) that assessed a penalty in the amount of \$5,000 for allowing a business known as ABC/XYZ (“organization”) to operate bingo at the taxpayer’s premises. The organization did not have a current bingo license or pull tabs license in violation of the Bingo License and Tax Act (“Bingo Act”) (230 ILCS 25/1 *et seq.*) and the Pull Tabs and Jar Games Act (“Pull Tabs Act”) (230 ILCS 20/1 *et seq.*) at the time that it was operating on the taxpayer’s premises. The

taxpayer timely protested the Notice. A hearing was held during which the taxpayer raised the following issues: (1) whether the penalty was properly imposed under section 4.2 of the Bingo Act when the taxpayer allowed only one unlicensed organization to conduct bingo on its premises; (2) whether the penalty may be reduced on the basis that only one unlicensed organization used the taxpayer's premises; and (3) whether the penalty may be reduced on the basis of other mitigating factors. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is a corporation that has a provider's license to allow bingo operations on its premises. (Tr. pp. 12-13)
2. The taxpayer has allowed several organizations to use its premises, including ABC/XYZ. (Tr. p. 13)
3. During 2003, ABC/XYZ conducted bingo on the taxpayer's premises without a license to do so. (Tr. p. 13)

CONCLUSIONS OF LAW:

Section 4.2 of the Bingo Act provides as follows:

Any person or organization which provides premises for the conduct of bingo without first obtaining a license or a special provider's permit to do so, or having a provider's license or a special provider's permit allows unlicensed **organizations** to conduct bingo on his premises, or allows any form of illegal gambling to be conducted on the premises where bingo is being played shall, in addition to other penalties provided, be subject to a civil penalty of \$5,000. (emphasis added) (230 ILCS 25/4.2)

The Department's regulations concerning the Bingo Act provide in part as follows:

Any person or organization, except a municipality exempt from licensing under Section 430.140, which provides premises for conducting bingo without having a license to do so, or any person or organization licensed to provide premises which allows an unlicensed **organization** to conduct

bingo on his premises, or allows any form of illegal gambling to be conducted on the premises where bingo is being played shall be subject to a civil penalty of \$5,000. (emphasis added) 86 Ill.Admin.Code §430.200(b).

The taxpayer contends that the Department's regulation conflicts with the statute because under the statute, the penalty should not be imposed unless the taxpayer allows more than one unlicensed organization to conduct bingo on its premises. The taxpayer argues that when the legislature used the plural word "organizations," it did not intend for the penalty to apply to a violation involving a single organization, especially since the singular form of the word was used in the previous sentence. The taxpayer states that in Beatrice Companies, Inc. v. Whitley, 292 Ill.App.3d 532 (1<sup>st</sup> Dist. 1997), the court considered the apportionment formula in the Illinois Income Tax Act (35 ILCS 5/1 *et seq.*) and found that the word "person" should be interpreted singularly. Beatrice Companies at 536-37. The taxpayer claims that other cases also indicate that singular words are to be interpreted singularly. See USX Corporation v. White, 352 Ill.App.3d 709 (1<sup>st</sup> Dist. 2004); Dover Corporation v. Department of Revenue, 271 Ill.App.3d 700 (1<sup>st</sup> Dist. 1995).

The taxpayer suggests that these cases indicate that the form of the word matters, and the plural word should be interpreted to mean more than one organization. The taxpayer believes that a lesser amount of blameworthiness is involved when only one organization is found unlicensed on its premises. The taxpayer maintains that the legislature did not intend to have the penalty apply when only one episode involving an unlicensed organization occurs.

In analyzing the apportionment formula, the Beatrice Companies court found that when determining the numerator of the formula, the word "person" in the statute referred to only one Illinois subsidiary, and when determining the denominator of the formula, the

word “person” in the statute referred to all group members. Beatrice Companies at 537. The court noted that under section 1501(b)(1) of the Income Tax Act, singular words may be construed as plural if such construction is “not otherwise distinctly expressed or manifestly incompatible with the intent” of the Act. 35 ILCS 5/1501(b)(1). The court concluded that a different interpretation of the formula would be contrary with legislative intent, rules of construction, and the Illinois Supreme Court’s interpretation of the apportionment formula. Therefore, although Beatrice Companies, as well as the other two cases cited by the taxpayer, indicate that a singular word may be interpreted singularly, they also indicate that the meaning of a word must be determined by considering the legislative intent and other sources that are generally used for interpreting a statute.

The cardinal rule of statutory construction is to ascertain and give effect to the true intention of the legislature. Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc., 158 Ill.2d 76, 81 (1994). The legislative history relating to the Bingo Act indicates that it was intended to eliminate illegal operations of bingo in this State. (82<sup>nd</sup> General Assembly Transcription Debate for Senate, May 19, 1982, pp. 62-63) The purpose of the legislation was to tighten the law that regulates bingo. Id. at 67. Under the taxpayer’s interpretation of section 4.2, an unlicensed organization can conduct an unlimited amount of bingo on the taxpayer’s premises without any repercussion to the taxpayer. This interpretation seems to be contrary to the legislature’s intent to eliminate all illegal bingo operations, including single incidents. The Department’s regulation accurately reflects that the plural word should be construed to include a single organization.

The taxpayer also argues that if a penalty should be imposed, it should be less than \$5,000 because the statute authorizes a \$5,000 penalty for multiple organizations. The taxpayer claims that the penalty should be less when only one organization is involved. In addition, the taxpayer contends that the penalty should be less because there are other mitigating factors: the taxpayer did not know that the organization was unlicensed; it is difficult to contact the Department to verify whether an organization has a license; and the taxpayer has conducted its business for many years without any other violation occurring.

The Bingo Act does not have a provision that allows a penalty to be reduced if the taxpayer provides a reason for reducing it. Even if there was authority to allow the reduction of a penalty, it is not warranted based on the reasons provided by the taxpayer. As previously stated, the penalty applies whether the taxpayer allows only one or more than one unlicensed organization to conduct bingo on its premises. The purpose of the penalty is to prevent illegal bingo operations, and the taxpayer is responsible for insuring that the organizations that operate on its premises are licensed. The taxpayer indicated that it had not previously attempted to contact the Department to verify whether an organization has a license until this incident happened, and now the taxpayer does it often. (Tr. p. 22) The taxpayer knew that anyone performing games in its hall had to be licensed. (Tr. p. 21) Although the penalty is a significant amount of money, its purpose is to prevent incidents such as the one that happened in this case.

Recommendation:

For the foregoing reasons, it is recommended that the penalty be upheld.

Linda Olivero  
Administrative Law Judge

Enter: May 5, 2005