



NONPROFIT ADVISOR

For DAV Departments and Chapters

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CHARITABLE GAMBLING – PART ONE

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Many tax-exempt organizations conduct gaming, or gambling, activities either as a recreational pursuit or, more frequently, as a fundraising vehicle. Nonetheless, the frequently used term “charitable gambling” is something of a misnomer. There is nothing inherently charitable about gambling. Gambling does not further the exempt purposes of most types of tax-exempt organizations. For this reason, and other reasons detailed below, DAV departments and chapters must be extremely careful about the extent and nature of their gambling activities.

GAMBLING AS AN ACTIVITY FOR A 501(c)(4)

Nearly all DAV departments and chapters enjoy federal tax exemption as “social welfare organizations” under Section 501(c)(4) of the Internal Revenue Code. Gambling is both a business and a recreational activity and is not normally considered to be an activity that promotes social welfare. In Revenue Ruling 66-150, the IRS determined that a 501(c)(4) organization whose primary activity was to conduct a bar/lounge operation that included gambling was no longer entitled to its tax exemption. It is not difficult to imagine the same result for a similarly situated DAV chapter. A 501(c)(4) organization whose *primary* activity is gambling is placing its exempt status in serious jeopardy. **This is true even if the net profits from the gambling are going to service programs.**

GAMBLING AS AN ACTIVITY FOR A 501(c)(19)

Some veterans organizations seek exemption under Section 501(c)(19) of the Internal Revenue Code. (A DAV department or chapter could not do this without leaving the umbrella of the DAV group exemption. Even in so doing, a department or chapter could not engage heavily in the recreational activities permitted under (c)(19) without violating DAV’s bylaws and regulations that mandate a commitment to service.) However, even non-DAV (c)(19) veterans organizations need to be very careful when it comes to gambling. A recent IRS ruling (No. 201104046) revoked the exemption of a (c)(19) because it operated its bar/lounge and gambling activities for members **and for the general public**. Recreational pursuits for a (c)(19) are strictly limited to members-only. The message from IRS is that an organization that wishes to conduct gambling as a business (even as a business donating its proceeds to charity) is not eligible for tax exemption.

GAMBLING AS A FUNDRAISER FOR DAV SUBORDINATE UNITS: INTERNAL CONTROLS

Some DAV subordinate units do engage in limited gambling activities as a vehicle to raise funds. Such fundraising activities are subject to the normal approvals at the department and/or national level, as appropriate. Additional requirements apply if the gambling is being conducted through a contractual arrangement with a third party.



Although this list is not intended to be exhaustive, the bylaws and regulations that may come into play for a DAV fundraising-by-gambling program are the following:

1. Article 15 of the Bylaws: relating to chapter and department fundraising projects and use of the name and symbols of DAV.
2. NEC Regulation 2: relating to fundraising contracts.
3. NEC Regulation 4: relating specifically to bingo operations.

The most overarching internal control on DAV gambling emerges from the mission statement, which is itself derived largely from the organization's federal charter and which dovetails with the requirements of DAV's tax exemption. It is simply this: DAV is dedicated to a single purpose: building better lives for America's disabled veterans and their families. If gambling activities – even those intended to produce revenue for mission-related programs – become the primary activity of a subordinate unit, things have gone badly off the tracks.

EXTERNAL CONTROLS ON GAMBLING ACTIVITIES

State and local laws have a tremendous role to play in charitable gambling activities. Most states (Hawaii and Utah being notable exceptions) permit limited charitable gambling, but some have a complicated system of permits and other requirements that must be observed to the letter. In some states (Tennessee is an

example), the requirements are so stringent as to discourage most such activity. The department or chapter seeking to engage in fundraising-related charitable gambling needs to have precise answers to these questions:

1. Is the activity being considered included within the definition of “gambling?” (Answers will vary from state to state and even among counties in the same state. In some states, for example, “gambling substitutes” (like the so-called “amusement with prize” games) are considered gambling).
2. Does the law contain a provision allowing the charity to conduct such an activity? (In some states, charitable gaming is limited to 501(c)(3) organizations).
3. What permits must be acquired, bonds posted, etc.?
4. What rules are in force regarding the safekeeping of and accounting for the proceeds of the activity?

Even if the activity is permissible, no DAV department or chapter should undertake gambling without ensuring full compliance with all legal requirements of the state and/or county having jurisdiction.

In the next issue, we will discuss the IRS' considerable interest in, and regulation of, charitable gambling.

Nonprofit Advisor is prepared by the Office of the DAV's General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.