



# **Gambling for Nonprofits in Georgia**

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To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

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  - ✓ Be located in or serve the greater Atlanta area.
  - ✓ Serve low-income or disadvantaged individuals.
  - ✓ Be unable to afford legal services.
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## What is “gambling”?

- 1) Consideration – payment or something that benefits the host; wager; bet
- 2) Prize – Something of value
- 3) Chance – Participants have little to no control over the outcome

## Gambling Defined

- Black's Law Dictionary – 2 or more persons play a game of chance for a wager which becomes property of the winner
- U.S. Code – IRC § 3402(q) & IRC § 4421
- State Statutes

## Illegal under Federal law

- Unlawful Internet Gambling Enforcement Act. This law applies to online gambling operators accepting financial instruments to fund accounts for players. including online casinos.
- Federal Anti-Lottery Laws
- Wire Act Violation: Internet v. Phone
- Gambling Ship Act

## Gambling

- Regulated by state law for activities within state lines
- Criminal statutes – fines, imprisonment
- Cannot have multi-state raffles
- Check each state's laws carefully



# Georgia Statutes

Georgia Code

Title 16. Crimes And Offenses

Chapter 12. Offenses Against Public Health And Morals

Article 2. Gambling And Related Offenses

# Georgia Definition of Gambling

## Ga. Code Ann. § 16-12-21. Gambling

(a) A person commits the offense of gambling when he:

(1) Makes a bet upon the partial or final result of any game or contest or upon the performance of any participant in such game or contest;

(2) Makes a bet upon the result of any political nomination, appointment, or election or upon the degree of success of any nominee, appointee, or candidate; or

(3) Plays and bets for money or other thing of value at any game played with cards, dice, or balls.

(b) A person who commits the offense of gambling shall be guilty of a misdemeanor.

# “Consideration” in Georgia

## O.C.G.A § 16-12-20. Definitions

As used in this part, the term:

(1) "Bet" means an agreement that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) Contracts of indemnity or guaranty or life, health, property, or accident insurance;  
or

(B) An offer of a prize, award, or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in such contest.

## How to Avoid Gambling

Remove one of the 3 elements

- × Prize – Play for pride, not prize; check state law
- × Chance – Use a contest of skill, specifically allowed by Georgia law. O.C.G.A § 16-12-20(1)(B)

## How to Avoid Gambling

- ✘ Remove Mandatory Consideration – not an appealing option for fundraising activities
  - ✓ Sweepstakes – Consideration may be suggested but cannot be required; “No purchase or donation necessary to win;” fundraising activities can be deemed consideration

## Common Gambling Activities

- Exceptions for nonprofits
  - ✓ Raffles
  - ✓ Bingo
  
- No exceptions
  - ✗ Poker Tournaments
  - ✗ Casino Nights

## Raffle Exception

### **Ga. Code Ann. § 16-12-22.1 - Raffles operated by nonprofit, tax-exempt organizations**

- Nonprofit, tax-exempt organizations qualified under Section 501(c) of the Internal Revenue Code, as amended; or bona fide nonprofit organizations approved by the sheriff.
- Must be licensed

## Raffle Defined

### **Ga. Code Ann. § 16-12-22.1 - Raffles operated by nonprofit, tax-exempt organizations**

"Raffle" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize. Such term shall also include door prizes which are awarded to persons attending meetings or activities provided that the cost of admission to such meetings or activities does not exceed the usual cost of similar activities where such prizes are not awarded.



## Raffle Licensing

- Apply with the county in which home office is located, may have raffles in other counties using one license
- Qualified tax exempt organization under Federal and Georgia law
- In existence for 2 years
- File annually

# Raffle License Application

- Names and home addresses for
  - officers and directors
  - all persons who will operate, advertise or promote
  - persons, organizations, legal entities acting as surety for prizes
  
- Convictions other than minor traffic violations for all persons listed above

## Raffle License Application

- List of locations
- Copies of leases, if applicable
- Fee of no more than \$100

## Raffle Special License

- Single raffle
- Limited to up to 3 per year
- Each raffle completed within 30 days
- Application, fee and annual report waived

## Raffles Without a License

Ga. Code Ann. § 16-12-22.1(m)

- Applies to anyone who aids, abets, or assists operation of an unlawful raffle
- Misdemeanor of a “high and aggravated nature”
- Prison 1 to 5 years and/or fine up to \$10,000

## Requirements of Operation

- Conduct as specified in application
- Must own or lease premises where raffle occurs
- Must own all equipment or lease from another licensed organization
- Display raffle license at all times
- No more than one raffle per calendar day
- No minors unless accompanied by adult

## Raffle Prizes

- No specific prohibitions
- Donated prizes highly recommended
- Cash – Negative perception
- Real estate – high risk
- Vehicles – title exchange required; recommended to have owner transfer directly to winner
  - recommend new vehicles from dealers
  - high risk from individuals or used

## Georgia Raffle Reporting

Financial reports due to county by April 15 of following calendar year

- Number of participants
- Expenses and payees
- List of prizes
- Winners with prizes > \$50

Must maintain records for 3 years



## Raffle Tips

- Keep it simple and transparent, public drawing
- Have a written plan
- Train volunteers
- Consider organization's mission or reputation when accepting donated prizes

# Bingo

Georgia Code

Title 16. Crimes And Offenses

Chapter 12. Offenses Against Public Health And Morals

Article 2. Gambling And Related Offenses

Part 2. Bingo

Rules and Regulations of the State of Georgia

Rules of the Georgia Bureau of Investigation

Chapter 92-2 Nonprofit Bingo Games

## Recreational Bingo

Ga. Code Ann. § 16-12-21(5)

- No license required
- No payment to play
- Prizes must be noncash with a value of less than \$15

## Bingo License Application

- More regulated than raffles
- Apply with the Georgia Bureau of Investigation
- Application due October 31 for following calendar year
- Qualified tax exempt organization under Federal and Georgia law
- Organization must be in existence for 12 months
- File annually

## One-Day License

Ga. Code Ann. § 16-12-56

- Available for tax-exempt school
- Application required
- Fee and reporting requirement waived
- One per year

# Bingo License Application

- Names and home addresses for
  - officers and directors
  - all persons who will operate, advertise or promote
  - persons, organizations, legal entities acting as surety for prizes
- Convictions other than minor traffic violations for all persons listed above
- Fingerprints and background checks for all persons listed above
- List of all current members

## Bingo License Application

- 501(c)(3) letter
- Proof of Georgia income tax exemption
- List of locations and copies of leases, if applicable
- Certificate from Fire Marshal for premises
- Copies of rental agreement or certificates of ownership for equipment
- Filing fee of \$100

## Bingo Without a License

Ga. Code Ann. § 16-12-62

- Applies to anyone who aids, abets, or assists operation of an unlawful raffle
- Misdemeanor of a “high and aggravated nature”
- Prison 1 to 5 years and/or fine up to \$10,000



## Bingo Operations

- Generally cannot pay any individual or entity compensation for operation of bingo
- May pay up to \$50 per day to members of organization who operate the game
- Individuals assisting in operations
  - 6 months Georgia resident, or
  - 12 months with organization

## Bingo Operations

- One session per calendar day
- Five hour limit
- Rental of premises cannot exceed fair market value nor be based on proceeds
- Names and addresses of winners receiving prizes valued at \$50 or more must be posted for 6 sessions

## Bingo Prizes

- Cash prizes allowed
- No more than \$3,000 in total value per day
- No more than \$3,000 during one week
- See Raffle Prizes for recommendations

## Georgia Bingo Reporting

- Financial reports due to county by April 15 of following calendar year
- Additional reports due within 15 days of elections or changes in officers or directors
- Reports must be filed even if there was no activity
- Must maintain records for 3 years

## Georgia Bingo Reporting

- Signed by a CPA
- Number of participants
- Expenses and payees
- List of prizes
- Winners with prizes > \$50

## Tips for Bingo

- Know the regulations
- Contact the GBI for assistance when needed
- Have a written plan
- Train operators
- Consider organization's mission and reputation when accepting donated prizes

## Federal Income Tax Reporting

- IRC § 61 – Income from whatever source derived
- IRC § 6041(a) – Report payments of \$600 or more to the IRS
- Treas. Reg. § 7.6041-1(a) – Bingo \$1,200 or more
- IRS Publication 3079, Gaming Publication for Tax-Exempt Organizations (8-2013)

# Federal Income Reporting

<b>Summary of Reportable Gambling Winnings</b>		
<b>Type of Game</b>	<b>Winnings amount at least:</b>	<b>Reduced by amount of wager?</b>
<b>Bingo</b>	<b>\$1,200</b>	<b>No</b>
<b>Raffles other wagering activities</b>	<b>\$600 and at least 300 times the wager</b>	<b>At option of payer</b>



# Federal Income Tax Withholding

I.R.C. § 3402(q) Extension of withholding to certain gambling winnings

- (1) 3<sup>rd</sup> lowest tax rate
- (3) Winning subject to withholding
- (4) Proceeds = winnings less one wager; fair market value of noncash winnings
- (5) no withholding for bingo

I.R.C. § 3406 Backup withholding – Failure to obtain TIN, 4<sup>th</sup> lowest tax rate

## Federal Income Tax Withholding

- Obtain Form W-9 from winner
- Form 945 to report withholding to IRS
- Form W-2G to report gambling income and withholding to winner

# Federal Income Tax Withholding

Summary of Withholding Requirements		
Type of Game	Regular withholding at 25% if winnings are:	Backup Withholding at 28% if winner does not provide a TIN and reportable winnings are:
Bingo	N/A	≥ \$1,200
Sweepstakes, raffles, and lotteries	> \$5,000	Between \$600 to \$5,000

# Federal Income Tax Withholding

For noncash prizes

- (1) Recommended: Collect tax from winner before releasing prize or
- (2) Not recommended: Charity may pay income tax for the winner  
Remit 33.33% to IRS, include tax in winner's income  
Treas. Reg. § 31.3402(q)-1(d) Example 5

## Georgia Income Tax

Ga. Code Ann. § 48-1-101(f)(7) – withhold 6% of winnings over \$5,000

- Collect withholding tax for noncash winnings before releasing prize or pay tax for winner. Include tax you pay as income to winner
- Include Georgia state income tax on Form W-2G
- File withholdings with GA Department of Revenue

# Federal Reporting for Donors

## IRS Form 8283 – Noncash Charitable Contributions

- Responsibility of donor
- Donee must sign
- Only acknowledge of receipt

## IRS Form 8282 – Donee Information Return

- Responsibility of donee
- Only if Form 8283 was filed
- Sale, exchange or other disposition within 3 years

# Questions

# Thank you

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## For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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