

STATE OF ALABAMA,	§	STATE OF ALABAMA
	§	DEPARTMENT OF REVENUE
V.	§	ADMINISTRATIVE LAW DIVISION
ELKS CLUB	§	
BPOE NO. 1887, A CORPORATION	§	DOCKET NO. S.85-111
3041 Ross Clark Circle	§	
Dothan, AL 36301,	§	
	§	
Taxpayer.		

ORDER

This case involves two disputed sales tax preliminary assessments entered by the Revenue Department against the Elks Club, BPOE No. 1887 (hereinafter Taxpayer) concerning the period April 1, 1980 through March 31, 1983. A hearing was conducted by the Administrative Law Division under the provisions of the Administrative Procedure Act, Code of Alabama 1975, §41-22-1, et seq., on June 10, 1985. Representing the parties at said hearing were attorneys Warren Reese and John J. Breckenridge, for the Taxpayer and the Department, respectively. Based on the evidence adduced at the hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer has operated for over thirty-one years as a civic organization in Dothan, Alabama. In 1953, the Taxpayer applied for and received a state sales tax license number.

During the period in issue, the Taxpayer operated a weekly bingo game at its facility in Dothan. The Taxpayer charged a fee for participation in the bingo games. There is evidence to indicate that the games were open to individuals that were not

members of the organization. As a civic organization, the Taxpayer contributed a portion of its bingo receipts to charitable or other civic oriented programs or organizations.

The Revenue Department audited the Taxpayer and set up a liability based on, among other items, the receipts derived by the Taxpayer from its bingo operation. The Taxpayer disputes that part of the assessments in issue relative to the taxation of said bingo receipts.

The Taxpayer presents several arguments in support of its position. First, the Taxpayer contends that it is not subject to the sales tax levied at Code of Alabama 1975, §40-23-2(2) because the bingo games are not open to the public. Second, the Taxpayer argues that it is not a business for profit within the purview of the sales tax law because of its charitable, non-profit nature. Finally, the Taxpayer contends that bingo is illegal in Dothan and thus cannot be taxed by the Department.

CONCLUSIONS OF LAW

The determinative question in this case is whether the gross receipts derived by the Taxpayer from the operation of bingo games are subject to Alabama sales tax. The issues raised are as follows: (1) Was the Taxpayer operating a "place of amusement or entertainment" within the purview of the sales tax statute, (2) Should the non-profit or charitable nature of the Taxpayer's operation exclude it from the scope of the sales tax law, and (3)

Can the Revenue Department tax an illegal activity.

The above stated issues are all somewhat interrelated and have all been effectively answered in State v. Crayton, 344 So.2d 771 (1977), and Fraternal Order of Eagles v. White, 447 So.2d 783 (1984). Those cases together hold in substance that a non-profit organization's bingo gross receipts, even though used for charitable purposes, are subject to sales tax. Further, the cases hold that such an activity as bingo constitutes a "business" as defined by §40-23-1(a)(11). Also, in Crayton specifically, the Court reaffirmed that the State can tax an illegal activity.

Concerning the Taxpayer's argument that the bingo games were not open to the public, there is evidence to indicate that any person, including non-members, could and did participate in said games. In any case, §40-23-2(2) provides in pertinent part for the levy of a sales tax as follows:

(2) Upon every person, firm or corporation engaged or continuing within this state in the business of conducting or operating places of amusement or entertainment; . . .

There is no requirement that the "places of amusement", etc. must be open to the public, although subsection (2) specifies that public places are also covered by the levy. The last phrase of subsection (2) reads as follows:

(2)..... or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, . . . (emphasis added)

Based on the above findings and conclusions, it is hereby

determined that the gross receipts derived by the Taxpayer from its bingo operations is subject to sales tax. Accordingly, the Revenue Department is hereby directed to make final the preliminary assessments in issue, with appropriate interest as required by law.

Done this 27th day of September, 1985.

BILL THOMPSON
Chief Administrative Law Judge