

## Nonprofit Law Section

State Bar of Montana

# GUIDE FOR NONPROFIT ORGANIZATIONS

### Charitable Gaming Law

Nonprofit organizations may conduct occasional charitable gaming activities to raise money for the organization, under the same principles that allow nonprofits to conduct other for-profit activities as an insubstantial part of the organization's activities. Both the IRS and Montana law impose specific and important limitations on these activities, however, and nonprofits must make sure they comply with numerous requirements.

**1. Federal Law.** A nonprofit conducting gaming events as an insubstantial part of its activities will not ordinarily jeopardize its tax-exempt status, but it may be subject to tax on unrelated business income. The IRS has a helpful publication<sup>1</sup> explaining its stance on charitable gaming. According to the IRS:

- “Gaming events” include: bingo, keno, slot machines, poker tournaments, and raffles.
- The IRS recognizes a “volunteer labor exclusion” to permit organizations to avoid being taxed on unrelated business income for gaming activities. “Substantially all” (about 85%) of the work performed for a gaming event must be performed by volunteers to take advantage of this exclusion. Maintain accurate records of hours worked and compensation given.
- Nonprofits must also maintain records of gross receipts from gaming events, prize payouts, and other related disbursements.
- If the winner of a gaming event earns more than a certain amount, the amount and information about the winner must be reported to the IRS using Form W-2G. The threshold amount depends on the type of game involved.
- Income tax must be withheld from a payment of winnings more than \$5,000.
- Individuals who buy raffle tickets or pay to play bingo or other games of chance may not deduct these amounts as charitable contributions.

**2. Montana Law.** Although Montana does not require nonprofits soliciting charitable contributions to register with any regulatory agency, nonprofits in Montana must abide by various state consumer protection and gambling laws.

- a. Casino Nights.** Nonprofits may conduct or participate in a casino night. The following activities may be conducted during casino night: live card games (bridge, cribbage, poker, etc.), live bingo/keno, and raffles.
- A nonprofit must complete a Casino Night Permit Application<sup>2</sup> through the Montana Department of Justice, and are allowed to hold only one casino night per year.

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<sup>1</sup> IRS Publication 3079, available at <http://www.irs.gov/pub/irs-pdf/p3079.pdf>.

<sup>2</sup> Available at <https://doj.mt.gov/wp-content/uploads/11.pdf>.

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- Only members of the nonprofit issued the permit may operate casino nights, and members may not be compensated for their services.
  - Only merchandise or cash can be awarded as prizes.
  - The proceeds must be used for charitable purposes. Administrative expenses may not exceed 50% of the proceeds.
  - Cash prizes are limited, and other requirements must be followed.
  - Within 30 days after a casino night is held, a nonprofit must submit a Casino Night Report Form.<sup>3</sup>
  - See Montana Code Annotated § 23-5-705 through 23-5-710 and Administrative Rules of Montana 23.16.3101 through 23.16.3104 for specific requirements.
- b. Live Bingo & Keno.** Nonprofits granted exemption on or before January 15, 1989, are exempt from paying a permit fee and being taxed for live bingo and keno events. Nonprofits granted exemption after January 15, 1989, which carry out gambling activities no more than 60 days a year, are exempt from being taxed but must pay half of the permit fee.
- Live bingo/keno events may only be held on premises operated by a nonprofit entity or a governmental entity.
  - A nonprofit conducting only one bingo/keno event in a year must complete a Casino Night Permit Application.
  - According to the Department of Justice, a nonprofit conducting more than one live Bingo/Keno event in a year must complete a Gambling Operator Application<sup>4</sup>through the DOJ.
  - See Montana Code Annotated § 23-5-406 for specific requirements.
- c. Raffles.**
- Nonprofit raffles must be publicly identified as a charitable raffle.
  - The proceeds from raffle ticket sales may be used only for charitable purposes or to pay for prizes. They may not be used for the administrative costs of conducting the raffle.
  - Raffle tickets may only be sold for events in Montana and to participants in Montana.
  - Raffle tickets may not be sold over the internet. All raffle announcements or advertisements on the internet must include the name of the organization offering the raffle and all raffle terms.
  - The nonprofit conducting the raffle must maintain detailed records of the following for a year after the raffle drawing: total proceeds collected; description of prizes awarded; description of the selection process; the source of the prizes; description of how the raffle was publicly identified as a charitable raffle; the

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<sup>3</sup> Available at <https://doj.mt.gov/wp-content/uploads/12.pdf>.

<sup>4</sup> Available at <https://doj.mt.gov/wp-content/uploads/FORM-5-Revised-06-2013.pdf>.

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name and address of persons awarded prizes; and a detailed record of the distribution of the proceeds.

- All raffle terms, including the date of the drawing, must be available to the public prior to the sale of any tickets.
- Other general requirements must be followed.
- See Montana Code Annotated § 23-5-413 and Administrative Rules of Montana 23.16.2602 for specific requirements.

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#### **NOTICE: THIS GUIDE IS NOT LEGAL ADVICE**

This guide has been prepared as a public service and for general information purposes only. The information in this guide is not legal advice. Legal advice is dependent upon the specific facts and circumstances of each situation. Furthermore, the information contained in this guide is not guaranteed to be up to date. This guide should not be used as a substitute for obtaining legal advice from an attorney licensed or authorized to practice in your jurisdiction. You should always consult a suitably qualified attorney regarding any specific legal problem or matter.