

**Title:** Gaming - 501(c)(8) Tax-Exempt Fraternal Organizations

**Date Approved:** September 28, 2021 (Published Fall 2021)

**References:** Internal Revenue Service (IRS) Publication 3079, Tax-Exempt Organizations and Gaming  
Internal Revenue Service (IRS) Publication 4221-NC, Compliance Guide for Tax-Exempt Organizations  
IRS Document “Exempt Organization Gaming and Unrelated Business Taxable Income”  
IRS Document “Exclusion of Bingo from Unrelated Business Activity”  
Grand Lodge Auditing and Accounting Manual, Chapter 3, Paragraph 3-205

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### **DISCLAIMER**

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## **GAMING**

### **501(c)(8) TAX-EXEMPT FRATERNAL ORGANIZATIONS**

Many questions keep coming up about gaming and now it has been reported that the Internal Revenue Service (IRS) is looking into the gaming procedures of a lodge during their audit. Every lodge should take a hard look at their gaming procedures because the IRS is looking for additional Unrelated Business Income (UBI).

What is gaming? In accordance with the Internal Revenue Service (IRS) document, "Exempt Organization Gaming and Unrelated Business Taxable Income," "gaming includes bingo, beano, raffles, lotteries, pull tabs, scratch-offs, pari-mutuel betting, Calcutta wagering, pickle jars, punch boards, tip boards, tip jars, certain video games, and other games of chance." In other words, gaming includes all games of chance regardless of the name it is called. All Elk lodges are section 501(c)(8) fraternal organizations and must be in compliance with this Internal Revenue Service Code. Members of Elk Lodges cannot compare Elk lodges with any other Tax-Exempt organization such as the military or other fraternal organizations as they may fall under other Internal Revenue Service Code. For example, veterans organizations are under the Internal Revenue Service Code 501(c)19.

For section 501(c)(8) fraternal organizations, recreational gaming activities further exempt purposes if conducted only with members

and their guests. Remember, a member must pay for their guest and the guest cannot be paid for winning any game of chance. Income from a member's spouse or dependent children is treated as member income. "The term 'guests' is generally defined as individuals whom the member invites and for whom the member pays."

All games of chance for Elks members must be conducted by Elks volunteers. No paid employee, including bartenders, is allowed to handle any type of game of chance ticket.

It is recommended that each Lodge start with reviewing the "Queen of Hearts Fundraiser" document posted on the Business Practices Link Library on the Florida Elks website at [floridaelks.org](http://floridaelks.org).

Additional IRS publications should also be used to ensure each Lodge is in compliance. The IRS publication 3079, "Tax-Exempt Organizations and Gaming," is a must. For instance, in chapter 1, page 4, it is noted that "501(c)(8) fraternal organizations may engage in gaming involving only members without jeopardizing their exempt status." In addition, on page 5, it notes, "For section 501(c)(8) organization, the term 'bona fide guest' is generally defined as individuals whom the member invites and for whom the member pays. If, for example, a nonmember pays for his or her own wagers in gaming activities, he or she is considered to be a member of the public and not

a guest, even though he or she may have entered the organization's premises with a member."

Chapter 2 of the IRS Publication 3079, "Tax-Exempt Organizations and Gaming," contains information on Volunteer Labor. Gaming income will not be taxed if substantially all the work is performed by volunteers. In accordance with IRS document, "Exclusion of Bingo from Unrelated Business Activity," "if substantially all work involved in the gaming activity is performed by volunteers, the income, regardless of the type game being played, will not be income from a trade or business." In other words, the income will not be taxable income.

What is considered compensation? Chapter 2 of IRS Publication 3079, "Tax-Exempt Organizations and Gaming," explains that "compensation" is interpreted broadly and may include payments to bartenders, waitresses, snack bar staff, maintenance workers, and security and other workers as well as the tips these workers receive from patrons at the gaming session. Workers who obtains good or services at a reduced price in return for their services may be considered to be compensated. This publication should be reviewed in its entirety.

The IRS Publication 4221-NC, "Compliance Guide for Tax-Exempt Organizations," is another source for obtaining information required by tax-exempt fraternal organizations. The Internal Revenue Service

Code requires tax-exempt organizations to comply with federal tax law to maintain tax-exempt status and avoid penalties. The organization's officers must ensure that the organization (Elks Lodge) maintain its tax-exempt status and meets its ongoing compliance responsibilities. "A tax-exempt organization that does not restrict its participation in certain activities and does not absolutely refrain from others, risks failing the operational requirements for exemption from income tax and jeopardizing its tax-exempt status."

Business Practices Committee has written several articles to help each Lodge know what they should do and why. IRS Publication 4221-NC, "Compliance Guide for Tax-Exempt Organizations," provides information why each Elks Lodge is required to keep good records. "In general, a tax-exempt organization must maintain books and records to show that it complies with tax rules. The organization must be able to document the sources of receipts and expenditures reported on Form 990."

The event report dated Sept. 7, 2021, also posted on the Business Practices Link Library online, is a good example for documenting fundraisers for the Lodge. If the report is completed properly, it will provide the information required by the IRS. The same form can be used for gaming that is being participated in by members of the Lodge. The form can be modified but make sure it contains the information required by the Internal Revenue Service.

Another good document on the Business Practices Link Library is the Florida DBPR (Department of Business & Professional Regulations) Alcoholic Beverages & Tobacco – Statutes & Rules. This document identifies what a Lodge can do and cannot do in providing service to its members and guest with their 11C alcoholic beverage license.

In summary, gaming activities is only allowed for lodge members and must be provided by volunteer workforce. Always check with your county, ensuring your Lodge is obeying all rules and regulations. Alcoholic beverages cannot be sold directly to a guest of a member. The lodge member must pay all expenses for their guest. Fundraisers are a very good way to increase your income; however, they must be conducted by volunteer workers. For additional information, refer to the Auditing and Accounting manual, paragraph 3-205, “General Rules,” page 56 and “volunteer workers exception” on page 57. All these endeavors require complete documentation to prove the lodge is in compliance with all rules and regulations.