

Online Internet Raffle Considerations

Running a charity raffle is complicated, and nonprofits must ensure only eligible people (such as state residents) participate. Online activity exposes any errors to a wide audience. It is important to know the rules, and seek legal expertise when needed. To accomplish this, states should use *and license* online platforms and age verification software/vendors.

A raffle is a method of distributing prizes among people who have paid for a chance to win a prize, generally determined by drawing tickets. A raffle is considered a *form of lottery or gambling* by the Internal Revenue Service. As a result, there are a number of restrictions and reporting requirements on all raffles. An online raffle brings additional obstacles for nonprofit organizations, particularly because online gambling is illegal in many states. As a result, using an online raffle for fundraising must be approached carefully.

With few exceptions, the IRS considers income from raffles to be unrelated business income. For most activities that a nonprofit engages in, they are exempt from taxation on their income. However, for activities that are unrelated to the nonprofit's exempt purpose, it must pay taxes on that portion of the income. Although a raffle may ultimately go to pay for exempt activities of a nonprofit, running a raffle is not substantially related to the nonprofit's exempt purpose. This means that nonprofit organizations must pay taxes on income from a raffle. A raffle winner should fill out Statement by Person(s) Receiving Gambling Winnings (Form 5754), identifying who will take the winnings and how much each will receive if the recipient will share or transfer the winnings. The nonprofit files Form W-2G using this information and retains Form 5754 for four years.

The *federal Wire Wager Act* makes it illegal for a business to regularly engage in online gambling, or for online gambling wages to provide regular and essential income to an organization. Therefore, your organization should not rely primarily on online raffles for income, nor should you run an online raffle with any regularity. Raffle tickets and the act of selling raffle tickets are a separate component from the raffle drawing since raffle tickets are “items of commerce” and are neither the actual act of a raffle drawing nor the act of selecting a winner. It is the act of selling raffle tickets, and to whom those tickets are sold that place online raffle ticket sales in the realm of regulatory scrutiny. Technically, there is no such thing as an “online raffle” since the drawing is conducted offline. The issue is online raffle ticket sales or raffle entry over the Internet.

The *Interstate Wire Act of 1961*, often called the *Federal Wire Act*, is a United States federal law prohibiting the operation of certain types of betting businesses in the United States. Non-profits and charities are not betting businesses, but rather utilize licensed Charitable Gaming activities for the purpose of Charitable Fundraising. Although this legislation may be referenced from time-to-time, the U.S. Department of Justice has determined it does not apply to Charitable Gaming activities. The opinion of the U.S. Department of Justice is that the Interstate Wire Act of 1961 only applies to “Sporting events and contests.”

The United States Court of Appeals for the Fifth Circuit ruled in November 2002 that the Federal Wire Act prohibits electronic transmission of information for sports betting across telecommunications lines, but affirmed a lower court ruling that the Wire Act "in plain language" does not prohibit Internet gambling on a game of chance." While some states have specific laws prohibiting online gambling and the sale of raffle tickets on or through the Internet, many do not. Although, there may be additional localized domicile restrictions that would prohibit the sale of raffle tickets on the Internet that only apply to drawings in a specific jurisdiction.

The *Unlawful Internet Gambling Enforcement Act of 2006 (or UIGEA)* is United States legislation regulating online gambling. The UIGEA prohibits non-profits operating games of chance from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law. It was added as Title VIII to the SAFE Port Act (found at 31 U.S.C. §§ 5361–5367) which otherwise regulated port security. This law does not prohibit legal activities that are licensed or permitted by states and establishes baseline standards that systems and software platforms must conform to in order to be used to operate games of chance. Since a raffle by definition is a game of chance, the operation of raffles must meet these requirements. *"The law requires systems to establish policies and procedures that are reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions."*

Contrary to what you may have been told there is no federal ban or Act that makes interstate or online raffle ticket sales illegal. There is only this stipulation above that requires the "reasonable" ability to prevent the sale of raffle tickets to those who are from states that "explicitly" prohibit raffles or "explicitly" prohibit the sale of raffle tickets online. This would constitute a prohibited transaction.

It is always best practice to review the laws of each state prior to engagement. In some instances a state may have laws that prohibit online raffle ticket sales for its domicile organizations due to other requirements, but do not prohibit the sale of raffle tickets on the Internet which will not apply to non-domicile organizations of that state, while others may only enforce their laws domestically in their own state. Keeping your raffle ticket sales within your state is always the easiest and least burdensome, not to mention carries the least amount of risk and liability.

The Federal Trade Commission has intervened in sweepstakes targeting people considered vulnerable (e.g., elderly people) or involving some element of trickery. Issuing caution when your donor/player base may have a vulnerability. Always make every element of your game transparent. Some lawyers advise nonprofits to draft detailed game terms and even have winners sign liability releases, tax rule sheets, and affidavits of eligibility. *Online platforms could ultimately facilitate this sort of agreement making.*

In addition to federal restrictions and reporting requirements on raffles, you must also follow the regulations for gambling within the state that you are running a raffle. In some states, gambling and online gambling are illegal. Other states make exceptions to gambling laws for nonprofit organizations. However, because some states do not make any exceptions for online gambling, online raffles should not be open to every state in the country. Instead,

research the gambling laws for the state where your nonprofit is located. *If allowed in your state, start an online raffle that only allows people in your state to buy tickets.*

Nonprofit organizations are required to report raffle prizes if the payout is at least 300 times the amount of the wager and the amount of the prize, minus the wager, is over \$600. If this is the case, the organization must file Form W-2G with the IRS, and give a copy to the person who wins the prize. Further, the winner must report their prize income on Form 5754. For winnings over \$5,000, the nonprofit must withhold 25 percent of the income and report this amount to the IRS on Form W-2G. If the prize is not a cash prize, and the fair market value is over \$5,000, the winner must pay 25 percent of the value to the nonprofit, minus the cost of the wager. Further, if the winner does not submit her Social Security number or other tax number to the organization, and the raffle prize must be reported, then the nonprofit must withhold 28 percent of the prize income. This is known as backup withholding. In addition to Form W-2G, the nonprofit must report the withheld income on Form 945, Annual Return of Withheld Federal Income Tax. A nonprofit must also report and remit the income it withholds using Annual Return of Withheld Federal Income Tax (Form 945) by January 31 of the next year. This is separate from the payroll withholding form. Mark the Form 945 box on your tax deposit coupon.

Consider also that Domestic Mail Manual (DMM) PS-307 (601.13.3) prohibits the mailing of raffle tickets and using the USPS to sell raffle tickets. The USPS does however allow the advertising of raffles. The Department of Justice notified Congress that it will no longer enforce the criminal lottery statute (18 U.S.C. Section 1302) against gambling advertisement mailers, so long as the activity advertised is legal and the mailing does not provide any entry materials. On December 5, 2000, the DMM was amended to revise the standards governing lotteries to incorporate this change.

While the DMM change revised the standards governing "advertising" for legal lotteries, it did not alter the standards that "unlawful matter includes any letter, newspaper, periodical, parcel, stamped card or postcard, circular, or other matter permitting or facilitating participation in a lottery; any lottery ticket or part thereof or substitute; and any form of payment for a lottery ticket or share (" Referred to in 18 U.S.C. Section 1302 as "entry materials").

Raffles that incorporate "prize," "chance," and "consideration" are considered lotteries under the statute and postal standards. "Tickets" for such raffles are considered unlawful mail matter and remain nonmailable. Therefore, don't use the mail for selling your raffle entries or accepting payment for raffle entries. The only exception to this rule is any "No Purchase Necessary" entry materials which can be mailed as they do not comprise any consideration since a monetary exchange does not take place.

And lastly, there is a clear and defined distinction between verification and authorization. Understanding what they are and how they are used is critical to the application of methods and processes within a greater system for effective access control. Both need to be used together and need to be utilized continuously to maintain jurisdictional regulatory compliance.

Methods of verification (Geolocation) include all methods of validating and confirming the accuracy of user and device data. Verification processes are utilized to determine if data is true or false. Verification methods and processes also attempt to establish accurate user residency and device location information. Verification can occur either prior to authorization, after authorization, or during authorization of user access, as well as whenever a user alters their information.

Methods of authorization (GeoFencing) require the establishment of access authorization policies and controls and utilize processes to evaluate user and device data to determine access permission or denial based on access controls, policies, and configurations within a system. Permission and Exclusion criteria are used to establish these policies for Location, Residency, and Age. User and device data are evaluated against these access authorization policies to determine access authorization. Authorization can occur either prior to verification, after verification, or during verification of user or device data, as well as whenever a user alters their information. Utilized together, Verification and Authorization processes can create an effective access control system that is capable of reliable jurisdictional access allowance or denial.

Conclusion:

When considering internet or online sales of raffle tickets Maine should consider the following:

- Any online raffle shall be registered with the regulatory agency, regardless of prize amount;
- Maine based non-profit or eligible organizations only;
- Sales should be limited to state residence;
- Online platforms and their operators shall be licensed by the regulatory agency;
- Require a dedicated bank account for game proceeds and authorized expenses;
- Rules, details, terms and affidavits for offering over the internet;
- Follow federal requirements or reporting (W2-G, Form 5754, etc.);
- Limit registrations to one online raffle per month, per organization, as example;
- Unlike tickets and a barrel, online winners will be selected randomly from the licensed platform.

Currently Maine allows internet gambling through advance deposit wagering and fantasy contests, both of which operators use their own platforms. Non-profits therefore have to rely on other companies to perform the online process which dictates the need for licensing these platform operators.

FANTASY CONTEST online requirements:

9. Platform. "Platform" means an online or electronic method by which access to a fantasy contest is provided, including, but not limited to, a website, personal digital device, such as a device commonly known as a smartphone, or other application providing access to a fantasy contest.

§1102. POWER AND DUTIES OF DIRECTOR

G. Review and **approve each platform for compliance** with the provisions of this chapter and rules adopted pursuant to this chapter;

§1103. LICENSE TO CONDUCT FANTASY CONTESTS

The director shall exercise authority over the licensing of all persons operating fantasy contests in the State.

§1104. CONDITIONS OF LICENSURE

1. Conditions of operation. As a condition of licensure, a fantasy contest operator shall submit evidence that the fantasy contest operator has established and will implement procedures for fantasy contests that:

- E. **Verify that a fantasy contestant in a fantasy contest is 18 years of age or older. If the licensee discovers that a person under 18 years of age has accessed the platform as a potential or active fantasy contestant, the licensee shall immediately refund any entry fees or other deposits made by the person under 18 years of age;**
- F. **Publish and facilitate parental control procedures to permit adults to exclude minors from access to the platform and fantasy contests offered by the fantasy contest operator;**
- G. **Provide fantasy contestants with access to information on responsible play;**
- H. **Provide fantasy contestants with access to information on seeking assistance for compulsive behavior;**
- J. **Allow individuals to restrict themselves from entering fantasy contests upon request and provide reasonable steps to prevent the individuals from entering fantasy contests offered by the fantasy contest operator;**

§1106. RULES

1. Required rules. Rules adopted pursuant to this section must include but are not limited to the following:

- A. **Prohibiting the operator from making statements that are not accurate or are misleading regarding the likelihood of winning;**
- C. **Prohibiting advertisements or promotions that target minors and individuals with gambling addiction, including individuals who have requested to be restricted from play on a fantasy contest operator's platform;**
- D. **Requiring the fantasy contest operator to provide information on how to participate and compete in fantasy contests, including an explanation of fantasy contest play and how to**

identify a highly experienced fantasy contestant; (Rules of Play posted to prevent complaints)

G. Requiring the implementation of a system within the platform by which a fantasy contestant may submit a complaint against the fantasy contest operator and requiring the fantasy contest operator to respond to the complaint within 48 hours;

H. Requiring the maintenance of records of fantasy contestant accounts, which must be made available to the director upon request, for a period of up to 5 years;

ADVANCE DEPOSIT WAGERING online requirements:

§5 RESPONSIBILITIES OF ADVANCE DEPOSIT WAGERING LICENSEE

A. Prior to licensing the prospective advance deposit wagering licensee must present to the Board a detailed plan of operation. The detailed plan of operation for an advance deposit wagering license must include, but is not limited to, the following information:

1. The manner in which the wagering system will operate including any fees associated with the establishment and maintenance of an advance deposit wagering account;
2. Programs for responsible wagering; and
3. The protections provided to safeguard accounts, including a certification from the advance deposit wagering licensee that account funds will not be commingled with other funds.

The Board may require changes in a proposed plan of operations, as a condition of granting a license. No subsequent changes in the system's operation may occur unless ordered by the Board or until approval is obtained from the Board after it receives a written request.

- B. All systems used for processing wager transactions will be approved by the Board.
- C. An advance deposit wagering licensee shall maintain complete records of all transactions, including deposits, credits, debits, refunds, withdrawals, fees, wagers, rebates, and earnings for five (5) years. These records shall be provided to the Board upon request.
- D. All wagering conversations, transactions, or other wagering communications, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of the communications shall be kept by the advance deposit wagering licensee for a period of two (2) years. These tapes and other records shall be made available to the Board upon request.
- E. An advance deposit wagering licensee shall not accept wagers if the appropriate recording system is not operable.

§8 PROMOTE AND ADVERTISE. (Governors Interest)

The Board finds that the State of Maine has a compelling interest in deterring excessive use of alcohol and tobacco products, especially by minors. The Board finds that the State of Maine has a compelling interest in that advance deposit wagering is conducted by persons 18 years of age or older, as evidenced by the provisions in 8 M.R.S. Chapter 31, Subchapter 7 and 8 M.R.S. Chapter 11 that are applicable to persons younger than the age of 18.

All advertising, marketing and promotional materials (referred to collectively as “advertising”) related to advance deposit wagering shall be filed with the Board thirty (30) calendar days prior to use. This section can be waived, in writing, by the Board or its designee. Advertising materials that have been previously filed with the Board and that have not been substantially altered need not be pre-filed but may be filed with the Board contemporaneously with distribution.

Advertising shall comply with the following standards:

- A. False, misleading and deceptive advertising is prohibited.
- B. Depictions of the use of alcohol and tobacco are prohibited.
- C. Depictions of persons under the age of 18 engaged in wagering are prohibited.
- D. Guarantees of success, riches or winnings are prohibited.
- E. Advertising must include a disclaimer as follows: “Persons under 18 years of age may not apply for an advance deposit wagering account or place advance deposits or wagers”
- F. Advertising must comply with all applicable Maine and federal laws.

On receipt of notice from the Board that advertising may be in violation of these rules or other laws of the State of Maine and upon request by the Board or its designee to do so, the advance deposit wagering licensee will suspend, or cause its agent or representative to suspend, the advertising campaign. Suspension of the use of the advertising materials in question will continue pending resolution of the matter, including any proceedings pursuant to 8 M.R.S. Chapter 31, Subchapter 5.

§9 ESTABLISHING AN ACCOUNT.

- B. The advance deposit wagering licensee shall utilize a third party approved by the Board to verify the age and address of each account applicant during the application process.

- C. The account application must be presented: (i) in person by the account holder to a commercial track, off-track betting facility or licensed casino for identity verification, or (ii) electronically through using an identity verification method approved by the Board.