



The State of Texas  
House of Representatives

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**OPINION COMMITTEE**

Thursday, July 29, 2010

**RQ-0905-GA**  
**FILE # ML-46543-10**  
**I.D. # 46543**

The Honorable Greg Abbott  
Attorney General  
Price Daniel Building  
Attn: Opinions Committee  
P.O. Box 12548  
Austin, Texas 78701-2548

RE: Regarding the interpretation of Occupations Code §2002.056(b-1), the value of a residential dwelling raffled by a charitable organization, in light of JC-0046.

Dear General Abbott:

As Chair of the House Committee on State Affairs, I formally request an opinion from you on how to determine the value of a residential dwelling to comply with Texas Occupations Code §2002.056.

**BACKGROUND**

The Texas Constitution was amended in 1989 by the approval of proposition 15 which represented HJR 32 and its enabling legislation HB 240 which legalized charitable raffles with a limit of \$25,000 in value for prizes. The Charitable Raffle Act was amended in 2005 by a Senate Floor Amendment offered by Senator Mike Jackson to HB 541 by Representative Mike Krusee. The Floor Amendment added Tex. Occ. Code §2002.056(b-1), which states:

"The value of a residential dwelling offered or awarded as a prize at a raffle that is purchased by the organization or for which the organization provides any consideration may not exceed \$250,000."

The statute does not provide definitions or further explanation for key terms or phrases like "value," "purchased by the organization," "provides any consideration." The vagueness in the law leaves charitable organizations to decide whether the \$250,000 cap is on the amount the charitable organization has invested in the residential dwelling, the fair market value of a dwelling, or an undefined cap on considerations from the organization.

In May, 1999 the Attorney General issued an opinion<sup>1</sup> which attempted to clarify this confusion by specifying that the cap applies to any funds which a charitable organization uses to purchase a already

<sup>1</sup> JC-0046, issued May 11, 1999 (see Attached)

constructed residential dwelling, but does not limit the market value of that residential dwelling as long as the charitable organization has not spent more than the cap to obtain the dwelling. The opinion specifically states "A prize that is purchased by the organization or for which the organization provides any consideration may not have a value of more than \$50,000 [the constitutional cap at the time of the opinion]. It follows that if a prize is donated to the organization, and the organization give no consideration for the prize, the value of the prize may exceed \$50,000....A qualified organization may raffle a prize valued in excess of \$50,000, but only if the prize was not purchased by the organization and the organization gave no consideration for the prize." The opinion went on to state "...we understand you to ask whether the \$50,000 cap applies to when an organization purchases a prize with raised funds. We believe it does....Such construction would also be inconsistent with the clear terms of the statute: a prize that is purchased by the organization or for which the organization provides *any* consideration may not have a value of more than \$50,000." (emphasis original)

This provides guidance that the value of the prize may exceed the statutory cap if the prize was donated, but that the value of the prize may not exceed the statutory cap if the organization purchases the prize outright or if the organization uses funds to help purchase an already existing dwelling. However, this does not provide insight into a situation where a home is not yet constructed.

It appears, under the guidance of JC-0046 that if a charitable organization is going to accept a donation of land and construction of a home which will then be donated to the organization for the purpose of a charitable raffle, then the value of the home could exceed the \$250,000 cap. However, if only part of the land, construction management services, building materials, and labor are donated and the charitable organization is left to purchase the remainder of the necessary items the guidance provided by JC-0046 is unclear as to whether the value of the prize is capped at \$250,000 or if the consideration provided by the charitable organization is capped at \$250,000.

How is a charity expected to determine the risk involved in accepting a charitable donation and the required matching expenditure by the charitable organization if they must determine the value of a residential dwelling as yet constructed? However, they can determine the amount necessary for the organization to expend on constructing the final project.

If the organization relies upon whether the residential dwelling "is purchased by," then the organization must consider only what it has expended, not what has been donated to the organization. This is consistent with the U.S. Tax Code<sup>2</sup> tax deduction for one donating tangible property to a charitable organization. The deduction "is *the amount of gain* which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution)." (emphasis added) Thus, the Internal Revenue Service limits a tax deduction on the donee's cost basis in the home.

However, the value of an as-yet-constructed home, could be trickier, especially for a volunteer board of a charitable organization which has no experience in such industries as real estate, construction, or property management.

Under Texas law, the market value of a residential dwelling for appraisal purposes is defined under the Texas Tax Code<sup>3</sup>, which further subdivides market value into cost, income, and market data comparison methods to appraise the market value of a residential dwelling. Cost method is the cost to replace the existing property including all structures while considering depreciation and economic variables; Income value considers the income generation potential of a property; and Market data is a value based on recent

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<sup>2</sup> 26 USC 170(e)(1)

<sup>3</sup> Texas Tax Code §23

sales of comparable property. Much of the data necessary to determine a market value of an as-yet-constructed home would be unavailable to a charitable organization to make a risk analysis of the acceptance of a donation of construction materials, labor, etc. in light of their necessary contribution.

#### QUESTIONS PRESENTED

I would ask that you provide a formal opinion on the following specific legal questions:

- 1) In light of JC-0046, is the cap under the Texas Charitable Raffle Act on the value of a residential dwelling which is not yet constructed, the amount which a qualifying charitable organization spends to build such a home?
- 2) In light of JC-0046, is the cap under the Texas Charitable Raffle Act on the value of a residential dwelling, which is not yet constructed, the total amount of donated and purchased materials, labor, land, and services or is it solely applicable to the amount purchased by the qualifying charitable organization?

Thank you in advance for your attention in this matter.

Yours truly,



Burt Solomons

CC: Senator Mike Jackson

Representative Ken Paxton

Texas NonProfits