



QUESTION PRESENTED

Does a service that pools lottery players violate federal or state laws if it operates under the following conditions: It limits participants to individuals who are physically outside of the United States or in states where its operation is legal; when the player is physically within the United States, it buys state lottery tickets from a licensed retailer only in the same state where the player is located; when the player is physically within the United States, it facilitates pooling of multi-state lottery players only in states with the identical multi-state game; it charges participants only the cost of the lottery tickets; and, it does not send any paper solicitations, tickets or acknowledgments in interstate or international commerce?

SHORT ANSWER

The final regulations for the UIGEA provide that a state-licensed attorney may issue a "reasoned legal opinion" consisting of "a written expression of professional judgment . . . that addresses the facts of a particular client's business and the legality of the client's provision of its services to relevant customers in the relevant jurisdictions under applicable federal and state law." 12 CFR §233.2(x), duplicated at 31 C.F.R. §132.2(x).

This service does not violate any federal or state laws. The purchases for foreigners does not violate any federal or state laws, because such laws are presumed to be limited to activities conducted within their borders. A statute will not apply to activities conducted entirely outside the jurisdiction unless the statute itself contains an express statement of extraterritorial intent. There appear to be no state prohibitions on acting as an agent for foreign purchasers, and in any case, the operation is limited to states where it is legal. There are some federal prohibitions on the international transportation of lottery paraphernalia, such as using the U.S. mail for paper lottery tickets in some circumstances. However, there are no federal criminal or civil statutes which explicitly prohibit sending information electronically to enable foreign residents to buy American lottery tickets or to participate in pools of American lottery tickets.

For purchasers physically within the United States, there again appear to be no state prohibitions on acting as an unpaid agent for state residents to purchase local lottery tickets. In any case, the operation is limited to states where it is legal. There are some federal prohibitions on the interstate transportation of lottery paraphernalia, such as sending information electronically to enable a person in one state to buy a lottery ticket in another state. But there are no federal statutes against sending information to enable a person to buy a lottery ticket in the same state. The multi-state games are similarly limited to players who are physically in states with the identical game. The federal anti-gambling statutes are limited to individual who are in the business of gambling. Xzotto merely acts as an agent and facilitates pooling; it makes no money off of the sale of lottery tickets.

CONCLUSION

Xzotto proposes to conduct a business that is legal where the participants reside. The federal government and the government of the various states do not have laws on the books prohibiting such entirely lawful activities in foreign countries or in states where such activities are legal. States and the federal government have public policies in favor of encouraging American businesses to sell abroad and in increasing the sales of their local state lotteries. Xzotto's proposed legal lottery pools do not violate any U.S. federal or state law. In fact, some states, like California, have expressly authorized individuals to help form lottery pools.

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