

BULLETIN

No. 2010 - 1 January 22, 2010

Subject: Annual Fees Payable by Indian Gaming Operations; Under New Rules

On July 27, 2009, the Commission published changes to the annual fees rule (25 C.F.R. § 514.1) in the Federal Register (74 FR 36926). On August 25, 2009, NIGC extended the effective date of the changes made by the final rule to December 31, 2009 (74 FR 42275), and on January 19, 2010, published corrections to fix incorrect dates inadvertently left in the final rule (75 FR 2795). The changes are effective as of January 19, 2010, and affect fee payments for calendar year 2010. Copies of the corrected final rule amending the fee regulations are attached. This bulletin highlights the changes to the fee regulations and gives guidance on how to comply with the amended requirements for submitting fee worksheets and payments. These regulations are applicable to all gaming operations under the jurisdiction of the Commission.

The first change to 25 C.F.R. § 514.1 cuts in half the number of fee submissions required each year. Fee worksheets and payments are now due only twice per year: on June 30 and December 31. Tribes that wish to continue to make fee payments and submit worksheets on a quarterly basis may do so. Likewise, tribes may also continue paying their full year's fees at the beginning of the year. Regardless, payments and worksheets must only be submitted to the Commission by June 30 and December 31 in order to be in compliance with the new regulations.

The second change to the fee regulation is that the NIGC will now use the date of mailing to determine if a submission is timely. Previously, the Commission required that submissions actually be received by their due dates. The new rule simply requires that fee worksheets and payments be postmarked by their due dates. If a tribe uses a private delivery service such as FEDEX or UPS, the shipping receipt should be dated on or before the due date.

Please note that new gaming operations, with no gaming revenues generated in the previous calendar year, still must file worksheets by the specified due dates, even if no fees

are due. Additionally, existing gaming operations that owe no fees on a given due date must still file worksheets by that due date. For example, if a gaming operation pays fees for an entire year on the June 30 due date, that operation still must submit a worksheet by the December 31 due date.

Also, care should be taken to use the correct fee rate for the correct year. The Commission adopts and publishes a preliminary rate for each calendar year no later than February 1st of that year. If necessary, the Commission will modify those rates no later than July 1st of that year. Fee rates are published in an NIGC bulletin and in the Federal Register, and are available on the NIGC website. Also, please be sure to use the previous calendar year's gross revenues as the base period for determining current year fee payments.

For example, a fee worksheet submitted on June 30, 2010, will use the preliminary rate that the NIGC publishes on or before February 1, 2010. That worksheet will calculate assessable gross revenue using gross revenues from calendar year 2009.

Fee worksheets should also include: the name, address and telephone number of the gaming operation; the name of the licensing tribe; and the name and telephone number of a contact person. Checks are made payable to the National Indian Gaming Commission.

Should you have any questions or need additional information, please contact Chris White, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC, 20005; telephone (202) 632-7003; fax (202) 632-7066 (these are not toll-free numbers).

PART 514 ANNUAL FEES

§ 514.1 Annual fees

- (a) Each gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.
 - (1) The Commission shall adopt preliminary rates for each calendar year no later than February 1st of that year, and, if considered necessary, shall modify those rates no later than July 1st of that year.
 - (2) The Commission shall publish the rates of fees in a notice in the FEDERAL REGISTER.
 - (3) The rates of fees imposed shall be
 - (i) No more than 2.5 percent of the first \$1,500,000 (1st tier), and
 - (ii) No more than 5 percent of amounts in excess of the first \$1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation subject to the jurisdiction of the Commission.
 - (4) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of assessable gross revenues from self-regulated class II gaming operations.
- (b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.
 - (1) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.
 - (2) The allowance for amortization of capital expenditures for structures shall be either:
 - (i) an amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% (two and one-half percent) of the cost of structures in use during only a part of the year; or
 - (ii) an amount not to exceed 10% of the cost of the total amount of

amortization/depreciation expenses for the year.

(3) Examples of computations follow:

(i) For (2)(i) of this section:

Gross gaming revenues:		
Money wagered	\$ 1,000,000	
Admission fees	5,000	\$ 1,005,000
Less:		
Prizes paid in cash	500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit	_	495,000
Less allowance for amortization of		
capital expenditures for structures:		
Capital expenditures for structures made in		
Prior years	750,000	
Current year	50,000	
Maximum allowance:		
\$750,000 x .05 =	37,500	
50,000 x .025 =	1,250	38,750
Assessable gross revenues		\$ 456,250

(ii) For (2)(ii) of this section:

Gross gaming revenues: Money wagered Admission fees	\$ 1,000,000 5,000	1,005,000
Less: Prizes paid in cash Cost of other prizes awarded	500,000 10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures: Total amount of amortization/depreciation per books: Maximum allowance: \$ 400,000 x .10 =	400,000 	40,000
Assessable gross revenues		\$ 455,000

- (4) All class II and III revenues from gaming operations are to be included.
- (c) Each gaming operation subject to the jurisdiction of the Commission and not exempt from paying fees pursuant to the self-regulation provisions shall file with the Commission a statement showing its assessable gross revenues for the previous calendar year.
 - (1) These statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;
 - (2) These statements shall be sent to the Commission on or before June 30th and December 31st of each calendar year.
 - (3) The statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.
 - (4) Each gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using –

- (i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) of this section,
- (ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and
- (iii) The amounts paid and credits received during the year.
- (5) Each statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations re as follows:
 - (i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.
 - (ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.
 - (iii) Add (total) the results (products) obtained in paragraphs (c)(5)(i) and (ii) of this section.
 - (iv) Multiply the total obtained in paragraph (c)(5)(iii) of this section by $\frac{1}{2}$.
 - (v) The amount computed in paragraph (c)(5)(iv) of this section is the amount to be remitted.

- (6) Examples of fee computations follows:
 - (i) Where a filing is made for June 30th of the calendar year, the previous year's assessable gross revenues are \$2,000,000, the fee rates adopted by the Commission are 0.0 % on the first \$1,500,000 and .08% on the remainder, the amounts to be used and the computations to be made are as follows:

1st tier revenues \$1,500,000 x 0.0%=	-
2nd tier revenues 500,000 x.08%=	400
Annual fees	400
Multiply for fraction of year 1/2 or	.50
Fees for first payment	200
Amount to be remitted	\$ 200

- (7) The statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).
- (8) The Commission may assess a penalty for failure to file timely a statement.
- (9) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date.
- (d) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due by June 30th and December 31st of each calendar year.
- (e) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:
 - (1) Closure, or
 - (2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of

gaming.

(f) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended to defray the costs of operations of the Commission.