

Quapaw Tribal Gaming Agency
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December 8, 2011

Ms. Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: Proposed Rule on Fees, 25 C.F.R Part 514

Dear Chairwoman Stevens:

The Quapaw Tribal Gaming Agency ("QTGA") appreciates the opportunity to provide comments on the National Indian Gaming Commission's ("NIGC") Proposed Rule on Fees (76 Fed. Reg. 62,684). The QTGA recognizes and applauds the NIGC's efforts to engage each tribe in meaningful government-to-government consultation, and submits the following comments in the spirit of cooperation in which they are intended.

The QTGA is encouraged by the NIGC's proposal to adopt a tiered approach to addressing late fees and quarterly submissions, which reflects the NIGC's commitment to emphasizing voluntary compliance over punitive enforcement measures. The QTGA supports the NIGC's proposal to issue NOV's or other enforcement actions for only those payments and submissions that are overdue by ninety days as it provides tribes with reasonable notice and an opportunity to correct the delinquency before being subject to an official enforcement action by the NIGC.

While the QTGA supports the overall direction of this proposed rule, we believe the following issues would benefit from additional clarification and tribal input. Our first concern is regarding the calculation of the late fee amount. Subject to the percentage limits set out in § 514.9 in the proposed rule, the Chair has the discretion to determine the amount of the late fee payment due. While we do not object to the Chair's discretion in calculating the actual amount of the late fee, we are concerned by the lack of adequate standards to guide the Chair's discretion in determining an appropriate late fee. This is particularly troubling since the actual amount of the late fee is calculated using a percentage of a tribe's fee payment – a metric which can vary widely depending on the size of the tribe's gaming operation. We therefore ask the NIGC to consider adding language to the effect that the NIGC will take factors, such as the size of the tribe's gaming operation, as well as other equitable considerations, into account when assessing late fees.

Also, in order to address any delinquencies resulting from minor personnel or administrative errors, we ask the NIGC to consider the addition of a brief grace period before the late fee penalties in §514.9 are triggered. Such a grace period would provide relief for those tribes whose payments and submissions are late due to reasons beyond their control. And lastly, the QTGA seeks clarification on late fees with respect to NOV's or other enforcement actions that are

issued once the late payment becomes a failure to pay pursuant to §514.9. Specifically, as drafted, the proposed rule is unclear as to whether late fees assessed under § 514.9 will run concurrently with any enforcement actions taken under § 514.10. If so, we ask for a reasonable cap on any late fees assessed in conjunction with an NOV or other enforcement action.

In closing, the QTGA would like to thank the NIGC for the opportunity to present our views on this Proposed Rule. We hope that you give meaningful consideration to our comments as you proceed with your deliberations.

Sincerely,

Barbara Kyser-Collier
Director, QTGA