

February 12, 2011

National Indian Gaming Commission  
Attn: Lael Echo-Hawk, Counselor to the Chair  
1441 L Street NW, Suite 9100  
Washington, D.C. 20005

Via Electronic Mail: [reg.review@nigc.gov](mailto:reg.review@nigc.gov)

Dear Honorable Chairwoman Stevens,

We respectfully submit the following comments in relation to the National Indian Gaming Commission's ("NIGC") *Notice of Inquiry and Request for Information; Notice of Consultation* ("NOI"), dated November 12, 2010. Our firm provides accounting, audit, and consulting services primarily to Tribal gaming operations and our comments are derived from our experiences working with our Tribal client base.

**Part 502 - Definitions - Net Revenues - Allowable Uses 25 U.S.C 2710(b)(2)(B)-**

It is our experience that the term 'Net Revenues', as it relates to distributions to the Tribal government, has been misconstrued and in certain circumstances, the vagueness of the term has led to significant disputes.

The NOI references various considerations as to operating cash flows, depreciation, and long-term debt transactions. While we understand that these items are critical in determining a gaming operation's ability to appropriately measure and fund distributions to the Tribal government; we do not believe that there is a single formulaic approach that should be adopted by the NIGC for implementation at all Tribes. Rather than mandating a new formula that would be applied broadly across Indian Country, we encourage the NIGC to continue promoting Tribal self-sufficiency and strong Tribal governments by allowing each Tribe to develop its own internal control framework for the measurement, payment scheduling, and forecasting insofar as it relates to distributions of excess cash from the Tribal gaming operation to the Tribal government. There are numerous considerations that have lead our team to believe that a single formula may not be successful which include, but are not limited to, the following circumstances: (1) funding of capital projects via internal gaming profits (2) transactions associated with long-term financing arrangements (3) allocation and review of related cost drivers for those costs benefiting both the Tribal gaming operation and the Tribal government (4) accounting treatment for gaming or related revenue taxes imposed on the Tribal gaming operation by the Tribal government (5) inconsistent treatment of accounting for Tribal regulatory costs (6) direct payment of Tribal government expenditures and (7) reinvestment of Tribal government funds to fund Tribal gaming operations.

The more successful distribution plans we have encountered are those that have a predetermined monthly budgetary based payment from the Tribal gaming operation to the Tribal government. These budgets are adopted by the Enterprise Board, Tribal Business Committee, or Tribal Council prior to the upcoming fiscal period. The Tribes that utilize this approach have a clear understanding of the sources and uses of cash, not 'Net Revenues'. In addition, these Tribes correspondingly have the appropriate information to adequately budget governmental expenditures as the Tribal leadership has a predetermined schedule of the timing and amounts of cash payments from the Tribal gaming operation to the Tribal government.

**Part 502 - Other Related Considerations - NIGC Technical Bulletin 2005-1-**

The additional guidance provided under NIGC Technical Bulletin 05-1 was welcomed to assist Tribal governments and interested parties in understanding and designing controls to ensure compliance with requirements under IGRA and associated approved Revenue Allocation Plans ('Plans'). We believe that the NIGC may want to consider soliciting additional guidance to assist Tribes in maintaining compliance with the regulations and approved Plan provisions. We believe that Tribal governments are experiencing difficulties in monitoring compliance with Plan provisions, have difficulty in determining categorical allowability (i.e. 'economic development'), and in certain circumstances are forced into categorical percentage collars that may not be reasonable based upon the demographics of the Tribal membership. Additional consultation and guidance would be welcomed in this area.

**Part 514 - Fees-**

We consider that in order for a Tribal gaming operation to maintain compliance with Part 571.14, *Relationship of audited financial statements to fee assessment reports*, it is critical that the calculation of NIGC fees be amended to be based upon a Tribal gaming operation's fiscal year.

The NOI addresses the question as to whether or not the NIGC should redefine gross gaming revenues for fee purposes to be consistent with generally accepted accounting principles. We do not believe that this approach would create absolute consistency as various Tribal gaming operations may apply conflicting accounting principles that may be considered 'generally accepted' by their respective accountants and auditors. In many jurisdictions where regulatory or revenue sharing fees are based upon gaming revenues, a regulatory approach is taken that clearly describes the elements considered for fee computation purposes, rather than a reference to generally accepted accounting principles. In addition, accounting principles change over time and can at times be implemented in different time periods based upon the size, accounting elections, or nature of the reporting entity. We further request that the 'cost of structures' allowance included in the fee computation is clarified as to which structures (parking structures, hotels, modular buildings, etc.) are allowed to be included as well as related sub-systems (HVAC costs, emergency power generation units, etc.) in the 'cost of structures' allowance.

Our firm also agrees that the NIGC should consider a late payment system in lieu of a Notice of Violation ('NOV') for submitting fees paid late. The issuance of a NOV for a delinquent payment is commonly believed throughout the industry to be severely harsh for the violation committed.



**Part 542 - Class III Minimum Internal Controls-**

We consider it critical that Tribal gaming operations implement at least a uniform baseline system of minimum internal control standards and that these standards are updated periodically to reflect significant changes in technology and the gaming environment. Minimum standards protect the Tribes and Tribal gaming operations as well as the general public by providing the lowest benchmark from which to create a proven internal control system tailored to the individual characteristics of each gaming operation. In addition, many intergovernmental agreements (State Compacts, M.O.U.s, etc.) incorporate the MICS through reference. Complete removal of these standards would create an environment with a perceived vacuum of operating controls by these external parties.


The concept of utilizing a fair and balanced Tribal Advisory Committee consisting of Tribal gaming regulatory agencies / Commissions, operators, accountants / auditors, and other interested parties from various regions is appealing to assist in providing revised advisory minimum internal control standards on a periodic basis.


Generally accepted accounting principles are derived from various sources (Financial Accounting Standards Board, Governmental Accounting Standards Board, American Institute of CPAs, Industry Guidance, etc.) and placed into a hierarchy as to authoritative status but are not considered to be 'regulations'. A similar concept could be utilized in providing guidance from the NIGC stemming from the Tribal Advisory Committee(s) for Minimum Internal Control Standards.

We thank the NIGC for the opportunity to participate in the process and to submit our comments.

Sincerely,

Egghart & Associates, LLC, CPAs  
Reno, Nevada

  
\_\_\_\_\_  
Ryan Burns, CPA  
Director of Audit & Assurance  
Ryan@egghart.com

  
\_\_\_\_\_  
Sheryl Ashley, CFE, CIA, FCPA, CPA  
Director of Risk Consulting  
Sheryl@egghart.com