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Subject: Audit Requirements for Gaming Operations

The purpose of this Bulletin is to reiterate and clarify several of the audit requirements for gaming operations. Our reviews of audit reports received to date reveal that not all the tribes and gaming operations are complying with all of the audit requirements. Although the level of compliance is improving, it is important for all tribes and gaming operations to meet all the regulatory and statutory requirements.

The Indian Gaming Regulatory Act (IGRA), the regulations of the National Indian Gaming Commission (NIGC), and NIGC approved tribal gaming ordinances require an annual audit of each gaming operation on Indian lands. Audit reports and management letters are to be submitted to the NIGC within 120 days after the end of each fiscal year.

Failure to obtain an annual audit and submit the required reports to the NIGC is a violation of the law that could subject the tribe to a civil fine of up to \$25,000 per violation.

Gaming Operation

First, there seems to be some confusion about the entity to be audited, the gaming operation. Section 502.10 of 25 C.F.R. defines the gaming operation as follows:

Gaming operation means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity. (emphasis added)

Furthermore, 25 C.F.R. § 522.4(b)(6) and 25 C.F.R. § 522.6(b) provide that a tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II and/or class III gaming.

Thus, the audit requirements apply to the gaming operation at each place, facility, or location on Indian lands where gaming is allowed.

Audit Requirements

Next, there are specific audit requirements. Section 571.12 of 25 C.F.R. provides:

A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this section may be conducted in conjunction with any other independent audit of the tribe, provided that the requirements of this chapter are met.

In meeting these requirements,

- The tribe or the gaming operation must establish the fiscal year for each gaming operation. The NIGC should be notified of any changes to a gaming operation's fiscal year end.
- An annual audit of the financial statements of each gaming operation on Indian lands is required, whether the operation is offering class II games, class III games, or a combination of class II and class III games.
- The financial statements (balance sheet, statement of operations and retained earnings, and statement of cash flows) should cover the gaming operation only, and not include such non-gaming activities as a hotel, golf course, or other unrelated business.
- The financial statements must be prepared in accordance with generally accepted accounting principles. The use of another comprehensive basis of accounting, such as the cash basis of accounting, is not acceptable.
- The independent accountants must perform their audit in accordance with generally accepted auditing standards and must express an opinion on the financial statements. Limitations by the tribe or management of the gaming operation on the auditor's scope of work are unacceptable. Auditors must be engaged in sufficient time for them to be able to perform their work and must have unrestricted access to the books, records, etc. to do their work. Also, the accounting records, internal controls, etc. must be sufficient for the auditors to perform their audit and express an opinion.

- The financial statements of each individual gaming operation must be set out separately and the independent accountant must audit and render an opinion on each set of financial statements. An audit of the combined financial statements of two or more gaming operations is not acceptable. Further, an audit of the general purpose financial statements of the tribe, even though they may include the financial statements of the gaming operation(s), is likewise unacceptable.
- An audit can be conducted in conjunction with the audit of the tribe's general purpose financial statements but the auditor's work would have to be expanded to include an audit of the financial statements of each gaming operation and separate report(s) would have to be rendered on each such operation by the independent certified public accountant.

Section 571.13 of 25 C.F.R. provides:

A tribe shall submit to the Commission a copy of the report(s) and management letter(s) setting forth the results of each annual audit within 120 days after the end of each fiscal year of the gaming operation.

- Some tribes and gaming operations have missed the due dates for their audit reports while others have routinely requested extensions. The NIGC believes that the 120 day filing period is achievable in most situations. While the NIGC will continue to consider requests for extensions for good cause, the 120 day rule is expected to be followed.

Section 571.14 of 25 C.F.R. provides:

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 C.F.R. Part 514, with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

- This reconciliation is necessary to show that amounts being reported on the quarterly fee assessment reports and the audited financial statements agree, because:
 1. Fees are assessed and reported on a calendar year basis while the financial statements may be prepared on a fiscal year basis. In most situations, the two are not the same. The revenues used for assessing fees for a calendar year must be reconciled with the revenues for that calendar year reported in the financial statements for the fiscal years beginning in, and ending in, the calendar year.

2. Fees are assessed on class II revenues while the financial statements may combine class II and III revenues.
3. Fee computations allow for the amortization of capital expenditures for structures. This is a limited provision that requires detailed information not normally available in audit reports.

Sections 522.4(b)(4) and 522.6(b) of 25 C.F.R. provide:

All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section . . .

- This requires that the scope of audit include, or be expanded to include, all gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year. The inclusion of such contracts specifically within the scope of audit implies that they be subjected to relevant audit procedures. These should include: reviewing the purchasing procedures, checking the pricing, verifying the receipt of goods or services, and checking the mathematical accuracy of all aspects of each transaction.

Mailing Address

Audit reports and management letters should be submitted to the National Indian Gaming Commission, 1441 L Street, N.W., 9th Floor, Washington, DC 20005.

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Should you have any questions, please call Elaine Trimble or Fred Stuckwisch at 202/632-7003.