

No.98-2

March 12, 1998

**Subject: ANNUAL FEES PAYABLE BY INDIAN GAMING OPERATIONS; RULE
1998 FEE RATES; NOTICE**

The purpose of this Bulletin is to announce that the changes to the Annual Fees Rule and the 1998 Fee Rate Notice were published in the Federal Register on March 12, 1998. Copies of the Fee Rate Notice and the Final Rule amending the Fee regulations as published in the Federal Register are enclosed as is a copy of the complete rule: Annual Fees Payable by Indian Gaming Operations as amended March 12, 1998.

The Indian Gaming Regulatory Act was amended to (1) add class III gaming revenues to the assessable gross revenue base, (2) eliminate the minimum rate that can be charged, (3) increase the total amount of fees that can be imposed, and (4) provide an exemption for self regulated tribes. Pursuant thereto, the National Indian Gaming Commission has amended its fee regulations. As a result, gaming operations offering only class III games must begin reporting and paying fees, and gaming operations offering both class II and III games must begin reporting and paying fees on their class III revenues. Gaming operations offering class II games must continue reporting and paying fees.

These regulations are applicable to all gaming operations under the jurisdiction of the Commission. New gaming operations (with no gaming revenues generated in the previous calendar year) must file reports quarterly even though no fees will be due.

The National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% on tier one revenues (up to \$1,500,000) and .08% (.0008) on tier two revenues (over \$1,500,000) for calendar year 1998. These rates apply to all class II and class III assessable gross revenues.

The fees are due in four quarterly payments. The first quarter payment for 1998 is due no later than April 13, 1998. The remaining three quarterly payments are due no later than June 30, September 30, and December 31.

Please be sure to use calendar year 1997 as the base period for determining 1998 fee payments. Also, please provide the following identifying information: name, address and telephone number of the gaming operation; name of licensing tribe; name and telephone number of contact person.

Should you have any questions or need additional information, please call Cindy Altimus or Fred Stuckwisch at 202/632-7003.

NATIONAL INDIAN GAMING COMMISSION

ANNUAL FEES PAYABLE BY INDIAN GAMING OPERATIONS: RULE

AS AMENDED MARCH 12, 1998

25 CFR PART 514 -- FEES

Sec.

514.1 Annual fees.

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

§ 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 during the first quarter of that year (or as soon thereafter as possible), and, if considered necessary, shall modify those rates during the second and third quarters of the calendar year.

(2) The Commission shall adopt final rates of fees for each calendar year during the fourth quarter of that year.

(3) The Commission shall publish the rates of fees in a notice in the Federal Register.

(4) 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.

(5) 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.

(6) If a tribe is determined to be self-regulated pursuant to the provisions of 25 U.S.C. 2717(a)(2)(C), no fees shall be imposed.

(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 not exceed 5% of the cost of structures in use throughout the year and 2-1/2 % of the cost of structures in use during only a part of the year.

(3) Example:

Gross gaming revenues		
Money wagered		\$1,000,000
Admission fees		<u>5,000</u>
		1,005,000
Less:		
Prizes paid in cash	\$500,000	
Cost of other prizes awarded	<u>10,000</u>	<u>510,000</u>
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	<u>50,000</u>	
	<u>800,000</u>	
Maximum allowance		
\$750,000 x .05 =	37,500	
50,000 x .025 =	<u>1,250</u>	<u>38,750</u>
Assessable gross revenues		\$ 456,250

(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 quarterly a statement showing its assessable gross revenues for the previous calendar year.

(1) These quarterly 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 quarterly statements shall be filed no later than --
 March 31,
 June 30,
 September 30, and
 December 31,

of each calendar year the gaming operation is subject to the jurisdiction of the Commission, beginning in September 1991. For calendar year 1998, the quarterly statement for the first quarter shall be filed no later than April 13, 1998. Any changes or adjustments to the previous year's assessable gross revenue amounts from one quarter to the next shall be explained.

(3) The quarterly 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) The quarterly statements shall be transmitted to the Commission to arrive no later than the due date.

(5) 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) or (a)(2) 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 previous quarters.

(6) Each quarterly statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are 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)(6)(I) and (ii) of this section.

(iv) Multiply the total obtained in paragraph (c)(6)(iii) of this section by the fraction representing the quarter for which the computation is being made: 1st quarter - 1/4; 2nd quarter - 1/2 (2/4); 3rd quarter - 3/4; and 4th quarter - 1 (4/4). For the purpose of making these computations in 1991 only, the third calendar quarter is the first quarter and the fourth calendar quarter is the second quarter. There will be no third or fourth quarter in 1991.

(v) Subtract the amounts already remitted by the operation for the current year and credits, if any, which are due for any previous year's overpayment from the amount determined in paragraph (c)(6)(iv) of this section.

(vi) The amount computed in paragraph (c)(6)(v) of this section is the amount to be remitted.

(7) Examples of fee computations follow:

(I) Example 1: Where a filing is made for the first quarter of the calendar year, the previous year's assessable gross revenues are \$2,000,000, the fee rates adopted by the Commission are 2% on the first \$1,500,000 and 4% on the remainder, and a credit of \$2,000 is due from the previous year, the amounts to be used and the computations to be made are as follows:

1st tier revenues -	\$1,500,000 x 2% =	\$30,000
2nd tier revenues -	500,000 x 4% =	20,000
Annual fees		50,000
Multiply for fraction of year - 1/4 or		.25
Fees for first quarter		12,500
Deduct credit due		2,000
Amount to be remitted		\$10,500

(ii) Example 2: Where a filing is being made for the third quarter, the previous year's assessable gross revenues are \$5,000,000, the fee rates adopted by the Commission are 1% on the first \$1,500,000 and 1.5% on the remainder, and \$35,000 has already been remitted, the amounts to be used and the computations to be made are as follows:

1st tier revenues -	\$1,500,000 x 1% =	\$15,000
2nd tier revenues -	3,500,000 x 1.5% =	52,500
Annual fees		67,500
Multiply for fraction of year - 3/4 or		.75
Fees for first three quarters		50,625
Deduct amounts already remitted		35,000 ¹
Amount to be remitted		\$15,625

(iii) Example 3: Where a filing is being made for the third quarter of 1991, the previous year's assessable gross revenues are \$5,000,000, the fee rates adopted by the Commission are 1% on the first \$1,500,000 and 1% on the remainder, and nothing has already been remitted, the amounts to be used and the computations to be made are as follows:

¹ This amount may be other than \$33,750 (\$67,500 x .50) because the assessable gross revenues may have been adjusted, the fee rate may have changed, a credit for the previous year's overpayment may have been received, or a clerical error may have been discovered.

1st tier revenues -	\$1,500,000 x 1% =	\$15,000
2nd tier revenues -	3,500,000 x 1% =	35,000
Annual fees		50,000
Multiply for fraction of year - 1/4 or		_.25
Fees for first quarter		12,500
Deduct amounts already remitted		<u>-0-</u>
Amount to be remitted		\$12,500

(8) Quarterly 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).

(9) The Commission may assess a penalty for failure to file timely a quarterly statement.

(10) 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 (31 U.S.C. 3717).

(d) The total amount of all fees imposed during any fiscal year shall not exceed \$8,000,000. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

(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 (P.L. 101-121; 103 Stat. 718; 25 U.S.C. 2717a) to defray the costs of operations of the Commission.