

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-23-02

To: Mr. Durell Cooper, Chairman
Apache Business Committee
511 East Colorado
Post Office Box 1330
Anadarko, OK 73005

1. Notification of Violation

The Chairman of the National Indian Gaming Commission hereby gives notice that the Apache Tribe of Oklahoma, located in Anadarko, Oklahoma, and having operated the Golden Eagle Casino and Silver Buffalo Casino has violated the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and the Apache Tribe of Oklahoma Gaming Ordinance (Tribe's Gaming Ordinance) by failing to submit timely and compliant Audited Financial Statements and Agreed Upon Procedures reports for fiscal years 2013, 2017, 2018, and 2019.

2. Authority

Pursuant to the Indian Gaming Regulatory Act (IGRA) and NIGC regulations, the Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation(s) of any provision(s) of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3.

3. Applicable Federal Laws and Tribal Ordinance Provisions

- A. IGRA requires an annual audit of each gaming operation and requires tribes to submit a copy of the results of the annual audit(s) to the NIGC. 25 U.S.C. § 2710(b)(2)(C).
- B. NIGC regulations define "gaming operation" as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses. 25 C.F.R. § 502.10.
- C. NIGC regulations require that a gaming operation maintain permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements and other information required in any financial statement, report, or other accounting prepared pursuant to IGRA or

NIGC regulations, available for inspection by the NIGC, and for no less than 5 years. 25 C.F.R. § 571.7(a)-(c).

- D. NIGC regulations require that a tribe engage an independent certified public accountant to conduct annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year. 25 C.F.R. § 571.12(b); Apache Tribal Gaming Ordinance § 9.
- E. The independent certified public accountant must be licensed by a state board of accountancy. 25 C.F.R. § 571.12(b)(1).
- F. NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 U.S.C. § 2710(b)(2)(C); 25 C.F.R. § 571.13; Apache Tribal Gaming Ordinance § 9.
- G. NIGC regulations also require tribes to submit within 120 days of the end of the fiscal year an Agreed Upon Procedures report for each Class II operation. 25 C.F.R. § 543.23(d). The Agreed Upon Procedures (AUP) report details the state of compliance with Class II Minimum Internal Control Standards.
- H. The Apache Tribal Gaming Ordinance of 2016, Section 9, approved by the NIGC Chair on December 01, 2016 (Ordinance), requires that “[t]he Tribe shall cause to be conducted independent audits of Gaming Operations annually and shall submit the results of those audits to the NIGC” and “[a]nnual audits shall conform to generally accepted auditing standard.” Further, the Ordinance provides “[c]opies of the annual audit of each licensed Gaming Operation, and each audit for supplies, services or concessions of each Gaming Operation, shall be furnished to the NIGC within 120 days after the end of each fiscal year of the Gaming Operation.”

4. Role of Independent Audit Report

Submission of the annual independent audit report by a firm of certified public accountants is critical to the NIGC's mission to protect the integrity of Indian gaming. A firm's ability to conduct an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principles provides a certain level of assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having bearing on the financial statements.

5. Circumstances of the Violation

- A. The Apache Tribe of Oklahoma is a federally recognized Indian tribe with tribal headquarters in Anadarko, OK.
- B. IGRA requires that tribes submit annual audits of each gaming operation. 25 U.S.C. § 2710(b)(2)(C). NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year. 25 C.F.R. § 571.12(b). The NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. § 571.13.
- C. Similarly, NIGC regulations require that tribes submit Agreed Upon Procedures reports to the NIGC for all operations offering Class II gaming within 120 days of each gaming operation's fiscal year end. 25 C.F.R. § 543.23(d)(2).

Silver Buffalo Casino

- D. The Tribe conducted class II and III gaming at its operation, Silver Buffalo Casino, in Anadarko, OK, during all or part of fiscal year 2013.
- E. Based on the most recent financial statements and audits submitted to the NIGC, for fiscal year 2013, the Silver Buffalo Casino fiscal year runs from October 1, 2012 to August 31, 2013.
- F. Therefore, the Agreed Upon Procedures reports, financial statements and audits for the Tribe's gaming operations for fiscal year 2013 were due to the NIGC on or before April 30, 2014.
- G. Silver Buffalo Casino closed in July 2013.
- H. On January 08, 2014, the NIGC received the fiscal year 2013 audits for Silver Buffalo Casino.
- I. Eldridge Gordon, Jr. completed the Agreed Upon Procedures/Audited Financial Statements audit for Silver Buffalo Casino's fiscal year 2013.
- J. On April 20, 2012, the Oklahoma Accountancy Board placed Eldridge Gordon Jr. on probation for three years, and one of the terms of the probation prohibited Mr. Gordon from preparing any audits.
- K. On August 16, 2013, the Oklahoma Accountancy Board revoked Eldridge Gordon Jr.'s CPA license.

- L. On April 08, 2014, the NIGC notified the Tribe that the submitted audit was inadequate because an unlicensed auditor prepared them.
- M. To date, the Tribe has not submitted a fiscal year 2013 audit conducted by a licensed auditor for Silver Buffalo Casino in violation of IGRA, NIGC Regulations, and the Tribe's Gaming Ordinance.

Golden Eagle Casino

- N. The Tribe conducted class II and III gaming at its operation, Golden Eagle Casino, in Anadarko, OK, during all or part of fiscal years 2013, 2017, 2018, 2019, 2020, 2021 and 2022.
- O. Based on the financial statements and audits submitted to the NIGC, for fiscal year 2013, the Golden Eagle Casino fiscal year ran from October 1 to September 30.
- P. Therefore, the Agreed Upon Procedures reports, financial statements and audits for the Tribe's gaming operations for fiscal year 2013 were due to the NIGC on or before January 18, 2014.
- Q. Golden Eagle Casino closed in July 2013.
- R. On January 08, 2014, the NIGC received the fiscal year 2013 audit for Golden Eagle Casino.
- S. The fiscal year 2013 audit submitted for Golden Eagle Casino was conducted by Eldridge Gordon, Jr.
- T. The Oklahoma Accountancy Board revoked Eldridge Gordon Jr.'s CPA license on August 16, 2013.
- U. On April 08, 2014, then Region Director, Tom Cunningham, notified the Tribe that the submitted audits were inadequate because an unlicensed auditor prepared them.
- V. To date, the Tribe has not submitted a fiscal year 2013 audit conducted by a licensed auditor for Golden Eagle Casino in violation of IGRA, NIGC Regulations, and the Tribe's Gaming Ordinance.
- W. Based on the financial statement and audit submitted to the NIGC, for fiscal year 2017, the Silver Buffalo Casino fiscal year changed to January 1 to December 31.
- X. On January 10, 2017, the Tribe reopened the Golden Eagle Casino.

- Y. The annual audit and AUP report for Golden Eagle Casino for fiscal year 2017 were due on April 30, 2018.
- Z. The annual audit and AUP report for fiscal year 2017, for Golden Eagle Casino was submitted in a timely manner.
- AA. The fiscal year 2017, Annual Financial Statement for Golden Eagle Casino was issued with a Disclaimer of Opinion.
- BB. The Disclaimer of Opinion noted that the Golden Eagle Casino did not maintain adequate accounting records in fiscal year 2017 and that the CPA was unable to obtain sufficiently appropriate audit evidence to support the presentation and related note disclosures of cash, prepaid expenses, deposits, capital assets, proper cutoff of receivables, amounts due to/from related-parties, among other relevant materials.
- CC. Golden Eagle Casino representatives were unable to locate and provide bank statements for January 2017 and February 2017.
- DD. The Golden Eagle Casino was unable to provide all detailed supporting documentation requested for vendor and payroll disbursements.
- EE. The Golden Eagle Casino was unable to provide sufficient evidence to allow the Tribe's CPA to determine repayment terms and confirm related party transactions for appropriate financial presentation and note disclosures due to inadequate and conflicting supporting documentation.
- FF. The fiscal year 2017 annual audits for Golden Eagle Casino demonstrate that the Tribe operated the Golden Eagle Casino in violation of IGRA and NIGC regulations because it failed to maintain records in violation of 25 C.F.R. § 571.7(a)-(c).
- GG. The annual audit and AUP report for Golden Eagle Casino for fiscal year 2018 were due on April 30, 2019.
- HH. On April 30, 2019, the Tribe submitted the fiscal year 2018 audited financial statement for the Golden Eagle Casino issued by Clifton Larson Allen LLP (Tribe's CPA).
- II. The Tribe did not submit an AUP Report for fiscal year 2018 in violation of IGRA, NIGC regulations, and the Tribe's Gaming Ordinance.
- JJ. On May 1, 2019, the NIGC received the fiscal year 2018 audited financial statement with a disclaimer of opinion by the independent auditor.

- KK. The independent auditor was unable to substantiate the beginning balances on the Statement of Net Position because the auditor issued the Disclaimer of Opinion on the fiscal year 2017 financial statements.
- LL. The fiscal year 2018 annual audit for Golden Eagle Casino demonstrates that the Tribe operated the Golden Eagle Casino in violation of IGRA and NIGC regulations because it failed to maintain records in violation of 25 C.F.R. § 571.7(a)-(c).
- MM. On May 15, 2019, the Tribe's CPA confirmed that they entered into a contract to complete the fiscal year 2018 AUP audit, but indicated that the audit was never completed.
- NN. On May 23, 2019, the Apache Gaming Commission confirmed that the external auditor did not complete an annual AUP audit for fiscal year 2018.
- OO. The Tribe violated IGRA and NIGC regulations by failing to providing an annual AUP audit for fiscal year 2018.
- PP. On July 08, 2019, the NIGC issued a Letter of Concern regarding the fiscal year 2013 and 2017 audits and required the Tribe to submit a corrective action plan to remedy the issue.
- QQ. On July 09, 2019, the NIGC commenced an Internal Control Assessment of the Tribe.
- RR. On August 09, 2019, the Tribe submitted a written response agreeing that an audit was necessary, but did not include any corrective steps it would take to remedy the issue.
- SS. On October 21, 2019, the NIGC issued an Internal Control Assessment Notice of Findings Report, which listed 69 findings.
- TT. The NIGC conducted a follow-up on January 8, 2021 through September 21, 2021. The results were provided to the Tribe on November 17, 2021 which listed 30 findings unresolved.
- UU. The NIGC conducted a follow-up on January 27, 2022 through March 25, 2022. The results were provided to the Tribe on May 17, 2022 which listed 12 findings unresolved.
- VV. The NIGC conducted a follow-up test on June 1, 2022 through November 11, 2022 and reported the results to the Tribe on January 5, 2023 which listed 10 findings unresolved. The NIGC Audit Program informed the

Tribe that 10 unresolved findings were being referred to the Oklahoma City Region Office and Chief Compliance Officer.

- WW. On March 14, 2023, the Tribe provided evidence that resolved 3 findings in full, partially resolved 4 findings, and left 3 findings unresolved.
- XX. The fiscal year 2019 Audits and AUP reports for Golden Eagle Casino were due on April 29, 2020.
- YY. The Tribe submitted the fiscal year 2019 AUP report for Golden Eagle Casino to the NIGC on October 27, 2020, 181 days late.
- ZZ. The Tribe submitted the fiscal year 2019 Annual Financial Statement to the NIGC on November 02, 2020, 187 days late.

AAA. As explained above, the Tribe has committed seven violations:

1. The Tribe failed to submit compliant audits and AUP reports for the Silver Buffalo Casino in fiscal year 2013.
2. The Tribe failed to submit complaint audits and AUP reports for the Golden Eagle Casino in fiscal year 2013
3. The Tribe failed to submit a compliant audit for Golden Eagle Casino in fiscal year 2017.
4. The Tribe failed to submit a compliant audit for Golden Eagle Casino in fiscal year 2018.
5. The Tribe submitted the fiscal year 2019 AUP report for Golden Eagle Casino, 181 days late.
6. The Tribe submitted the fiscal year 2019 Annual Financial Statement for Golden Eagle Casino 187 days late.
7. The Tribe failed to maintain books of account or records.

BBB. NIGC did not issue a Letter of Concern for violation 5 – 7 above prior to issuing this NOV. The violations occurred after the July 8, 2019 Letter of Concern addressing similar issues, violations 1 – 4, and the Apache Tribe failed resolve all concerns. NIGC expended substantial amounts of time and effort over the last several years to assist the Apache Tribe in correcting these violations and to improve its internal controls and record keeping. An additional letter of concern would not likely result in voluntary compliance.

6. Measures Required to Correct the Violations

No remedial action can correct the violation of failing to submit AUP, Financial Statements, and audits within 120 days of the end of the fiscal year. 25 C.F.R. §§ 542.3(f), 543.23(d), and 571.13(a). Submission of the compliant audits for fiscal year 2017 and 2018 will cure the on-going violations and must be submitted to the NIGC

within 90 calendar days of service of this NOV. Evidence that fully resolves the 7 remaining 2019 ICA finding should be submitted to the NIGC within 90 calendar days of service of this NOV. In addition, improved controls to ensure timely submission of future audits and the maintaining of permanent books of account or records should be put in place.

7. Appeal

The Tribe may appeal this action within 30 days of service of this Notice of Violation. The Tribe may either: (1) request a hearing before a Presiding Official under 25 C.F.R. Part 584; or (2) may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions pursuant to 25 C.F.R. Part 585. Failure to file an appeal within the time provided will result in a waiver of right to appeal.

Any appeal of this Notice of Violation must reference this NOV and be submitted to the NIGC at the following address:

NIGC Attn: Office of General Counsel
1849 C Street NW
Mail Stop #1621
Washington, DC 20240

The Tribe has a right to assistance of counsel in such an appeal.

If the Tribe elects a hearing before a Presiding Official, it must file a brief with the Commission (within ten days after filing a notice of appeal), which states, with particularity, the relief desired and the grounds in support including, when available, supporting documentation and evidence in the form of affidavits.

If the Tribe prefers a closed hearing, it must include, with the brief, a request to do so and why. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the brief. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony.

The Tribe may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

8. Fine-Submission of Information

The violation cited above may result in the assessment of a civil fine against the Tribe in an amount not to exceed \$57,527 per violation per day. Under 25 C.F.R. § 575.5(a), the Tribe may submit written information about the violations to the Chairman within fifteen (15) days after service of this Notice of Violation (or such longer period as the Chairman may grant for good cause). The Chairman shall

consider any information submitted in determining the facts surrounding the violations and the amount of the proposed civil fine, if any.


Dated this 19th day of April 2023.


E. Sequoyah Simermeyer
Chairman

Certificate of Service

I certify that this **NOV-23-02** was sent by first class mail, certified U.S. mail, return receipt requested, and email on this 19th day of April, 2023 to:

Apache Tribe Business Committee
Attn: Mr. Durell Cooper, Chairman
P.O. Box 1330
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Anadarko, Oklahoma 73005
durell.cooper@apachetribe.org



Shakira Ferguson
Legal Staff Executive Administrator