July 12, 2021
Summary of proposed change to 25 C.F.R. § 514.4
National Indian Gaming Commission

The Indian Gaming Regulatory Act requires that tribal gaming operations pay annual fees derived from the operation's gross revenues. IGRA defines gross revenues are "the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures." 25 U.S.C. § 2717(a)(6). NIGC regulations clarify that assessable gross revenues include "entry fees (including table or card fees)" and provide a definition for the "allowance for capital expenditures for structures." 25 C.F.R. §§ 514.4(c) and (e). Currently, NIGC regulations do not specify whether promotional credits (free play) that are issued by gaming operations and wagered by patrons should be included in the "total amount of money wagered."

The proposed amendment to the Commission's fee regulation, shown in redline below, would permit a gaming operation to deduct from "the total amount of money wagered" the amounts the gaming operation can demonstrate were issued to patrons as promotional credits.

§ 514.4 How does a gaming operation calculate the amount of the annual fee it owes?

(a) The amount of annual fees owed shall be computed using:

(1) The most recent rates of fees adopted by the Commission; and

(2) The assessable gross revenues for the gaming operation's assessed fiscal year.

(b) Assessed fiscal year means the gaming operation's fiscal year ending prior to January 1 of the year the Commission adopted fee rates.

(c) For purposes of computing fees, assessable gross revenues for each gaming operation are the total amount of money wagered on class II and III games, plus entry fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for capital expenditures for structures as reflected in the gaming operation's audited financial statements.

(d) Tier 1 assessable gross revenues are the first $1,500,000 of the assessable gross revenues from each gaming operation. Tier 2 assessable gross revenues are the amounts in excess of the first $1,500,000 of the assessable gross revenues from each gaming operation.

(e) The allowance for capital expenditures for structures shall be either:

(1) An amount not to exceed 5% of the cost of structures in use throughout the assessed fiscal year and 2.5% of the cost of structures in use during only a part of the assessed fiscal year; or

(2) An amount not to exceed 10% of the total amount of depreciation expenses for the assessed fiscal year.

(f) The amounts wagered that the gaming operation can demonstrate were issued by the gaming operation as promotional credits may be excluded from the total amount of money wagered.

(g) Unless otherwise provided by regulation, generally accepted accounting principles shall be used.